

AMENDED BY COUNCIL MAJORITY

BLACK DIAMOND CITY COUNCIL MINUTES

April 21, 2016

Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular 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: Jamey Kiblinger, Police Chief; Seth Boettcher, Public Works Director; Barbara Kincaid, Community Development Director; Peter Altman, City Labor Attorney, and Brenda L. Martinez, City Clerk.

A **motion** was made by Councilmember Pepper and would like to move immediately to substitute the Council meeting Agenda.

Mayor Benson called her out of order stating the Mayor's submitted her agenda nine days before the meeting and this one was not submitted until Friday.

Councilmember Pepper further stated that council has the right to its own agenda and that agenda is the one that she was presenting now and that it has been denied public notice. She stated she needs a second..

The motion was **seconded** by Councilmember Morgan.

Councilmember Pepper spoke to her motion. She stated the mayor had posted the wrong agenda to the website. Pepper stated she had asked the Council to hold a Special Meeting on Tuesday night the 19th where the Council could vote on the Council agenda for April 21st, adding this would have given people more information sooner about possible council actions for tonight. She referenced RCW 42.30.080 and public notice should have been issued for the meeting on the 19th. She stated we have been through this before and we need the proper Council agenda. Councilmember Pepper called the question

Councilmember Edelman stated we need to have a debate about this.

Mayor Benson called Pepper out of order.

Councilmember Pepper stated on "call the question" there is no debate.

AMENDED BY COUNCIL MAJORITY

Mayor Benson stated that is not true, everyone gets one chance to speak.

There was Council discussion.

Councilmember Pepper called point of order, impugning the motives of a Councilmember.

Councilmember Pepper called point of order; speak to the issue at hand. You do not get to impugn the motives of a Councilmember.

Councilmember Pepper called point of order; confined remarks to the merit of the pending question.

Councilmember Pepper called point of order and stated that the presiding officer does not engage in debate.

Mayor Benson stated according to state law she can engage in debate and called her out of order.

There was Council discussion around this and the hiring of an attorney which is on the agenda.

Councilmember Pepper called point of order and stated we are off the topic which is the agenda.

Councilmember Pepper called point of order and stated Councilmembers don't question other Councilmembers.

There was Council discussion around this.

Councilmember Pepper called point of order and said the Council has its own meeting and its own agenda and this agenda can be passed this evening.

Mayor Benson stated that this is a Council-Mayor meeting per state law so that we can get together to discuss items of business so that you can pass legislation. This meeting has been properly noticed, and your agenda has not been properly noticed and it is out of order.

Councilmember Pepper stated the agenda can be amended by the council on the evening of the meeting and she called for the vote. Councilmember Morgan seconded it.

Councilmember Pepper stated this has been motioned twice.

Mayor Benson called her out of order.

Councilmember Pepper called the question.

AMENDED BY COUNCIL MAJORITY

Mayor Benson called her out of order.

Councilmember Pepper called point of order and stated this is the Council's meeting. This is our agenda and stated you do not get to tell us what goes on the agenda.

Councilmember Pepper called point of order.

Mayor Benson called her out of order; you cannot put a new substitute agenda.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to suspend the rules and to immediately substitute the council meeting agenda with the one that is distributed now.

Councilmember Pepper called point of order as Councilmember Edelman already spoke to the motion; Councilmember Edelman shared that she made a different motion.

Councilmember Pepper called point of order; and stated Councilmember will be courteous.

Mayor Benson stated again that you can add to my agenda and noted her (Mayor) agenda was published these nine days ahead of time according to the rules with all the packet material.

Councilmember Pepper called point of order; and stated this agenda was not approved.

Mayor Benson stated this agenda has been approved. There are two other Councilmembers. They are also Councilmembers.

Councilmember Pepper called point of order; and said time to call for the vote.

Councilmember Edelman asked about the debate and stated she had her hand raised to make a statement.

Councilmember Pepper called point of order as Councilmember Edelman was discussing the suspension of the rules. Councilmember Pepper stated please do not impugn the motives of Councilmembers.

Councilmember Pepper called point of order; Courtesy.

There was Council discussion around this and Councilmember Morgan discussed the new Council rules stating the agenda needs to be approved by the Mayor Pro-Tem and Council President. She also discussed the process for getting items on the agenda.

Councilmember Pepper called point of order.

Mayor Benson stated you didn't publish your agenda according to your own rules. You have violated your own rules.

AMENDED BY COUNCIL MAJORITY

Councilmember Pepper asked the Presiding Officer for the floor.

Councilmember Pepper stated it is time to call for the vote; the motion has been made and seconded.

Mayor Benson stated “your agenda is illegal” and we are not calling for a vote.

Councilmember Pepper called point of order; stated “then we will have to call for the vote ourselves”.

Councilmember Deady stated we can go through unfinished business and that items that are still in committee should be discussed at Council.

Councilmember Pepper stated “the approved agenda was not noticed”. “This is a substitute agenda”. “The motion has been made and seconded”.

Mayor Benson stated her approved agenda has been noticed and your agenda has not.

Councilmember Pepper called for the vote.

Mayor Benson stated it is time to move on.

Councilmember Pepper called point of order; there is a motion on the floor. A vote needs to be taken.

Mayor Benson stated we are not going to go by your agenda, it’s a violation of your own Council rules.

Councilmember Pepper called point of order, and stated there is a motion on the floor and a vote needs to be taken.

Mayor Benson stated we are not voting on your agenda. This is a violation of your own Council rules.

Councilmember Pepper stated this substitute agenda is in front of you and the motion has been made and seconded.

Councilmember Pepper stated she **appeals** the decision of the chair. She stated she needs a second. Councilmember Morgan **seconded** the appeal.

Mayor Benson stated we need to move on to the consent agenda.

Councilmember Pepper called point of order; stated she had the floor.

Mayor Benson called her out of order.

AMENDED BY COUNCIL MAJORITY

Councilmember Pepper stated “I **appeal** the decision of the chair and there has been a second to that. By taking a vote if you say yes you agree with the Mayor’s decision. If you say no, then you do not agree with the Mayor’s decision.

There was council discussion around this.

Mayor Benson called her out of order and stated “your agenda is illegal”. “You are not following your own rules”.

Councilmember Weber asked that the Parliamentarian note where the motions are and what the specific motions were.

City Clerk Martinez noted the last motion was Councilmember Pepper appealed the Chair’s decision and we have a second by Councilmember Morgan.

City Clerk Martinez noted the motion before that was by Councilmember Pepper to suspend the rules and substitute the agenda with a new agenda and seconded by Councilmember Morgan.

City Clerk Martinez noted the first motion by Councilmember Pepper to substitute the Council agenda for the one she submitted for a total of three motions on the floor.

Councilmember Weber clarified they need to be worked from the newest back.

City Clerk Martinez noted that is correct.

Mayor Benson stated it is time to move on to the consent agenda.

Councilmember Pepper called point of order; there are three motions on the floor

Mayor Benson stated “nobody is doing anything about them” and time is up.

Councilmember Pepper called point of order; stated “The Presiding Officer does not get to control meeting”.

There was council discussion around this.

Councilmember Weber called point of order.

Councilmember Pepper called point of order; now working backwards we have a motion on the floor that we have an appeal on the decision of the Chair. We need to take a vote, if you think the Mayor is in order on what she said, then you will vote ‘yes’. If you think the decision of the Mayor is not okay, then you will vote ‘no’.

Councilmember Pepper called for a vote.

Councilmember Pepper asked Councilmember Deady “do you vote yay or nay” ?

AMENDED BY COUNCIL MAJORITY

Councilmember Deady stated she is not going to vote.

Councilmember Pepper stated she is appealing the decision of the Chair. If you agree with the Chair, say yes. She further stated if she doesn't want to vote, it will count as a yes.

Councilmember Deady stated yes she agrees with the Mayor.

Councilmember Pepper asked "Councilmember Morgan?

Councilmember Morgan responded "No".

Mayor Benson stated "I am the Chair of the Meeting".

Councilmember Pepper responded "and you are not chairing the Meeting, and you don't get to say what happens."

Mayor Benson stated your rules are out of order.

Councilmember Pepper called point of order;

Mayor Benson stated your agenda is out of order.

Councilmember Pepper called the roll call vote.

Roll call vote: Councilmember Edelman responded yes she votes with the Mayor, Councilmember Weber responded no, Councilmember Deady responded yes, Councilmember Pepper responded no. Mayor's decision was **overruled**.

Councilmember Pepper stated working backwards the substitute agenda has a second to be substituted right now. It has been debated and Council is ready to vote. She stated if you are in favor of the substituted agenda say yes, if you are not in favor say no.

City Clerk Martinez interceded and clarified that the wrong motion was put forth. She further noted wanting to make sure we get them in the right order.

Councilmember Weber called the Chair out of order.

Councilmember Pepper called for the vote on the next motion back suspending the rules to pass this substitute agenda immediately.

Councilmember Pepper called the roll call vote.

Roll call vote: Councilmember Deady responded no, Councilmember Morgan responded yes, Councilmember Edelman responded no, Councilmember Weber responded yes, Councilmember Pepper responded yes. Motion **passed** 3-2 (Edelman, Deady) to suspend the rules to pass the substitute agenda immediately.

AMENDED BY COUNCIL MAJORITY

Councilmember Pepper said now we move forward to the first motion to substitute the agenda.

Councilmember Pepper asked the City Clerk to read the original motion.

Councilmember Pepper called the Mayor out of order.

There was discussion regarding the public having the new agenda.

City Clerk Martinez stated the motion: Motion by Councilmember Pepper and seconded by Councilmember Morgan to substitute the Council agenda with the one submitted.

Councilmember Pepper said time to vote.

Mayor Benson stated you're out of order.

Councilmember Pepper asked for roll call vote. The mayor did not call the vote. Councilmember Pepper called the roll call vote.

Roll call vote: Councilmember Deady responded no, Councilmember Morgan responded yes, Councilmember Edelman responded no, Councilmember Weber responded yes, Councilmember Pepper responded yes. Motion **passed** 3-2 (Edelman, Deady) to substitute the agenda.

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to put the Mayor's agenda back on along with the Council's agenda they just put on.

There was Council discussion around this.

Point of order was called by Councilmember Pepper.

No vote was taken on the above motion.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to accept the consent agenda. Motion **passed** with all voting in favor (5-0). The consent agenda was approved as follows:

- 1) **Claim Checks** – April 21, 2016 - No. 43375 through No.43432 and EFTs in the amount of \$299,125.05

AMENDED BY COUNCIL MAJORITY

2) **Payroll** – March 31, 2016 - No. 18799 through 18818 and ACH Payments in the amount of \$259,301.19

3) **Minutes** – Council Meeting of March 2, 2016

PUBLIC COMMENTS:

Bob Edelman, Black Diamond spoke to Council.

Enumclaw School District representative spoke to Council.

Kevin Esping, Public Works Department spoke to Council.

Matthew House, Teamsters Local 117 spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Point of order was called by Councilmember Weber for the Chair to keep the meeting at a respectful level including comments from the public that have not come up to speak.

Mark Hill, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

Jason Seth, Black Diamond spoke to Council.

EXECUTIVE SESSION:

A **motion** was made by Councilmember Morgan and **seconded** by Councilmember Edelman to move the executive session up. Motion **passed** with all voting in favor (5-0).

At 7:49 pm Mayor Benson announced an executive session as authorized under RCW 42.30.140(4) to discuss collective bargaining. The executive session is expected to last for 30 minutes. Possible final action may follow the executive session.

A ten minute extension was announced.

Mayor Benson called the meeting back to order at 8:27 pm.

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to move item number eight on the Mayor's agenda regarding resolution approving collective bargaining agreement with Public Works Unit and move it on to the agenda. Motion **passed** with all voting in favor (5-0).

AMENDED BY COUNCIL MAJORITY

8) AB16-025A- Resolution Approving Collective Bargaining Agreement with Public Works Unit

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to adopt resolution number 16-XXXX, the clerk will assign the number at adoption authorizing the Mayor to execute a Collective Bargaining Agreement between the City of Black Diamond and the Teamsters Local Union number 117 Public Works Unit. Motion **passed** with all voting in favor (5-0).

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

4) Claim Check – March 7, 2016 – No. 43294 DKS Associates in the amount of \$10,000

A **motion** was made by Councilmember Weber and **seconded** by Councilmember Morgan to postpone this item until the regular scheduled Council meeting on May 5.

There was Council discussion and the Mayor stated Councilmember Morgan is disparaging one of her staff.

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

5) A Resolution approving Legal Services for the City Council and City in connection with Resolution 16-1089 and the Council Rules of Procedure.

Councilmember Pepper read the entire resolution.

Mayor Benson stated you don't need to read the entire resolution.

Councilmember Pepper called point of order and stated she has the floor.

Mayor Benson called her out of order as Councilmember Pepper does not need to read the entire resolution.

Councilmember Pepper stated she has the floor and continued to read the resolution.

Mayor Benson called her out of order and stated she will need to quit or leave the room.

Councilmember Pepper stated she has the floor.

Mayor Benson called her out of order. Again asked her to quit or leave the room. She stated all she needs to read is the title; we don't need to hear the entire item.

Councilmember Pepper continued to read the resolution.

Mayor Benson called her out of order.

AMENDED BY COUNCIL MAJORITY

Councilmember Pepper stated she has the floor.

Mayor Benson noted to Councilmember Pepper on the Roberts Rules of Order the Mayor is the Chair.

Councilmember Pepper stated she has the floor.

Mayor Benson stated if this is your first reading, you only need to read the title.

There was Council discussion around this.

Councilmember Pepper continued to read the resolution and stated we need to suspend the rules around this.

Councilmember Deady called point of order and stated we need to take a vote to suspend the rules.

A **motion** was made by Councilmember Pepper and was **seconded** by Councilmember Morgan to suspend the rules in order to read the rest of this.

Mayor Benson called her out of order.

Mayor Benson stated to Councilmember Pepper she can leave the meeting.

Mayor Benson called her out of order.

Councilmember Pepper continued to state she has the floor and further stated she (Mayor) does not get to interrupt when she (Pepper) has the floor.

Mayor Benson told her for first reading, you just read the title.

Councilmember Pepper continued to read the resolution.

Mayor Benson called a recess and cleared the room at 8:40 p.m.

Mayor Benson called the meeting back to order at 8:46 p.m.

A **motion** was made by Councilmember Pepper and was **seconded** by Councilmember Morgan to appeal the decision of the chair.

Mayor Benson stated she doesn't think you can appeal the decision of the chair.

A **motion** was made by Councilmember Pepper and was **seconded** by Councilmember Morgan to suspend the rules and adopt this motion right now.

AMENDED BY COUNCIL MAJORITY

Councilmember Weber noted this was two motions running together. He requested that Councilmember Pepper restate her motion to suspend the rules.

A **motion** was made by Councilmember Pepper and was **seconded** by Councilmember Weber to suspend the rules.

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

Councilmember Pepper continued to read the entire resolution.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to pass this resolution.

There was Council discussion around this.

Councilmember Deady asked Councilmember Pepper when the contract was signed with the law firm and asked about the hourly rate.

Councilmember Pepper called point of order for continuous questioning of a fellow Councilmember.

Discussion continued.

Councilmember Morgan read a statement.

Discussion continued.

Councilmember Weber called point of order as Councilmember Morgan has the floor.

Councilmember Morgan stated she knows you haven't read the contract and stated they couldn't answer questions about the law firm because it was a conflict of interest due to they are contracting to be and in this contract you will see when you read it, they are contracting to be the lawyer not even for the whole Council, but for us (Morgan, Weber, Pepper).

Councilmember Edelman called for order.

Councilmember Pepper called point of order; please do not impugn the motive of the fellow Councilmembers in reaction to questions around resolutions in committee.

Councilmember Pepper called point of order; courtesy.

Councilmember Edelman stated she has the floor and continued with her comments around items that are still in committee.

Councilmember Pepper called point of order for Councilmember Deady saying things that might not be true about the law firm and the representation of the three councilmembers.

AMENDED BY COUNCIL MAJORITY

Councilmember Weber stated he has the floor. He further stated that since December it's no surprise there has been issues with legal representation with the city. He noted we are hampered in committee meetings because the Mayor doesn't recognize committee meetings. Therefore, they have to do more research on their own, which takes more time.

Mayor Benson stated you are not even following your own council rules, she noted that her staff has been here thirteen hours today. You cannot make a motion to get stuff moving and not following your own council rules.

Councilmember Pepper stated she believes there is a motion on the floor and a second.

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

6) Resolution approving Interim Legal Services for the City

Mayor Benson stated you cannot hire an interim attorney; you do not have the authority.

Councilmember Pepper presented this item and read the resolution.

There was Council discussion around this.

A **motion** was made by Councilmember Pepper and **seconded** by Councilmember Morgan to approve a resolution of the City of Black Diamond, King County Washington approving interim legal services for the City.

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

Censure of Councilmember Erika Morgan

A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to officially censure Councilmember Morgan.

She stated she has a packet for all the Councilmembers that includes correspondence.

There was Council discussion around this.

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

DEPARTMENT REPORTS:

MAYOR'S REPORT:

Mayor Benson reported that the claim check for DKS was moved to May 5. We have a resolution for the Department of Ecology that has been there since February and now the grant amount has been reduced down to \$25,000 because you didn't accept the grant. We have a resolution confirming the Mayors appointment to the Civil Service Commission from

AMENDED BY COUNCIL MAJORITY

January. We have a resolution for payment for BHC for building services. We have a resolution for collective bargaining which you did approve tonight and a resolution approving DKS. She noted all paperwork is here and if any of you would like to suspend the rules and introduce any of these items that are very important to the City, it would greatly be appreciated.

Mayor Benson asked if they have any Department Reports as it was left off their agenda.

Councilmember Pepper stated there was none on the agenda.

Mayor Benson stated that as part of her Mayor's report she wants her staff to get up and speak. She called on Ms. Kincaid to speak.

9) AB16-026A-Resolution Approving an Agreement with DKS

Community Development Director Kincaid discussed AB16-026A – Resolution approving an agreement with DKS. She spoke to the high level of concern regarding the school project. She discussed a contract brought forward at the April 7 meeting and also commented on the ILA agreement with Maple Valley and Covington having troubles with capacity and it's in the best interest to look forward and approve the agreement with the new building official. She noted the fee structure being fair and a benefit of the taking of permits out. She noted the City is required by law to have a building official. She discussed her role with the DKS and BergerABAM contract and also noted that the DKS services being rendered.

Mayor Benson called on Public Work Director Boettcher to speak.

5) AB16-016A-Resolution Accepting Dept. of Ecology Grant for 2015-2017 Stormwater Capacity Grant.

10) AB16-028 – Resolution Authorizing a Conservation Grant Agreement with Puget Sound Energy for the LED Streetlight Conversion Project.

11) AB16-029-Resolution Authorizing Water Quality Grant Agreement with King County for the North Commercial Stormwater Treatment Facility Project.

Public Works Director Boettcher spoke on the above three grants he is trying to get through Council. He noted receiving a letter on Tuesday regarding the Stormwater Capacity Grant being reduced to \$25,000 from \$50,000. The letter indicated since May 2015, revenues in state budget have fallen by \$92 million and the legislature reduced funding for contracts where work was not yet finalized. Mr. Boettcher passed out the letter. With the state cutback he thinks the city will not be able to fund a contractor to look at barriers to Low Impact Development; the remainder of the \$25,000 would be purely to offset expenses for activities the city has to do anyway.

There was Council discussion around this.

AMENDED BY COUNCIL MAJORITY

A **motion** was made by Councilmember Deady and **seconded** by Councilmember Edelman to suspend the rules to vote on these three grants (Stormwater Capacity Grant, Puget Sound Energy for LED Streetlight Conversion Project, North Commercial Stormwater Treatment Facility Project) tonight.

There was Council discussion.

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

COUNCIL REPORTS:

Councilmember Deady read a verbatim transcript excerpt from the Government Operations Budget Finance Administration meeting. She discussed her job as a Councilmember and meeting with the Finance Director to go over vouchers and being prepared to vote on items that come before Council. She also discussed the Civil Service appointment and the Council's job to confirm the appointment and the courtesy of the Council Committee to let the applicant know the status.

Councilmember Morgan discussed being tasked from the Chair of the Budget Committee to look over the vouchers and supporting documentation and reporting back to Councilmember Weber. She noted had Councilmember Deady attended this meeting with her and she reported the happenings back to Councilmember Weber that would have been a violation of the OPMA. She spoke on the Doctrine of Necessity for the Civil Service Commission.

Councilmember Edelman reminded Council they are legislative not administrative and should not be doing the Mayor's job.

Councilmember Weber discussed having two Budget and Growth Management meetings.

Councilmember Pepper discussed that the Association of Washington Cities has a booklet out regarding "Whose meeting is it anyway?". She read an excerpt from the booklet. She discussed that the Maple Valley Council gave permission for a disk golf course to go up somewhere in Maple Valley and wondered if we (Black Diamond) can be a destination for certain things. She noted we should try to get in on tourism dollars and think about things that people would stop by and spend their dollars locally.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Bob Edelman, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.


ADJOURNMENT:

AMENDED BY COUNCIL MAJORITY

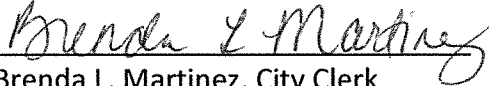
A **motion** was made by Councilmember Edelman and **seconded** by Councilmember Deady to adjourn the meeting. Motion **passed** with all voting in favor (5-0).

The meeting ended at 10:25 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk