



CITY OF BLACK DIAMOND

April 14, 2016, 6:30 p.m. – Special Council Meeting and Government Operations
and Administration Council Committee Meeting Agenda
25510 Lawson St., Black Diamond, Washington

Pursuant to Rules of Procedure of the City Council of Black Diamond, Washington, Section 18, this Standing Committee Meeting is also noticed as a Special Council Meeting whose agenda is limited to committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to the full council meetings.

Agenda

Black Diamond City Council Government Operations & Administration Standing Committee
(Chair: Erika Morgan, Patricia Pepper, Tamie Deady)

This committee's work scope includes: issues related to the operations and administration of City Departments and shall consider issues related to public health, safety and welfare of the citizens of Black Diamond including but not limited to, law enforcement, fire safety, court, hazardous materials, animal control, special events and emergency services. The Committee shall consider matters related to water, sewer, solid waste, recycling, utility franchises, storm water management, transportation, capital improvement program, transit, streets, street lighting, signalization, street local improvement, planning and implementation of park and recreational facilities, trails and cemetery.

CALL TO ORDER, ROLL CALL

APPROVAL OF MINUTES FROM PRIOR MEETING(S)

- 1) Public comment on topics in this committees' scope or on agenda items.
- 2) Discussion of Resolution 16-1079 Confirming Mayor's Appointment to Civil Service Commission Position #3.
- 3) Discussion of AB16-XXX - Resolution Regarding Dismissal of Robert Edelman Lawsuit
- 4) Discussion of AB16-XXX - Resolution Recognizing the Legality of Council Standing Committees
- 5) Discussion of AB16-XXX - Resolution Regarding the Proper Noticing of Council Agendas
- 6) Discussion of Resolution Establishing Policies Regarding the City Newsletter and Communications to the Public
- 7) Discussion of truck traffic and AASHTO (American Association of State Highway Transportation Officials) standards
- 8) Discussion of Committee work program and future agendas.

ADJOURNMENT

* Per Black Diamond City Council Rule of Procedure 18.1.1: No ordinance or resolution shall be placed on the Council Agenda for enactment unless it has received a "do-pass" or "no recommendation" recommendation by a Council Standing Committee.

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT: Resolution No. 16-1079, confirming the Mayor's appointment to the Civil Service Commission	Agenda Date: February 18, 2016	
	AB16-021	
	Mayor Carol Benson	X
	City Administrator	
	City Attorney Carol Morris	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res – Barb Kincaid	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
Cost Impact (see also Fiscal Note): \$	Police – Chief Kiblinger	
Fund Source: --	Public Works – Seth Boettcher	
Timeline:	Court – Stephanie Metcalf	
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator Attachments: Resolution No. 16-1079; application		
SUMMARY STATEMENT: <p>Staff advertised for the vacancy on the Civil Service Commission and one application was received. An interview committee consisting of Mayor Benson, Councilmember Edelman, Councilmember Deady, and Civil Service Secretary Luzville Goebel interviewed the applicant.</p> <p>After careful consideration, the Mayor is seeking confirmation of her appointment of Becky Arnold to the Black Diamond Civil Service Commission Position No. 3, with said term to expire December 31, 2020.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 16-1079, authorizing the Mayor's Civil Service Commission appointment of Becky Arnold to the Black Diamond Civil Service Commission Position No. 3.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
February 18, 2016		

RESOLUTION NO. 16-1079

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
CONFIRMING THE MAYOR'S APPOINTMENT TO THE CIVIL
SERVIE COMMISSION**

WHEREAS, in accordance with Black Diamond Municipal Code 2.64.020, members of the Civil Service Commission shall be appointed by the Mayor and confirmed by the City Council; and

WHEREAS, this Resolution confirms the Mayor's appointment to the City of Black Diamond Civil Service Commission;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. That the Mayor's appointment of Becky Arnold to the City of Black Diamond Civil Service Commission Position No. 3 is hereby confirmed; said term to expire on December 31, 2020.

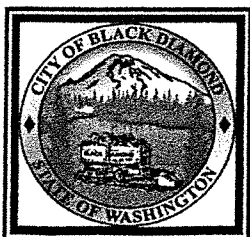
**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT
A SPECIAL MEETING THEREOF, THIS 18TH DAY OF FEBRUARY, 2016.**

CITY OF BLACK DIAMOND:

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND

Commission Application

Mailing Address: PO Box 599

Physical Address: 24301 Roberts Drive

Black Diamond, WA 98010

Phone: 360.886.5700 - Fax: 360.886.2592

RECEIVED

NOV 5 2015

BY

CITY HALL

Name: Becky Arnold

Address: 30420 Cumberland Dr Black Diamond, Wa 98010

Home Phone: 360-886-2536 Business Phone: _____

Email address: _____

How long at Residence: 9 yrs Best time to contact: evening

Commission desired: 1.) Black Diamond civil service commission
2.) _____

Reason you are interested in serving: _____

to support Black Diamond police Department

Previous community activities: None

Applicable education, occupational, and specialized experience: _____

work community center Bask program

Commissions make recommendations regarding monetary expenditures and/or benefits to certain areas of the Community.

1.) Can you foresee possible conflicts of interest with any of your current employment or civic positions:

None

2). When making these recommendations do you feel you could be impartial and base your decision on the overall need and benefit of the Community: yes

Are there any days or evenings you are unavailable to meet? None

Signature: Becky Arnold Date: 11-22-2015

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING DISMISSAL OF ROBERT EDELMAN AND HIS MARITAL COMMUNITY LAWSUIT

WHEREAS, at the January 7, 2016 City Council meeting, Councilmembers Janie Edelman and Tamie Deady moved to confirm Mayor Benson's appointment of City Council committees; and

WHEREAS, also at the January 7 Council meeting, Mayor Benson, backed by the City Attorney, blocked the City Council from appointing its own committee members and unilaterally removed items from the Council's agenda; and

WHEREAS, also at the January 7 Council meeting, Mayor Benson stated that if the City Council did not adopt her proposed City Council committee appointments, she would eliminate City Council committees; and

WHEREAS, at the January 21, 2016 Council meeting, Mayor Benson used the City Attorney's opinions in the political debate over new City Council Rules of Procedure allowing the City Council to appoint its own committees; and

WHEREAS, at the January 21 Council meeting, the City Council adopted the new Council Rules by a vote of 3-2, with Councilmembers Edelman and Deady opposing; and

WHEREAS, on February 19, 2016, Councilmember Edelman's husband, Robert Edelman, along with his "marital community," initiated a lawsuit against the City attempting to invalidate the new Council Rules; and

WHEREAS, on February 23, 2016, the City Attorney filed a Notice of Appearance in the lawsuit stating that she would represent the City;

WHEREAS, an Answer from the City was due on March 10, 2016; and

WHEREAS, instead of filing an Answer in defense of the City, the City Attorney entered an agreement with Mr. Edelman to dismiss the lawsuit without prejudice, which would allow Mr. Edelman to re-file the case at a later date;

WHEREAS, on March 28, 2016, the City Attorney and Mr. Edelman signed a Stipulation for Dismissal Without Prejudice which was presented to an ex parte judge of the King County Superior Court that day; and

WHEREAS, as of March 29, 2016, the Stipulation for Dismissal had not yet been added to the Clerk's online docket, and the City Council had not received notice that the City Attorney had signed the Stipulation for Dismissal on behalf of the City; and

WHEREAS, since no answer from the City had been filed, on March 29, 2016, Council President Pat Pepper and Mayor Pro Tempore Erika Morgan, at their own expense, filed a Motion to Intervene; and

WHEREAS, the Pepper-Morgan Motion to Intervene stated that:
"Councilmembers Pepper and Morgan seek to intervene to defend the lawfulness of the rules and ensure that there is a ruling on the merits which settles the public debate about the separation of powers": and

WHEREAS, the Pepper-Morgan Motion to Intervene stated that: "The City Attorney, appearing for the City in this case, has gone on record as opposing the new rules at issue and has repeatedly made public statements that the mayor controls the City Council agenda"; and

WHEREAS, in her declaration to the Court, Council President Pepper stated: "I believe the rules are lawful and in the public interest" and "I believe that a ruling on the merits will promote cooperation at City Hall as well as public confidence in City government"; and

WHEREAS, in her declaration to the Court, Mayor Pro Tempore Erika Morgan stated: "I believe that, as long as control over City Council agendas and committees is subject to dispute, it will be difficult for me to serve the people of Black diamond effectively. Our meetings are mired in rancor. I am seeking to intervene in this action to defend the City Council rules and to ensure that the legal questions herein are decided on the merits and not by default"; and

WHEREAS, after learning of the Dismissal Order, Council President Pat Pepper and Mayor ProTempore Erika Morgan filed declarations with the Court on April 1, 2016, that said: "The City Attorney did not seek my approval of, nor notify me about, a stipulation by the City of Black Diamond to voluntarily dismiss this case without prejudice prior to the filing of the stipulation in this Court. There was never any discussion of a stipulated dismissal by the City Council"; and

WHEREAS, on April 1, 2016, Council President Pepper and Mayor ProTempore Morgan filed a Notice of Objection to Stipulated Dismissal and Striking of Motion to Intervene; and

WHEREAS, the Notice of Objection stated: "the City Attorney took an official position on behalf of the City that: a) the City would rather drop the case than obtain a ruling on the lawfulness of the City Council rules in question; and b) the City is fine with allowing Mr. Edelman or some other political opponent of the rules to re-file the case at some later date"; and

WHEREAS, the Notice of Objection included a statement from Mayor ProTempore Morgan that: "I am a strong believer in open government and the Open Public Meetings Act. I am concerned that a stipulation stating the City's agreement to drop the case without prejudice was signed and entered on behalf of the City without any public vote or notice. I would have preferred that this case be dismissed on the merits, but I do not object to the City formally agreeing to voluntary dismissal as long as there is a public vote by the City Council approving such a position. I expect that a resolution to take a position on voluntary dismissal will be introduced at the next regular meeting of the City Council"; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Council acknowledges the decision by Robert Edelman to voluntarily dismiss the lawsuit *Robert Edelman and his Marital Community vs. the City of Black Diamond*, No. 16-2-04054-3KNT.

Section 2. The Council recognizes the public interest in an open public decision-making process;

Section 3. The Council did not discuss or approve the action of the City Attorney to sign the Stipulated Dismissal Without Prejudice.

Section 4. The Council hereby authorizes the City Attorney to stipulate to voluntary dismissal of the *Edelman* lawsuit without prejudice.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THE**

_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest: _____
Brenda L. Martinez, City Clerk

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON RECOGNIZING THE LEGALITY OF COUNCIL STANDING COMMITTEES

WHEREAS, the City Council Rules of Procedure create three Standing Committees of the City Council, each with three Councilmembers. The Rules give Standing Committees authority to review all legislation referred by the Council and to make recommendations to the full Council, which retains decision-making authority; and

WHEREAS, the Council Rules recognize the Council's authority under state law to appoint its own Committee members and Chairpersons; and

WHEREAS, the Council Rules state that "Whenever possible, committee meetings shall be conducted on weekday evenings"; and

WHEREAS, since Standing Committees have three members which is a quorum of the Council, the Council Rules state that: "All meetings shall be noticed in the same manner as Council meetings and be conducted in accordance with the Open Public Meetings Act RCW 42.30"; and

WHEREAS, the Standing Committee structure promotes transparency and public participation by providing more frequent and earlier opportunities for the public to learn about and comment on proposed legislation; and

WHEREAS, the Standing Committee structure is better aligned with Council priorities and streamlined to enable efficient participation by the public and staff;

WHEREAS, the Council Rules encourage Standing Committees to meet in the evening in order to allow the public to attend and participate; and

WHEREAS, the Mayor, backed by the City Attorney, publicly characterized the Standing Committees as "illegal," evidencing a need to reaffirm the Council's commitment to comply with the Open Public Meetings Act, to make absolutely

clear as already stated in the Council Rules that the Council Standing Committees will be fully noticed and open to the public; and

WHEREAS, the City Clerk of Black Diamond handles public meeting notices;

WHEREAS, the Council expects and requests that the City Clerk provide such notice of Standing Committee meetings as the law requires, consistent with the stated intention of the Council that Standing Committee meetings comply with the OPMA;

WHEREAS, as individuals and at their own expense, Council President Patricia Pepper and Mayor Pro Tempore Erika Morgan obtained and made publicly available a letter by open government attorney Katherine George of the firm Harrison-Benis LLP, which generally discussed the requirements of the Open Public Meetings Act and stated in part, “There is nothing in the OPMA that limits the size of a council committee. In fact, it is not unusual for a council to have ‘a committee of the whole’ consisting of all council members. As long as the public has the requisite notice and opportunity to attend, the governing body’s meetings will satisfy the OPMA”; and

WHEREAS, public testimony was entered into the record that documented that other jurisdictions including King County, the City of Seattle, and the City of Spokane also utilized Council Standing Committees with memberships that constituted Council quorums; and

WHEREAS, while those jurisdictions are chartered differently than the City of Black Diamond, they are subject to the same requirements of the Open Public Meeting Act.

WHEREAS, the Council desires to resolve the dispute about the legality of Standing Committees because it is negatively affecting the ability of the Council to conduct its business, including the refusal by the Mayor to allow staff to attend or support the committees and a resulting labor grievance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Council reaffirms its commitment to comply with the Open Public Meetings Act, including through proper notice of, and public attendance at, meetings of Standing Committees.

Section 2. The Council requests that the Mayor and City Clerk ensure that all public notice requirements for the Standing Committees are met.

Section 3. The Council acknowledges the potential of scheduling and cost considerations associated with evening meetings and is committed to working collaboratively with the Mayor, staff, and bargaining unit representatives on these matters.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THE

_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON REGARDING THE PROPER NOTICING OF COUNCIL AGENDAS

WHEREAS, RCW 35A.12.120 states that “the council shall determine its own rules and order of business and may establish rules for the conduct of council meetings...”; and

WHEREAS, The Council Rules adopted on May 21, 2016 by Resolution 16-1069 Section 2.2 state: "The Agenda is subject to approval by the Mayor Pro Tempore and Council President"; and

WHEREAS, the highly respected Municipal Research Services Center advised in January of 2014: "The city council's authority under RCW 35A.12.120 includes the authority to control the agenda for council meetings. The mayor is the presiding officer at council meetings but does not have the authority to control the agenda contrary to the council's wishes."; and

WHEREAS, The Mayor wrote a memorandum to the Council on February 26, 2016 stating: "...I will no longer submit the Council agenda to any of you for approval."; and

WHEREAS, on three occasions, the mayor has blocked the City Clerk from performing her duties to properly notice Council Agendas that were approved in accordance with Council Rules; and

WHEREAS, a purpose of requiring approval of the Agenda by the Council President and Mayor Pro Tempore is to promote certainty for the public by coordinating with the Mayor and reducing the need for Agenda modifications at regular meetings of the Council; and

WHEREAS, when an Agenda is publicly noticed that has not been properly approved according to Council Rules, public confidence in functional Mayor-Council relations is jeopardized.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is reminded of her duty to faithfully administer the adopted policies of the City and is urged to cooperate with the Council President and Mayor Pro Tempore in ensuring proper notice of all Council Agendas in accordance with the Council's Rules of Procedure.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THE

_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON ESTABLISHING POLICIES REGARDING THE CITY NEWSLETTER AND COMMUNICATIONS TO THE PUBLIC.

WHEREAS, the City's Quarterly Newsletter has been prepared and distributed by the City Clerk since 2008 and has communicated useful information to City residents; and

WHEREAS, the City's Quarterly Newsletter has traditionally reflected a generally balanced perspective about City issues and has refrained from partisan or divisive commentary; and

WHEREAS, the City Newsletter should present a balanced view about the City with equal attention and respect for both the Executive and Legislative Branches of City Government; and

WHEREAS, the City Clerk serves both the Mayor and Council in her official duties and is responsible for the preparation and distribution of the City Newsletter; and

WHEREAS, the City Newsletter is distributed in water bills and stormwater bills sent to City customers and is paid for with public funds that are subject to approval by the City Council; and

WHEREAS, the City's Quarterly Newsletter for the second quarter of 2016 contained highly controversial and partisan commentary by the Mayor. This commentary was over 1990 words and included a long essay entitled: "The Truth about the Black Diamond City Council"; and

WHEREAS, the Mayor's commentary contained unsubstantiated accusations and false statements, including specific references to named individuals who find themselves cast in a negative light in an official publicly funded newsletter that is

distributed widely to the public. These kinds of communications could expose the City to defamation claims; and

WHEREAS, the Mayor's commentary included references that were political in nature and which could expose the City to legal sanctions for using public funds for political purposes; and

WHEREAS, the Council wants to protect the integrity of the City's communications to the public, including its newsletter; and

WHEREAS, the Council wants to reduce the City's risk of liability for inappropriate statements; and

WHEREAS, the Council wants to mitigate the negative effects of the second quarter 2016 Newsletter; and

WHEREAS, the Council wants to establish clear and balanced policies for all communications to the public, including and especially the City's Newsletter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. It is the policy of the City of Black Diamond that all city communications to the public shall be factual and informative. Advocacy of controversial positions are to be avoided, and care shall be taken to make sure that alternative viewpoints are fairly presented.

Section 2. The City's Quarterly Newsletters shall reflect the activities and perspectives of the Mayor and Council equally. In order to implement this policy, the City's Newsletter shall be subject to approval by both the Mayor and the Council President.

Section 3. The City's Newsletter for the third quarter shall include a copy of this Resolution.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THE**
_____.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk