

BLACK DIAMOND CITY COUNCIL MINUTES

October 6, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:01 p.m. and lead us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Morgan, Edelman, Weber, Pepper

ABSENT: None

Staff present were: Andrew Williamson, MDRT/Economic Development; Seth Boettcher, Public Works Director; Jamey Kiblinger, Police Chief; David Linehan, City Attorney and Brenda L. Martinez, City Clerk.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

1) Presentation-Fire Department

Councilmember Pepper requested the floor.

Mayor Benson stated we have a presentation.

Councilmember Morgan called point of order to Mayor Benson.

Mayor Benson called Councilmember Pepper out of order.

Councilmember Pepper called point of order.

Councilmember Morgan called point of order to the Mayor.

Councilmember Pepper stated the Chair is not being recognized.

Mayor Benson called Councilmember Pepper out of order.

Mayor Benson again stated we have a presentation.

Councilmember Pepper appealed the decision of the chair.

Mayor Benson called Councilmember Pepper out of order several times as Councilmember Pepper continued to state the Chair is not being recognized.

Mayor Benson called a five -minute recess at 7:01 p.m.

Councilmember Morgan called Mayor Benson out of order as she stated there should be a vote to call a recess.

Mayor Benson called the meeting back to order at 7:06 p.m. and stated we are having a presentation by Mountain View Fire & Rescue.

Councilmember Pepper requested the floor, as Mayor Benson was calling the meeting back to order.

Mayor Benson called Councilmember Pepper out of order again as Councilmember Pepper continued talking.

Councilmember Morgan appealed the decision of the chair and stated this is the Council's meeting, not the Mayors.

Mayor Benson called Councilmember Morgan out of order several times and stated she has no appeal power.

Mayor Benson restated we have a presentation from Mountain View Fire & Rescue.

There was Council discussion.

Mayor Benson called Councilmember Morgan out of order several times as she continued to talk.

Mayor Benson called Councilmember Pepper out of order as Councilmember Pepper continued to state she appeals the decision of the chair several times; and noted that Councilmember Pepper is not the presiding officer.

Councilmember Weber called point of order.

Councilmember Pepper appealed the decision of the chair, to which the Mayor stated she cannot appeal the Presiding Officer.

Again, Mayor Benson called Councilmember Pepper out of order several times as she continued to talk; and noted to Councilmember Pepper that she is not the presiding officer.

Councilmember Pepper stated please let the record show that the Council has approved its own agenda.

Mayor Benson called Councilmember Pepper out of order.

There was Council discussion.

Clerk noted to Councilmember Pepper there was no second to her motion.

Councilmember Pepper **motioned** to approve a valid agenda. **Second** Councilmember Morgan.

Mayor Benson stated Councilmember Pepper has no authority and she's out of order, as Councilmember Pepper continued to talk.

Mayor Benson stated she needs to call another five -minute recess.

Councilmember Morgan stated that only the Council has the authority to declare a recess.

Mayor Benson called for recess at 7:09 p.m.

Meeting called back to order at 7:15 p.m.

Councilmember Pepper asked for the floor.

Councilmember Pepper stated there is a process for the presentation and **moved** for the Council to accept and look forward to the presentation from the Fire Chief this evening. **Second** Councilmember Morgan.

There was Council discussion around Council rules and presentation guidelines.

Chief Smith excused himself with the Mayor and stated he needs to cancel his presentation tonight and reschedule another night.

Mayor Benson thanked Chief Smith for coming tonight.

Councilmember Morgan asked for the floor and addressed time constraints and the agenda and her email to Chief Smith regarding the presentation.

Mayor Benson asked the Attorney for his opinion on how we should proceed with this meeting.

Attorney Bob Noe introduced himself and is standing in for Attorney Linehan of Kenyon Disend Law firm. He discussed the usual-typical way the Agenda is put together by the

Mayor's office. He went on to talk about the agenda and the processes of motions and meetings to run smoothly to get the work of the City completed.

There was Council discussion around agendas and Council rules.

Attorney Noe spoke about law requirements and the agenda notice process.

There was continued Council discussion.

Councilmember Edelman expressed her concern about the lack of working with the staff and using illegal and invalid rules.

Councilmember Morgan called point of order to Councilmember Edelman, stating that she is impugning a fellow Councilmember.

Mayor Benson expressed her concern about illegal items being placed on the agenda.

CONSENT AGENDA:

- 2) **Claim Checks** – October 6, 2016 - No. 43927 through No. 43991 and EFTs in the amount of \$297,565.40
- 3) **Payroll** – August 31, 2016 – No. 19178, No. 19194 through No. 19206 (voids, 18829) and EFTs in the amount of \$292,470.16
- 4) **Minutes** – Council/Planning Commission Joint Meeting of July 12, 2016, and Council Special Meeting of September 8, 2016

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt the Consent Agenda.

There was Council discussion.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to adopt an amended motion as he read into the record from a prepared statement.

Councilmember Edelman called point of order to Councilmember Weber. She stated to Councilmember Weber there is already a motion on the floor.

Councilmember Weber stated he just made an amended motion.

There was Council discussion.

Councilmember Weber restated his motion; I amend the current motion that I have a motion that I will distribute and I ask for a courtesy second.

Mayor Benson stated you cannot interrupt the motion on the floor, you need to finish the consent agenda.

There was Council discussion.

Councilmember Weber called a point of order.

Clerk called point of order to Councilmember Weber and let him know that he does need to read the motion into the record.

There was Council discussion.

Councilmember Weber clarified his motion as follows: I move to adopt an amended motion that I will now distribute, may I have a courtesy second.

There was Council discussion.

Clerk noted to Councilmember Weber he does not need a courtesy second, he can read it right into the record.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to postpone all the minutes until the next regularly scheduled Council meeting on October 20 at 7 pm. Second, the claim checks and payroll are approved except the voucher number 43953 for Kenyon Disend which is disapproved because the City Council does not consider their contract to be valid.

Councilmember Weber spoke to his motion.

There was Council discussion.

Councilmember Weber called point of order to the Mayor.

Councilmember Pepper called point of order to the Mayor.

Councilmember Morgan called point of order to the Mayor.

Councilmember Morgan spoke to the motion as she seconded.

There was continued Council discussion.

Councilmember Edelman stated for the record that when this all hits the fan, this is not the right thing to do. She further stated she does not stand-by postponing these meeting minutes just because they don't like the Mayor.

There was continued Council discussion.

Mayor Benson asked for an opinion from the Attorney.

Attorney Noe commented that the motion to amend to approve the consent agenda by Councilmember Weber is two amendments. One, he wants to take out the minutes; and then he wants to take out the Kenyon Disend voucher. He further stated these two items are under the consent agenda/claim checks, and that it is a proper amendment.

Councilmember Weber noted that is why it is written that way. The consent agenda is voted in as one item, even though there are three separate items under the consent agenda, but voted as one item.

AMENDED MOTION VOTE: Motion **passed** 3-2 (Deady, Edelman).

An amended **motion** was made by Councilmember Edelman and **seconded** by Councilmember Morgan to pass the consent agenda as amended. Motion **passed** 5-0.

PUBLIC COMMENTS:

Colin Lund, CCD Black Diamond gave a summary of the proposed amendments to the MDRT contracts. He submitted a letter from the Attorney which he would like submitted into the record.

Bob Edelman, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

PUBLIC HEARINGS:

5) AB16-058 – Proposed Ordinance Adopting 2012 Stormwater Manual for Western Washington

Public Works Director Boettcher gave a brief overview on this item and noted received comments from the public.

Mayor Benson asked Mr. Boettcher if he received anything from Kristen Bryant and her mother and noted that they are encouraging the City to accept the Stormwater Manual.

Mayor Benson noted that the amended Stormwater manual acceptance was reviewed by the Attorney and he noted there are things in it that you cannot do. His recommendation was to use the one that the City presented that was reviewed by the Attorney to accept the Stormwater manual, if you choose to do that tonight.

There was Council discussion.

Judy Carrier, Auburn noted being confused about what is being approved tonight. She encouraged Council to approve the 2012 Stormwater manual and the 2014 amendment updates. She brought some maps with her and gave to the clerk to distribute to Council members. She noted this is a map that was zoomed in on the Black Diamond area; and critical recharge areas that most of Black Diamond area lies over. She noted that people are concerned about what happens here as far as their water sources, wells, streams and springs. She encouraged the Council to approve 2012 and the 2014 Stormwater manual update.

Robbin Taylor, Black Diamond spoke to Council and noted receiving a copy of the amended ordinance when she went to the Growth Committee meeting. The City's ordinance that was approved by the Attorney does say as amended in December 2014. She feels that no ordinance will be passed tonight. She also voiced concern that the Stormwater manual will, again, go on no longer being adopted and there goes our Stormwater grant. She supports the adoption of the Stormwater manual with its 2014 amendments.

Councilmember Pepper asked Mayor Benson about the letters from Kristen Bryant and her mother and Ms. Wheeler being part of a record. Mayor Benson stated they are included as part of the record. They are written statements that are included in the record.

Councilmember Edelman called a point of order to Councilmember Pepper as the Public Hearing has not been closed.

There was continued Council discussion around two versions of the Stormwater manual and which version is being supported.

Mr. Boettcher said there is no debate about the manual we are adopting as amended in December 2014. This manual includes the amendments and he feels people are just referring to it as the 2014 Stormwater management manual. He feels the confusion comes from competing ordinances.

Bob Edelman stated this is extremely confusing. What are we discussing? A proposed amendment to the ordinance? He stated the ordinance hasn't even passed yet, and people are discussing amendments to it.

Councilmember Edelman gave a suggestion/ proposal to pass the Stormwater manual that was in the packet, if the majority would like to amend the ordinance after this passed, then let's bring this back later for a discussion and maybe there will be more changes because there's some legal questions in here. She further suggested that we not even discuss the packet that was put on their desk tonight.

Kristine Hanson, Black Diamond spoke to Council about the Stormwater packet manual being very important as it goes through so many processes for the safety of our water, of the lake, all these things. You need to pass the manual first, and then if you have

amendments that you want to bring forward, you do that afterwards. You have to let everybody see those amendments. If you don't pass this, we are in violation. Pass the packet, pass the Stormwater and then if you have an amendment, bring it back and let everybody see it.

Mayor Benson closed the public hearing at 8:30 p.m.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adopt ordinance with Clerk to assign a number after adoption adopting the new Stormwater management regulations and amending chapter 14.04 of the Black Diamond Municipal Code.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to pass the amended ordinance of the City Council of the City of Black Diamond, King County Washington adopting the new Stormwater Manual regulations and amending chapter 14.04 of the Black Diamond Municipal code. She spoke to her motion.

There was Council discussion.

A **motion** was made by Councilmember Pepper to amend the motion that is on the floor to pass the amended Stormwater ordinance. **Second** Councilmember Morgan.

There was continued Council discussion.

Councilmembers Deady & Edelman noted they cannot support this due to legal concerns.

Point of order was called by Councilmember Edelman to Councilmember Pepper.

Councilmember Pepper restated to the City Clerk her above motion.

Councilmember Edelman went on record to state that she does not support this amendment.

Councilmember Deady also stated she does not support this amendment.

VOTE: Motion **passed** 3-2 (Deady, Edelman)

Mayor Benson stated she vetoes this ordinance.

Mayor Benson stated we can now go back to the main motion for a vote. This is in the packet section five, that was vetted by the attorney.

Mayor Benson noted that a veto means you need a super majority vote.

Councilmember Edelman called the question.

Councilmember Edelman called for roll call vote.

ROLL CALL VOTE:

Councilmember Deady- Yes; Councilmember Morgan-No; Councilmember Edelman-Yes; Councilmember Pepper-No; Councilmember Weber-No. Motion **Failed** 2-3 (*Morgan, Weber, Pepper*) on the main motion.

Councilmember Pepper made an amended motion to pass the amended Stormwater management regulations and chapter 14.04 of the Black Diamond Municipal Code.

Mayor Benson noted to Councilmember Pepper that since she vetoed it, she will need four votes.

Attorney noted that the revote would be at the next scheduled council meeting.

UNFINISHED BUSINESS:

7) AB16-049A – Resolution Authorizing an Agreement with Parametrix, Inc. -Surveying Svc. – MDRT

There was Council discussion. Mayor noted you cannot adopt and replace an entire agenda. She stated this is not legal.

There was continued Council discussion.

Councilmember Pepper called a point of order.

Councilmember Pepper appealed the decision of the Chair who is not accepting the Councils approved agenda.

Mayor Benson called Councilmember Pepper out of order. She stated to Councilmember Pepper that she has no authority.

Councilmember Edelman called point of order to Mayor that we need some order.

There was continued Council discussion.

A **motion** was made by Councilmember Pepper on number five on the approved agenda as the amended resolution authorizing an amended agreement with Parametrix. There was no second. (*Motion died due to lack of second*).

Mayor Benson noted that Councilmember Pepper needs to make a motion to put that on the agenda.

There was continued Council discussion.

Councilmember Weber called a point of order. Mayor Benson called an out of order.

Councilmember Pepper called a point of order for interrupting a Councilmember who has the floor. She continued to speak to this item.

There was Council discussion.

Councilmembers Edelman and Deady noted their concern of the agenda bills being modified. Councilmember Edelman noted that on October 1 she sent an email to Councilmember Pepper and asked her to remove her name as she did not support these amendments. For the record, I do not want to see my name on any resolution that the majority puts forth.

There was Council discussion.

A **motion** was made by Councilmember Pepper that we accept the amended resolution for a thirty -day contract authorizing agreement with Parametrix Inc. Surveying Services MDRT. **Second** Councilmember Weber. Motion ***passed*** 3-2 (*Edelman, Deady*)
Mayor Benson stated she will deny this.

8) AB16-050A – Resolution Authorizing an Agreement with Parametrix, Inc. -Traffic Eng. Svc. - MDRT

A **motion** was made by Councilmember Pepper that we accept the amended resolution for a thirty -day contract authorizing agreement with Parametrix, Inc. Traffic Engineer Service MDRT. **Second** Councilmember Weber. Motion ***passed*** 3-2 (*Edelman, Deady*)

9) AB16-051A – Resolution Authorizing an Agreement with RH2 - Civil – MDRT

A **motion** was made by Councilmember Pepper that we accept the amended resolution for a thirty -day contract resolution authorizing agreement with RH2 - Civil – MDRT. **Second** Councilmember Weber. Motion ***passed*** 3-2 (*Edelman, Deady*)
Mayor Benson stated this also will be denied like the last two.

10) AB16-052A – Resolution Authorizing an Agreement with Perteet –Environment- MDRT

A **motion** was made by Councilmember Pepper that we accept the amended resolution for a thirty -day contract authorizing agreement with Perteet-Environment MDRT. **Second** Councilmember Weber. Motion ***passed*** 3-2 (*Edelman, Deady*)
Mayor Benson stated this also will be denied.

11) AB16-053A – Resolution Authorizing an Agreement with HWA Geosciences – MDRT

A **motion** was made by Councilmember Pepper that we accept the amended resolution for a thirty -day contract authorizing agreement with HWA Geosciences – MDRT. **Second** Councilmember Weber. Motion *passed 3-2 (Edelman, Deady)*
Mayor Benson stated this will be denied.

12) AB16-057A – Resolution Regarding Enumclaw School District Mitigation Plan

Mayor Benson stated this has already been approved and already in motion.

There was Council discussion.

Councilmember Edelman stated that this needs to be withdrawn.

Councilmember Pepper read the entire resolution into record.

A **motion** was made by Councilmember Pepper that we accept the resolution of the Enumclaw School District Traffic Mitigation Plan. **Second** Councilmember Weber.

There was Council discussion.

VOTE: Motion *passed 3-2 (Edelman, Deady)*
Mayor Benson stated this resolution will be denied.

NEW BUSINESS:

13) AB16-059 – Resolution Adopting the 2017-2022 Capital Improvement Plan

14) AB16-060 – Resolution Authorizing an Agreement with RH2 for On-Call Services

A **motion** was made by Councilmember Weber to remove the CIP from the agenda this evening. **Second** Councilmember Pepper. (Withdrawn)

There was Council discussion.

Public Works Director Boettcher spoke about this project and the process of this plan.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan that the Council decline these two items. *(This motion was restated below).*

Clerk clarified there is already a motion that needs to be voted on.

Councilmember Weber withdrew his motion.

Councilmember Pepper then **motioned** to remove resolution number adopting the 2017-2022 Capital Improvement Plan and resolution authorizing an agreement with RH-2 for on call services; these were not on our agenda; and the Council declines to take them up this evening. **Second** Councilmember Weber. Motion **passed** 3-2 (*Edelman, Deady*) to remove items 13 and 14 from agenda.

Councilmember Morgan noted she would like to add something under New Business mostly about our agendas in the future. She spoke to her three items of New Business.

There was Council discussion.

A **motion** was made by Councilmember Morgan that they will no longer be attending the Planning Commission meetings beginning with the meeting of Tuesday, October 11. No second. (*Motion died for lack of second*).

Councilmember Morgan spoke to her motion.

Mayor Benson asked for clarification from the Attorney regarding these meetings.

The Attorney commented that the process for comprehensive planning is set well in advance, so those items were already scheduled and they should not be altered at this time.

There was continued Council discussion.

Mayor Benson recommended that we do not want to reschedule these meetings.

Councilmember Weber called the Mayor out of order.

There was continued Council discussion around the Planning Commission.

DEPARTMENT REPORTS: None

MAYOR'S REPORT:

Mayor Benson reported on attending a SCATBd meeting and a meeting at (PSRC) Puget Sound Regional Council who made a presentation; their ORCA data, which is their transit and the light rail; they have discovered that when they went to employ the matched subsidies it increased transit usage so they think that the ORCA data is giving a lot of information to them that is being studied through the University of Washington. She shared that it was a very interesting meeting.

COUNCIL REPORTS:

Councilmember Deady shared about the purple bows and purple lights around town in recognition of Domestic Violence Awareness month for October; reported meeting with the Finance Director. Make a Difference Day will be October 22 and she reported on attending the Community Center Harvest Moon auction. Net proceeds for this year was \$46,940.00. She thanked everyone who was able to come and support this event. She asked the Council to keep in mind during budgeting, the Community Center could utilize \$5,000 to help with insurance. She stated that in regards to contracts and committees and full votes she wants to go on record to state that she does not recognize those committees and noted that she does not attend, recommend or do anything out of those Committees.

Councilmember Morgan reported attending the Puget Sound Pollutant Loading Action Committee meeting in Tukwila, she also reported they are getting ready to model surface and ground water flows. She noted they are looking for carbon from the coal and arsenic from the surface; and looking for PCB's. She talked about the job of an elected official and the important role of the Committees.

Councilmember Edelman reported that she attended the Emergency Preparedness event at Rock Creek Elementary School. She met with Finance Director to talk about vouchers. She helped stuff utility bills at the City Hall and attended the Community Center's auction. She also reported that she helps to feed the elderly on Tuesday and Thursday each week. She shared that two weeks ago, she handed out from the Sound Cities Association a low - income housing tax credit document and that next Wednesday at the PIC meeting there will be a vote and she needs to know which way the Council is leaning so she can vote appropriately. Council supports a yes vote. She reported on the upcoming SCA 2017 state legislative agenda, this agenda will include adjusting the property tax cap. Council supports this. She printed an agenda from the PIC meeting that is coming up, low income tax credit is coming up, there is a SCA (Sound Cities Association) state legislative agenda and she talked about the assessed fees. Legislature wants to address the housing and homelessness and underlying issues of homelessness.

Councilmember Weber reported that he attended work session and committee meetings, he touched briefly on the water ordinance amendments and how they make sense. He discussed contracts, it's not his position to change any funding agreements, development agreements, items come to Council and we are here for input. He noted he is not trying to run any one out of town, all he's looking for is information to make decisions, he wants to be more informed not only as a Councilmember but as a citizen of Black Diamond.

Councilmember Pepper reported on her follow up with Department of Ecology regarding our Stormwater capacity grant; she spoke with the finance person at DOE and she was hoping to get the Stormwater ordinance passed this evening, she asked the Mayor if she could revisit that veto; Mayor Benson said no and talked about bundling future Stormwater issues into one that has a cut-off date. Mayor Benson noted the Attorney had sent this information on to you as well. Councilmember Pepper had hoped to get this grant put before the Council by the 20th of October, the Stormwater ordinance passed first. She noted the City was never in jeopardy of losing the grant. She felt that information was misrepresented at the September 15 meeting and would really like to see the amended

Stormwater grant passed. She addressed comments regarding OPMA violations. She spoke to false accusations and messages without evidence. She discussed the need of independent Attorney review. She thanked everyone for coming out tonight.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Leslie Cooley, Black Diamond spoke to Council.

Brock Deady, Black Diamond spoke to Council.

Pam McCain, Black Diamond spoke to Council.

Judy Goodwin, Black Diamond spoke to Council.

Chief Smith, Black Diamond spoke to Council.

Cole Oglesbee, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Melissa Oglesbee, Black Diamond spoke to Council.

Kristine Hanson, Black Diamond spoke to Council.

Judy Baxley, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

EXECUTIVE SESSION: None

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Deady to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

The meeting was adjourned at 10:36 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk