

## **BLACK DIAMOND CITY SPECIAL COUNCIL MINUTES**

**December 22, 2016**

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

### **CALL TO ORDER, FLAG SALUTE:**

Mayor Benson called the special meeting to order at 7:00 p.m. and led us all in the Flag Salute.

### **ROLL CALL:**

**PRESENT:** Councilmembers Deady, Morgan, Edelman, Weber and Pepper.

**ABSENT:** None

Staff present were: Andrew Williamson, MDRT/Economic Development Director; Judge Dane, Kevin Esping, Capital Facilities Coordinator; Scot Hanis, Capital Projects; Dan Dal Santo, Utility Superintendent; Jamey Kiblinger, Police Chief; David Linehan, City Attorney; Kathy Allen, Deputy City Clerk; Debbie McGraw, Records Management; Stephanie Metcalf, Court Administrator; Tracy Redd, MDRT Senior Accountant; Bryan Lynch, Police Sergeant; Brian Martinez, Police Commander

### **APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:**

Mayor Benson stated there will be some rules to keep the meeting in order. Please approach the Dias, signal to me and I will allow you to come up. If you have notes, please pass those to the City Clerk. If you are out of order, you could be expelled from the meeting.

### **PUBLIC COMMENTS:**

Kevin Esping, Representing Teamsters spoke to the Council.

Pat Nelson, Black Diamond spoke to Council.

Gary Davis, Black Diamond spoke to Council.

Howard Botts, Black Diamond spoke to Council.

Erin Stout, Black Diamond spoke to Council.

Johna Thomson, Black Diamond spoke to Council.

Leslie Cooley, Black Diamond spoke to Council and requested that the email be included in the minutes that she sent to the Mayor and Clerk.

Nancy Rogers, OakPointe Attorney spoke to Council.

Kristen Bryant, Black Diamond spoke to Council.

Brian Derdowski, Bellevue spoke to Council.

Tina McGann, Black Diamond spoke to Council.

Judy Baxley, Black Diamond spoke to Council.

Kayla Solter, Black Diamond spoke to Council.

Pam McCain, Black Diamond spoke to Council.

Craig Goodwin, Black Diamond spoke to Council.

Bill Roth, Black Diamond spoke to Council.

Brock Deady, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Bill McDermond, Black Diamond spoke to Council.

Councilmember Weber called point of order.

Councilmember Deady called point of order as speaker wasn't addressing the Council.

Councilmember Weber called point of order as Mayor told speaker he needed to address the Council.

Kristine Hanson, Black Diamond spoke to Council.

Jackie Buss, Black Diamond spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

**1) AB16-088A-Ordinance Adopting 2017 Budget**

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber to the first item of business, the ordinance adopting the 2017 budget, I move that this item is not

properly before the Council, it is removed from the agenda and we should immediately address item number two, the substitute 2017 budget ordinance.

There was council discussion on this item with the focus on staff being allowed to discuss item number one.

Councilmember Weber asked Councilmember Pepper that he would like to clarify if we are talking about item number two, correct?

Councilmember Pepper stated no, that item number one is on the floor with a motion and a second.

Councilmember Weber stated that then there would need to be an amended motion for the substitute, correct?

Mayor Benson stated that May just presented a comparison between the two budgets so that you can see that you have calculation errors on your budget and you cannot adopt an unbalanced budget.

Councilmember Edelman stated she would like Councilmember Pepper to rescind her motion and let us vote on the Mayor's budget and then we can move on to the substitute budget.

Councilmember Pepper stated the motion stands, second stands and she would like to take the vote.

Councilmember Edelman stated she would like the motion read again.

Councilmember Pepper restated her motion as follows: to move AB16-088A ordinance adopting the 2017 budget. She moved that this item is not properly before the Council and is removed from the agenda and we should immediately address item two, Substitute 2017 Budget Ordinance and she had a second by Councilmember Weber.

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

Mayor Benson stated motion carries, but because you did not adopt our budget and removed it from the agenda, you do not have a budget, because you incorporated your budget into my budget by reference. Mayor Benson stated, "You have nothing to discuss without approving my budget."

There was continued Council discussion around the Mayor's budget and substitute budget.

## **2) AB16-091-Substitute 2017 Budget Ordinance**

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to adopt Ordinance AB16-091 (Substitute 2017 Budget Ordinance).

Councilmember Deady **moved** to amend the motion. She further stated that she and Councilmember Edelman have fifteen amendments.

There was council discussion regarding the fifteen amendments being read and voted on as separate items.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman "I move to amend the motion to strike the second and third recital clauses because they are inaccurate. The recital clauses would be accurate with respect to the budget ordinance prepared by the Mayor and staff. But they are not accurate for the Substitute Budget. The City Council has never had public hearings on the Substitute Budget, which was not revealed to the public until the December 15th Council meeting. And a copy of the Substitute Budget was not "on file with the City Clerk for examination by the public until after all work studies and public hearings were closed. To be compliant with RCW 35A.12.130, replace the enacting clause to say "The city council of the City of Black Diamond **DO** ordain as follows:"

There was council discussion around this.

Councilmember Edelman called for the vote.

**VOTE; Amended motion failed 2-3 (Morgan, Pepper, Weber)**

### **SECTION THREE**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend the motion to strike Section 3 because Exhibit A does not appear to balance, per calculation by May Miller. The budget must balance, per RCW 35A.33.075 ("Appropriations shall be limited to the total estimated revenues contained therein).

There was council discussion around this.

**VOTE; Amended motion carries 3-2 (Pepper, Weber) Morgan did not vote**

### **SECTION FIVE**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to strike Section 5 because Per RCW 35A.33.145: "Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law." It would be improper for the City to place state grant money (which is granted for restricted uses) into a contingency fund. The Substitute Budget shows 2017 grant money is being directed into the contingency fund, which would not be allowed.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

#### **SECTION SEVEN**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to strike Section 7, first two sentences because State law imposes tight time limits on certain planning functions, which could create liability for the City if staff capacity is compromised and a supplemental budget appropriation is delayed or refused. I also move to strike the last two sentences of Section 7 last two sentences because these provisions are inviting legal claims against the City for breach of contract, particularly from the MDRT master developer. The funds for MDRT consultants are provided 100% by the developer pursuant to a validly enacted development agreement, which carries the force of law. Telling these consultants that their contracts are terminated or that their funding may be withheld or refused is likely to provoke a lawsuit against the City. The Council also lacks authority to require the Mayor to "immediately notify all consultants that funding may no longer be available." The Mayor is the chief executive and is not required to take instructions from the Council as to how to perform her administrative duties. Additionally, it is also unclear what this section means when it refers to "restoring funds" from terminated contracts "to the applicable FTE and wages and benefits line items." The proposed ordinance language restricting the expenditure of budgeted funds until existing contracts are reviewed and reauthorized by Council also appears contrary to BDMC 2.52.010, which states: "The heads of the various executive departments of the city are authorized to expend such funds and in such amounts (within departmental budget limitations) as are deemed necessary by them for the proper operation and function of their various departments." The Substitute Ordinance does not call out that it is effectively repealing and replacing BDMC 2.52.010, nor does the title of the ordinance make that repeal *clear*, which is contrary to the single-subject and title rule.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

#### **SECTION ELEVEN**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to strike Section 11 because this provision effectively amends the procurement rules previously adopted in BDMC 2.90 without directly saying so. The language "Notwithstanding any provisions of BDMC 2.90," fails to give notice to the public that multiple portions of 2.90.010(B) would be effectively repealed by Section 11 of this Substitute Ordinance. This would likely violate the single-subject and title rule and the requirements of 35A.12.130 ("No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full

length.") Section 11 also appears to violate contractual obligations of the City to the master developer under the MPD Development Agreements. Under these prior agreements, the City Council has no authority to restrict funding to MDRT consultants, which are paid for entirely by the developer, with required staffing levels and consultants spelled out in the MPD documents

There was council discussion around this.

**VOTE; Motion passed 2-3 (Pepper, Weber)**

Councilmember Edelman stated to go ahead with roll call vote, but for the record wants it noted that Councilmember Morgan did originally vote yes.

Councilmember Pepper called for a Roll Call Vote

**ROLL CALL VOTE:** Councilmember Morgan called for a roll call vote on amendment of section eleven (Deady, yes; Edelman, yes; Morgan, no; Pepper, no; Weber, no)

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

## **SECTION TWELVE**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend to strike Section 12 because the intent of this section is unclear and confusing. It purports to condition the expenditure of funds budgeted "for the Finance Department," on conditions that apply generally to all City expenditures under BDMC 3.23.030.

Apparently, it is the Council majority's intent to require the withholding of paychecks (wages and benefits) for the Finance Department personnel if the Mayor does not provide the requested documentation to the Council majority's satisfaction. This kind of threat to dock staff pay is illegal.

There was council discussion around this.

Councilmember Edelman called for the vote.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

## **SECTION THIRTEEN**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to amend to strike Section 13 because like Section 11, Section 13 would effectively amend a part of BDMC 2.90.010(B) relating to the Mayor's spending authority, but without expressly stating so, and without providing any notice in the title of the ordinance and in violation of the single-subject rule. RCW 35A.12.130 states "No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.". Depending on the

length of time it takes to locate qualified legal counsel and negotiate a contract for legal services, the \$10,000 cap on legal expenditures may also violate the MPD Development Agreement by restricting the City's ability to hire and use legal counsel necessary to process MDRT permits in a timely fashion.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

Councilmember Edelman called the question.

#### **SECTION FOURTEEN**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend Section 14 to strike Section 14 because the Council has no authority to require the Mayor to hire a Community Development and Environmental Review Officer. State law gives the Mayor exclusive authority to hire and fire staff, per RCW 35A.12.090. The Council may create and eliminate positions (within lawful limits), but Council cannot force the Mayor to fill a position. Section 14 also purports to change the BDMC's existing designation of who serves as the SEPA Responsible Official, which again violates the single-subject rule and fails to give adequate notice to the public in the title of this ordinance that the Code is being amended. Under BDMC 19.04.050, the City's SEPA official is the Community Development Director or his/her designee. The Council can change this by ordinance, but not through adoption of the budget. RCW 35A.12.130 states "No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length."

There was council discussion around this.

**VOTE; Motion passed 3-2 (Pepper, Weber) (Morgan noted she did not vote)**

#### **SECTION FIFTEEN**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman moved to amend section 15 because the Council may allocate funds to a certain position, but the Council cannot compel the Mayor to fill the position.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

#### **SECTION SIXTEEN**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend to strike section 16 because the conditions on spending monies that are specifically

budgeted for the various funds violates BDMC 2.52.010 ("The heads of the various executive departments of the city are authorized to expend such funds and in such amounts (within departmental budget limitations) as are deemed necessary by them for the proper operation and function of their various departments."). Additionally, as written, the conditions of Section 16 may require withholding staff wages and benefits based on an ambiguous requirement to put forth policies concerning staff time and resources-subject to Council approval. Not only would this be an illegal conditioning of payment of staff salaries and benefits, but the Council has no authority to require the Mayor to submit administrative policies for Council approval. As the chief executive, the Mayor determines policies relating to use of staff time and resources. RCW 35A.12.100 ("The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees...and shall have general supervision of the administration of city government and all city interests."

There was council discussion around this and Councilmember Deady read letters from Judge Dane, Chief Smith, and Dan Dal Santo, Public Works Superintendent.

Mayor Benson noted there was one more letter today from the Union around budget proposals.

**VOTE;** Motion **passed** 3-2 (Pepper, Weber) Councilmember Morgan did not vote.

Councilmember Morgan noted she did not vote and stated, "The amendment carries".

Councilmember Deady called for roll call vote

**ROLL CALL VOTE:** Councilmember Deady, yes; Councilmember Morgan, yes;  
Councilmember Edelman, yes; Councilmember Weber, no; Councilmember Pepper, no  
Motion **passed** 3-2 (Pepper, Weber)

## **SECTION SEVENTEEN**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman moved to amend to Section 17 to strike because this section violates the express terms of the MPD Development Agreement and Funding Agreement and could therefore result in liability for the City if the developer were to sue for breach of contract.

There was council discussion around this.

**VOTE;** Motion **failed** 2-3 (Morgan, Pepper, Weber)

## **SECTION EIGHTEEN**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend to strike Section 18 because the Council may authorize or not authorize money for



uses but the Council does not have legal authority to appropriate funds for the Storm Water Fund but then tell the Mayor or department heads that they cannot spend the budgeted amount unless and until the Mayor completes specific assignments ordered by the Council. That would violate the Mayor's authority as chief executive.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

#### **SECTION NINETEEN**

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to amend to strike Section 19 because the CIP is not a budget document. And providing for Council to have "design approval" of certain items on the CIP has nothing to do with adopting a budget. Including legislation relating to CIP projects and contract approvals is not consistent with the single- subject rule, and the title of the ordinance fails to give adequate notices to the public that such topics are included.

There was council discussion around this.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

#### **SECTION TWENTY-ONE**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend the motion to strike section 21 because the salary structure was not included as Exhibit A. This ordinance shall include the 2017 salary schedule as shown in the attachments as exhibit A.

Councilmember Edelman stated that exhibit A is the adopted budget, not the salary structure, so it needs to go away.

There was council discussion regarding no packet material being included for exhibit D.

Councilmember Weber stated it should read exhibit D, which is the salary schedule.

Councilmember Edelman called for the vote.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

Councilmember Pepper stated that she would like to motion in section 21 that this ordinance shall include the 2017 salary schedule as shown in the attachment as exhibit D.

Councilmember Edelman stated this is not the place for this motion. The place for this motion is after we go through and do all the amendments to the motion. Otherwise, you are amending the

motion to amend the motion to amend the motion. She further stated it would be more logical to wait until they go through these fifteen items to make her motion.

## **SECTION TWENTY-TWO**

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to amend to strike section 22 (after section 22) because the salary structure was not included as exhibit A. Substitute Ordinance states in the conclusion that it was "Introduced on the 1st day of December." This is not true. The correct date is December 15, 2016. It also states that it was passed at a "regular" meeting of the City Council. This is not true, either. I strike Exhibit C in its entirety because no budget has been adopted or published, the Substitute Budget is not balanced, the CIP has not been adopted, no ordinance has been adopted to create a Landmarks and Arts Commission, per the Council Rules, the City Attorney is the parliamentarian and moving funds from MDRT to reserves is breach of contract.

**VOTE; Motion failed 2-3 (Morgan, Pepper, Weber)**

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Weber that she would like to go back to section 21, and amend to read exhibit (A) be changed to read exhibit (D) in section 21 at the end of the salary schedule.

Mayor Benson asked her if she had an exhibit to pass out to go with this and noted it was not included in the packet.

Councilmember Pepper stated "no" and then asked if she had a second.

Mayor Benson told her she needs to have a document.

Councilmember Edelman stated that at least two of us have not seen this document that you want people to vote on. We do not know if you have made changes from May Miller's version.

Councilmember Pepper stated there is a Motion to adopt AB16-091-the substitute 2017 budget ordinance for the 2017 budget and that there was a second by Councilmember Weber.

Councilmember Deady asked for clarification that we have an amendment to replace the document that Councilmember Weber has.

Councilmember Pepper then stated we have a motion and it was seconded to change a letter in section twenty-one.

Councilmember Weber stated to Councilmember Pepper to withdraw her motion.

Councilmember Pepper stated "I **withdraw** my motion".

Councilmember Weber then stated he will make sure everyone gets a copy of the same schedule that we looked at a few months now and that he will work with the City Clerk to get it posted to the website and that it gets clarified that it should read exhibit D.

Councilmember Pepper then stated that before her withdrawn motion there was a motion to adopt AB16-091- the Substitute Budget Ordinance for the 2017 budget and there was a second.

Councilmember Morgan called for the vote.

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

Mayor Benson stated she would veto the ordinance and suggested to revisit this issue on the 27<sup>th</sup>. She further stated she doesn't believe this document is legal or correct. She asked Attorney Linehan if we should have the meeting on the 27<sup>th</sup> so we make sure we have the document in its entirety.

Attorney Linehan said the Mayor has vetoed the ordinance, which means that the council can vote to try to override veto and that you would need at least four votes to override the veto. He thought it would make more sense to have a few more days to review, reflect and process the information. Then everyone has an informed vote, with all exhibits provided.

Councilmember Edelman asked for clarification that we are meeting on the 27<sup>th</sup> to which Councilmember Weber stated "correct". She asked what is going to be on the agenda.

Mayor Benson stated that there are problems with your budget that it incorporates by reference my budget. She stated that if you cannot pass my budget, you can't keep going forward with this. You cannot incorporate my budget by reference.

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Edelman to reconsider AB16-088A- the ordinance adopting the 2017 budget which is the Mayor's version and have that brought up on the 27<sup>th</sup> of December.

Councilmember Morgan asked "as amended".

Councilmember Weber discussed his intent behind the motion was to add it to the agenda. He clarified he wants to get this on the next schedule.

There was council discussion around the verbiage of this motion and the intent of the word 'reconsider'.

Councilmember Edelman asked Attorney Linehan what his thoughts were about this.

Attorney Linehan didn't know why you couldn't have reconsideration at a specific time.

**VOTE; Motion passed 4-1 (Pepper)**

**The following conversation refers to Items 4-6 on Agenda (4-Discussion and Possible Action Regarding Indemnification of Councilmember, 5-Discussion and Possible Action on Legal Services, 6-Discussion and Possible Action on Council Rules of Procedure Amendment).**

Councilmember Pepper stated she wants to make sure that the first three budget items are on the 27<sup>th</sup> of December council meeting. She also stated she would like to see items 4, 5 and 6 on the agenda discussed this evening.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to postpone this to sometime in January to discuss this because two of us, the minority on the Council did not see these resolutions until the beginning of this meeting. You are not giving the public the opportunity to review what you are doing and you are not being transparent. She stated that in addition to this, we have already had votes on indemnification on legal services. There is no reason to be bringing these items back. She asked do we need to read the disqualification motions again.

There was council discussion around these legal documents that a City Attorney has not reviewed.

**6)-Discussion and Possible Action on Council Rules of Procedure Amendment**

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan with item number six, discussion and possible action on council rules and procedure amendment to move that we suspend the council rules and immediately adopt this resolution titled amending the city council rules of procedure, do I have a second.

Councilmember Pepper called the question.

Councilmember Edelman stated that she made a motion to postpone this to the second week of January and had a second.

Councilmember Edelman called the question.

**VOTE; Motion failed 2-3 (Weber, Pepper Morgan) regarding item six.**

Councilmember Pepper repeated her motion on item six, discussion and possible action on council rules and procedures.

Councilmember Pepper asked for the floor. She read the entire resolution of the City Council Amending the Rules of City Council Procedure.

Councilmember Edelman expressed her concern that there was no attachment (A) and there has been no discussion yet. She said last week there was a motion to disqualify you three from voting on the indemnification resolution because you have a vested interest. On the legal defense and the indemnification which the Mayor did not vote on because it included money that is outside her purview of breaking tie votes. That failed on a 2-2 tie. She further stated this was all done last week, and Councilmember Edelman further stated she does not understand why they are bringing this back up again. She further stated that by trying to change the Council rules it should not change the result of last week's meeting.

Mayor Benson stated the vote failed to indemnify you.

Councilmember Pepper stated there is a motion on the floor that has been seconded.

Attorney Linehan offered comments for consideration. He stated Section 1 purports to eliminate the Mayors authority to cast a tie vote, but that tie vote responsibility or authority is provided by RCW 35A.12.090, obviously, this Council resolution can't reverse state law. He also noted a reference that the Mayor may violate OPMA by meeting with two other Councilmembers but OPMA clearly does not apply to the Mayor. The OPMA applies to governing bodies. There is no possibility to applying the OPMA on what the Mayor does. Section 2 of the ordinance appears to have changed the rule of council rules require a vote of four and certainly the Council can modify its own rules, but 8.5.2 the extension and disqualification rules are clearly rooted in RCW42.23.030 which makes it impermissible for a Councilmember to vote on any matter in which the authorization approval ratification of a contract in which he/she is beneficially interested. He offered those comments for the potential invalidity of some of the intentions or provisions of this resolution.

Councilmember Pepper called for the vote.

**VOTE; Motion passed 3-2 (Deady, Edelman) regarding new section amending Council rules.**

Mayor Benson stated she will deny this motion because of the Attorneys message and she will write up her denial.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Weber to call for a five-minute recess. Motion **passed** with all voting in favor (5-0).

Mayor Benson recess the meeting at 10:25 p.m.

Mayor Benson called the meeting back to order at 10:31 p.m.

#### **4) Discussion and Possible Action Regarding Indemnification of Councilmembers**

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to speak on item number four-discussion and possible action regarding indemnification of Councilmembers. She moved that we suspend the City Council rules and immediately adopt this resolution titled Determining that the City of Black Diamond shall provide a defense for certain individually named Councilmembers in King County Superior Court cause number 16-2-29091-4 pursuant to Chapter 2.66 of the Black Diamond Municipal Code.

Mayor Benson stated we already did this last week and you cannot redo an indemnification, the City is not paying for this.

There was council discussion around this.

Councilmember Edelman asked Attorney Linehan about a motion from last week to disqualify that passed with a tie breaking vote from the Mayor with each individual Council members, I am glumping them together tonight for purposes of this discussion and we also had motions to provide legal defense and indemnification that failed on a 2-2 vote. The Mayor did not and cannot vote when it involves money. The question for the City Attorney is are these still valid from last week or do we need to go back and do them again?

Attorney Linehan stated your original motion procedure were done per the Council rules. This is a resolution; however, there is a previous ordinance of the City of Black Diamond ordinance 384, Section 4, adopted in 1988 now codified Black Diamond Municipal Code 2.66.040 that relates to this indemnification and representation issue. It states that the determination of whether an official or an Employee shall be afforded a defense for the City under the terms of this chapter shall be finally determined by the City Council and recommendation of the Mayor. The decision by the City Council shall be final as a legislative determination of the Council. The previous decision of the Council was to deny the representation under 2.66 according to 2.66.040 that decision of the City Council is final as a legislative determination of the Council.

Councilmember Pepper stated we have a motion on the floor and a second and would like to take a vote.

Councilmember Pepper called for a roll call vote.

Mayor Benson stated we have not voted yet, you cannot have a roll call without a vote.

There was council discussion around this and the fact that this has been already voted on and Councilmember Edelman stated this is a dead issue.

Councilmember Morgan called the question.

**VOTE;** Motion **passed** 3-2 (Deady, Edelman) regarding indemnification of Council members.

Mayor Benson stated resolution is denied.

Councilmember Pepper stated these are procedural votes and we have the right to vote.

Mayor Benson stated it is her recommendation that she will not indemnify for any reason.

#### **5) Discussion and Possible Action on Legal Services**

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan discussion and possible action on legal services and would like at this time to suspend the Council rules immediately and adopt this resolution titled creating a Legal Services Steering Committee to act as the duly authorized constituents to interact with and provide direction to Defense Council on behalf of the Black Diamond City Council.

Mayor Benson stated you do not have an Attorney.

Councilmember Edelman asked Councilmember Pepper who signed the contract with Mr. Tarraday.

Councilmember Pepper stated she signed the contract.

Mayor Benson stated "you have no legal authority".

Councilmember Edelman expressed her concern around a Legal Services Steering Committee with members on it that are being sued by Oak Pointe. Under Section 2, committee powers, to preserve confidentiality of information defense Councils invoices shall be reviewed by Legal Services Steering Committee. The minority councilmembers will not have access to this information and the Mayor and the City Attorney and the Taxpayers. I do not support this. She stated they need to dig themselves out of this lawsuit and not on the backs of the Taxpayers.

Councilmember Deady asked Councilmember Pepper if you two are going to be Attorneys for the City. You are going to sit on a Legal Services Steering Committee and direct legal advice out of your Steering Committee. Councilmember Pepper and Councilmember Weber?

Councilmember Edelman called for the vote.

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

Mayor Benson stated she will deny this because we turned down the Attorney at the last meeting.

Mayor Benson stated we already talked about moving the budget items to the next meeting. It is time to move on to Public Comments.

### **PUBLIC COMMENTS:**

Leslie Cooley, Black Diamond spoke to the Council.

Bob Edelman, Black Diamond spoke to the Council.

Attorney Linehan in response to Mr. Edelman's concerns over the City's shutdown, stated the City can't spend money unless it has been properly allocated through an adopted ordinance. He said there is no exception in the statute for the Police Department, Fire, anything.

Councilmember Deady, Black Diamond spoke to the Council.

Pat Nelson, Black Diamond spoke to the Council.

Kristen Bryant, Bellevue spoke to the Council.

Suzie DalSanto, Black Diamond spoke to the Council.

Nancy Rogers, Attorney for OakPointe spoke to the Council.

Brian Derdowski, Bellevue spoke to the Council.

Brian Ross, Black Diamond spoke to the Council.

Robbin Taylor, Black Diamond spoke to the Council.

Kristine Hanson, Black Diamond spoke to the Council.

Daryl Buss, Black Diamond spoke to the Council.



Mayor Benson read a letter from AWC about the 2017 budget. The budget ordinance is a legal document. We, therefore, recommend that the City utilize their legal counsel for the proposed ordinance. Mayor Benson stated if we get sued, we will not have coverage from our insurance carrier.

## **ADJOURNMENT:**

Mayor Benson stated we do not have an executive session because the Attorney who wanted the executive session has not been hired. She said she would accept a motion to adjourn until the next meeting.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adjourn the meeting.

**VOTE; Motion failed 2-3 (Weber, Morgan, Pepper)**

Councilmember Morgan stated they will have their own executive meeting.

Council meeting continued.

Councilmember Edelman stated if they want to meet with their Attorney outside and violate the OPMA, have at it. She further stated this Attorney has not been hired by the City of Black Diamond and we have a City Attorney who is on contract.

Jeff Taraday-Lighthouse Law Group gave a history of his firm. He further noted that he has never seen anything like tonight. We have courts for a reason. We go to court to dissolve our disputes. There is clearly a massive dispute here between the majority of the Council and the Mayor. He stated "you guys need a Court to solve that". He said he is quite confused as he doesn't know if he is being retained by the Council. He further stated we should have a roll call vote to establish this. He wanted to clarify the record from the last Council meeting. He felt even the City Attorney was unclear of what happened at the last Council meeting.

Councilmember Edelman explained to Mr. Taraday because we had motions to disqualify on each individual Councilmember, they were 2-2 votes on the disqualifications, and the Mayor broke the tie. On the resolution about hiring an Attorney, it was a 2-2 tie, it involves money, the affected person could not vote for that. The Mayor couldn't break that vote. She doesn't have the authority to do that because it involves money. Therefore, the motion died because it was a tie.

Jeff Taraday stated that he has observed is that you all are making legal rulings on the fly.

Councilmember Edelman stated we have a City Attorney that we take advice from.

Jeff Taraday stated he didn't know if the City has Counsel in this Legal lawsuit or the City Council.

Mayor Benson stated that Kenyon Disend will answer the lawsuit until we find another Attorney.

Councilmember Pepper stated she would have to disagree with the last meeting, she said we took two votes, one when the Mayor declared a recess, which she cannot do unless it is moved by the body and voted on. The meeting continued and we voted 3-0 to hire Lighthouse Law Group and when we came back we also again voted for Lighthouse Law Group 3-2.

Councilmember Edelman stated you were disqualified.

Jeff Taraday said there is no point arguing it here. It will not be decided here.

Councilmember Edelman stated to him "file a lawsuit against the City".

Jeff Taraday said that obviously has to happen. He further stated it's not out of ill will; he doesn't have anything against anyone and applauds everyone for volunteering their time to their community. He further stated rather than sitting here and tearing at each other, we will just put this in front of a court and let them figure it out. He further stated he is happy to not represent the City Council in the interim until we get verification from the Court and what that means. We will assert that we have been hired, our firm Lighthouse Law.

Attorney Linehan asked Mr. Taraday "do you have clarity of who are you representing?" "Are you going to file the lawsuit?"

Mr. Taraday stated he doesn't and when asked if he was filing the lawsuit, he stated "I assume somebody will be hiring me."

Attorney Linehan stated it sounds like you are already asserting legal position on behalf of someone. He further stated he is trying to make clarity as to who Mr. Taraday is representing.

Mr. Taraday stated that his position was based on the vote that was taken last week that can be argued in court to see what happens.

Attorney Linehan stated before you get to court you need to establish who your client is.

Mr. Taraday said clearly there is a dispute about who he is representing. He further stated if the individuals decide to retain me, then those will be my clients. He further stated he is not representing against the City or Council at this time when further questioned by Attorney Linehan.

Councilmember Edelman asked is it not true that Ms. Pepper signed a contract with you.

Mr. Taraday stated he believes she was authorized to, and we will argue that to the court.

Councilmember Edelman stated to Mr. Taraday that Councilmember Pepper has no authority to sign a contract.

Mr. Taraday stated let's agree to disagree on that.


**ADJOURNMENT:**


A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Morgan to adjourn the meeting.

**VOTE;** Motion **passed** 5-0

Meeting adjourned at 11:30 p.m.

ATTEST:

  
\_\_\_\_\_  
Carol Benson, Mayor

  
\_\_\_\_\_  
Kathy Allen, Deputy City Clerk