

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution No. 12-783, rejecting the petition of Village Partners, LP and YarrowBay Development LLC for formation of CFD No. 2011-1	Agenda Date: January 17, 2012	
	AB12-008	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator –	
	City Attorney –Chris Bacha	X
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Public Works – Seth Boettcher	
	Economic Devel. – Andy Williamson	
Police – Jamey Kiblinger		
Court – Stephanie Metcalf		
Comm. Dev. – Steve Pilcher		
Attachments: Proposed Resolution No. 12-783		
SUMMARY STATEMENT: At the last regular Council meeting a motion passed rescinding Resolution No. 11-770 which approved the formation of CFD 2011-1. The resolution before you tonight would reject the Petition for formation of CFD No. 2011-1.		
COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: MOTION to adopt Resolution No. 12-783, rejecting the petition of Village Partners, LP and YarrowBay Development LLC for formation of CFD No. 2011-1.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 17, 2012		

RESOLUTION NO. 12-783

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, REJECTING THE PETITION OF VILLAGE PARTNERS, LP AND YARROWBAY DEVELOPMENT LLC FOR FORMATION OF CFD NO. 2011-1

WHEREAS, Black Diamond is a municipal corporation operating as a non-charter code city under the laws of the State of Washington and is authorized pursuant to RCW 35A.21.160 and 35A.11.030 to exercise all powers reserved to any city of any class and to exercise all powers of taxation in the manner provided by the general laws of the State; and

WHEREAS, in year 2010 the Washington State Legislature enacted Engrossed Substitute Senate Bill 6241 (codified at RCW Ch. 36.145) authorizing legislative authorities, such as the Black Diamond City Council, to form special taxing districts known as Community Facilities Districts (“CFD”), to provide an option for landowners to voluntarily finance local improvements through special assessments upon their property; and

WHEREAS, the Legislature found that such legislation was necessary because inadequate community facilities and infrastructure exist to support growth over the next 20 years and current financing options are not adequate or flexible enough to fund these needed facilities; and

WHEREAS, chapter 36.145 RCW (the “CFD Statute”) provides that the City Council may consider approval of formation of a CFD only after a petition meeting the requirements of the CFD Statute has been filed by 100% of the property owners owning land within the district, as certified by the County, and the City Council finds, within the time periods prescribed in the CFD Statute, that formation of the District meets the following requirements: (a) the petitioners will benefit from the proposed district; (b) the formation of the district will be in the best interest of the City; and (c) the formation of the District is consistent with the requirements of Washington’s Growth Management Act; and

WHEREAS, on October 26, 2011, BD Village Partners, LP and YarrowBay Development LLC (hereafter “Petitioners”) submitted their petition (hereafter the “Petition”) to King County Record and Licensing Services for certification for the formation of CFD No. 2011-1 (hereafter “CFD No. 2011-1”) with its proposed district boundaries located entirely within the corporate boundaries of the City of Black Diamond, King County, Washington; and

WHEREAS, on October 31, 2010, the Office of the King County Executive forwarded to the City of Black Diamond its certificate of sufficiency of the Petition confirming, as required pursuant to RCW 36.14.020(2), that 100% of the owners of the properties located within the proposed district boundaries had executed the Petition; and

WHEREAS, the City is required by law to give notice of and conduct a public hearing regarding the formation of a CFD by no later than 60 days from the date a certificate of sufficiency is issued; and

WHEREAS, the City Council conducted a public hearing regarding the formation of CFD No. 2011-1 on December 15, 2011, at which time the City Council took public testimony and received evidence; and

WHEREAS, on December 27, 2011, the City Council conducted a special meeting and voted to approve Resolution No. 11-770 authorizing formation of CFD No. 2011-1; and

WHEREAS, the CFD Statute provides at RCW 35.145.070(2) that the decision to approve formation is deemed final only if no appeal has been filed within 30 days following the effective date of the resolution approving formation; and

WHEREAS, because the decision to approve formation is not deemed final until 30 days following approval, the City Council may reconsider its decision to authorize formation of CFD No. 2011-1 prior to such formation being deemed final by operation of law; and

WHEREAS, on January 5, 2012, the City Council reconsidered its action taken pursuant to Resolution No. 11-770 to authorize formation of CFD No. 2011-1 and determined that the City Council did not have adequate time to consider the Petition and did not have sufficient information upon which to determine whether or not the Petition was in the best interest of the City, and thereupon voted to rescind Resolution No. 11-770 with the intent that such action would immediately nullify and render inoperative its authorization to form CFD No. 2011-1; and

WHEREAS, the City Council desires now to take formal action upon the Petition for CFD No. 2011-1; and

WHEREAS, the City Council, having reconsidered the public testimony and evidence provided at the public hearing and subsequent thereto, and having reconsidered the formation Petition, the Special Benefit Apportionment Analysis prepared by David Taussig & Associates, Inc. dated November 28, 2011, the independent analysis of the Taussig Report by Henderson, Young and Company, the additional written comments submitted by Henderson, Young and Company, the Petitioner and members of the public, and having otherwise considered relevant authorities and materials;

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

Section 1. Incorporation of Recitals. The above stated recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. Rejection of Petition and Formation of CFD No. 2011-1. Based upon the foregoing, and pursuant to its authority granted under RCW Ch. 36.145, the City Council does hereby reject the Petition for formation of CFD No. 2011-1.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A SPECIAL MEETING THEREOF, THIS 17th DAY OF
JANUARY, 2012.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk

Filed with the City Clerk:

Passed by the City Council:

Resolution No.:

Date Posted:

CITY COUNCIL AGENDA BILL

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

ITEM INFORMATION		
SUBJECT: Resolution 12-784, authorizing the Mayor and City Council to approve the "Tough Mudder" special event	Agenda Date: January 19, 2012	
	AB12-009	
	Department/Committee/Individual	
	Mayor Rebecca Olness	
	City Administrator –	
	City Attorney –Chris Bacha	
	City Clerk – Brenda L. Martinez	
	Finance – May Miller	
	Public Works – Seth Boettcher	
	Economic Devel. – Andy Williamson	
Police – Jamey Kiblinger		
Court – Stephanie Metcalf		
Comm. Dev. – Steve Pilcher	X	
Attachments: Resolution 12-784, Application, Staff Comments		
SUMMARY STATEMENT:		
<p>The Tough Mudder event is a 10-12 mile foot race with military obstacles planned to take place on lands owned by Palmer Coking Coal. This will be the first Tough Mudder event to occur in the Pacific NW and event organizers are expecting a larger turnout (up to 10,000 participants and 3,000 spectators). Since this is a two-day event, City Council approval of a special event permit is required (BDMC 2.59.040).</p> <p>City staff reviewed the proposal, made initial comments and event organizers made modifications/clari- fications to the event that have satisfied staff's concerns. BDMC 2.59.080 lists reasons for which a special event permit could be denied. Staff did not find that any of these reasons could result in a need for permit denial. Therefore, staff is recommending approval of the special events permit, with the conditions noted as attached.</p> <p>A representative from Tough Mudder will be present at the Council meeting to make a brief presentation about their activity and answer any concerns from Council. They have requested this early Council consideration so they may have adequate time to begin advertising the event.</p>		
COMMITTEE REVIEW AND RECOMMENDATION: None		
RECOMMENDED ACTION: MOTION to adopt Resolution 12-784, approving the Tough Mudder special event SEP11-0014.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
January 19, 2012		

RESOLUTION NO. 12-784

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE CITY COUNCIL TO APPROVE THE
TOUGH MUDDER SPECIAL EVENT SEP11-0014**

WHEREAS, Tough Mudder LLC has proposed a two-day athletic event to occur on private property within the city limits on September 29th and 30th, 2012; and

WHEREAS, Black Diamond Municipal Code 2.59.040(B) requires the City Council to approve any special event that exceeds one day in duration; and

WHEREAS, City staff has reviewed the proposed activity and recommends it be approved, subject to conditions;

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

Section 1. The Mayor is hereby authorized to execute the approval of special event permit SEP11-0014 for the Tough Mudder event to be held on September 29th and 30th, 2012.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 19TH DAY OF JANUARY
2012.**

CITY OF BLACK DIAMOND:

Rebecca Olness, Mayor

Attest:

Brenda L. Martinez, City Clerk



SPECIAL EVENT APPLICATION

PERMIT# _____

EVENT INFORMATION

EVENT NAME: Tough Mudder
EVENT LOCATION: 31407 Highway 169 Black Diamond, WA 98010
(If structures will be erected and/or street ROW used, please attach (3) drawings noting locations and dimensions.)

EVENT TYPE: Exhibition Protest Run/Walk Dance Festival Concert Party
(Check all that apply) Wedding Drama Parade Other _____

DATE OF EVENT: 9/29-9/30 2012 HOURS: 7am - 5pm

PURPOSE OF EVENT: 10 mi Endurance run

EST. ATTENDANCE: Participants 7,000/day Spectators 2,000/day Volunteers/Personnel 75
CITY BUS. LICENSE #: _____ *(participating commercial vendors will also require a City license)*

PARKING PLANS: See attachment A
(Please provide a drawing unless you are using an existing parking lot with sufficient stalls.)

FACILITIES TO BE USED: City Park Lake Sawyer Sidewalk Street Private Property
(If using private property, you must provide proof that you have permission unless you are the owner.)

CITY ASSISTANCE REQUIRED: Police Fire Public Works Other _____
Describe: Traffic Flow (Police), Event Safety (Fire)
(Police and Fire services require a written agreement that must be submitted with the event application.)

INSURANCE COMPANY: Gem Insurance
(Proof of Ins. required naming City of Black Diamond as co-insured if event is taking place on City property.)

FOOD TO BE SERVED: YES NO If yes, provide copy of Health Dept approval/license.
SOUND SYSTEM: YES NO
(If liquor and music are provided a Cabaret license may be required.)

SANITATION PLANS (Sani-cans, hand washing stations, etc): Sani-cans, *hand-washing stations

PRODUCTS OR SERVICES TO BE SOLD: YES NO If yes, what? Merchandise

ADMISSION FEE: YES NO If yes, how much? \$120 participants / \$40 spectators

HAS THE EVENT BEEN PREVIOUSLY PRODUCED? YES NO PREVIOUS DATE: 20+ events held

ANY CHANGES FROM PREVIOUS EVENT? YES NO If yes, list changes:

APPLICANT INFORMATION

APPLICANT: Tina Fekula ORGANIZATION: Tough Mudder

MAILING ADDRESS: 55 Washington St 329 Brooklyn, NY 11201

CONTACT PHONE: 718-878-6349 FAX _____

EMAIL ADDRESS: Tina. Fekula @ toughmodder. com

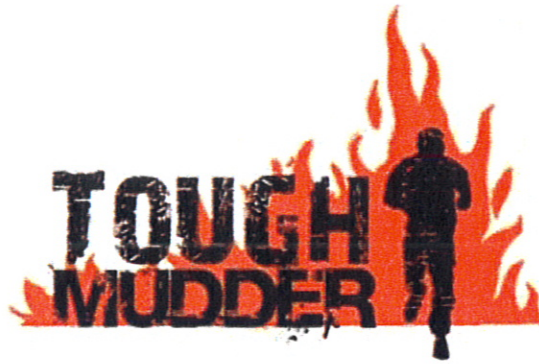
EMERGENCY CONTACT Tina Fekula PHONE 718-878-6349

AT R 12/13/11

SIGNATURE OF APPLICANT

DATE

Additional information or requirements may be requested. Please allow 3 - 4 weeks for processing.



City of Black Diamond Special Events Proposal

What is Tough Mudder?

Tough Mudder is a foot race across 10-12 miles, featuring 25 military style obstacles.

How many people are attending the event?

Participants: 10,000 (Saturday: 7,000; Sunday: 3,000)

Spectators: 3,000 (Saturday: 2,000; Sunday: 1,000)

Location: Palmer Coking Coal Company, 31407 Highway 169 Black Diamond, WA 98010

Senior Event Planner Contact Information:

Daniella Sloane

Tough Mudder LLC

55 Washington St, #329, Brooklyn, NY 11201

Phone: 718.643.2221 Fax: 347.227.0220

daniella.sloane@toughmudder.com

Event Planner Contact Information:

Rachel Kerner

Tough Mudder LLC

55 Washington St, #329, Brooklyn, NY 11201

Phone: 718.878.6337 Fax: 347.227.0220

rachel.kerner@toughmudder.com

Time of Event:

	START TIME	END TIME
Saturday September 29, 2012	8:00am	6:00pm
Sunday September 30, 2012	8:00am	6:00pm

Operating Details:

Duration of event (including pre-event set up and post-event tear down):

	START DATE	END DATE
Course Construction	9/1/12	9/28/12
Event Set Up	9/24/12	9/28/12
Event Breakdown	9/30/12	10/2/12

Typical hours of activity:

All event set up will take place between the hours of 7am – 7pm; Event Execution will take place between 6am – 7pm.

Staffing:

Roughly 200 individuals – both paid staff and volunteers – will be on hand to execute the event. Tough Mudder will be responsible for managing volunteers, event staff, and security.

Facilities provided:

Tents, stage, showers, portable toilets, picnic tables, 5-6 drinking water stations on course.

Camping:

Overnight camping will not be permitted on site.

Water Stations:

Water at on-course hydration stations will be supplied with 16.9 ounce bottled water. Participants will be allowed to take one bottle per station. Bananas and energy bars will also be provided throughout the course.

Portable toilet locations and quantities:

There will be 55 standard portable toilets, 2 ADA accessible portable toilets, and 6 hand washing stations placed in the base area and on the course. Tough Mudder will contract with United Site Services in order to provide the aforementioned resources; they will be serviced daily.

Trash Removal:

Trash removal will happen all day during the event. Saturday night there will be a significant clean up as well as one Sunday after the event. Dumpsters, trash cans, and a large trash management labor force will be utilized to accomplish this.

Tough Mudder will also take care of litter the event may cause along the municipal ingress and egress roads (i.e. Route 169, Lake Sawyer Road, and SE Auburn – Black Diamond Road). We will contract through the third-party event staffing company Labor Ready.

Accommodations for Disabled Visitors:

We will provide reserved parking spaces, ADA portable toilets, and a wheelchair accessible van shuttle between parking lots and post party area.

Power Requirements:

Small generators will be brought in to power small PA systems; power will also be pulled from buildings where possible.

Equipment Rentals:

UTV's, forklift, skid steer, flatbed trucks and other equipment will be rented to set up the course.

Vendors:*Food Concessions*

Food will be provided by Spectrum Catering and Concessions. Dave Smalley is the president of Spectrum and can be reached by phone at 281.363.0900 x240 or by email at dsmalley@spectrumfcs.com.

Additional Vendors:

Tough Mudder branded merchandise will be for sale (t-shirts, hats, posters). Additional vendors include local gyms, energy drink, energy bar, and athletic apparel providers. All vendors will be located within the post party area.

Please see Exhibit A: Sample Base Map.

Parking and Vehicles:

Amount of Parking Needed:

Approximately 3500 spaces per day.

Parking Locations:

All parking will take place on site at the venue. The parking area can be seen as designated on the map. From experience, we are able to park 125 cars per acre and have designated 37 acres of the site for parking. Our estimates are conservative, however, there are fields designated for overflow parking on the property as well.

Ingress and egress locations are also noted on the map. Because of the nature of the event, all attendees will arrive in the morning and leave in the afternoon. Therefore, in the morning all ingresses and egresses can become ingresses in case of back up, and vice versa in the afternoon.

Please see Exhibit B: Parking, Ingress & Egress

Traffic Controls:

Directional signage will be placed at Route 169 directing participants to parking lots. 'Lot Full' signs will be provided by Tough Mudder. Electronic message boards will also be used to notify travelers of the special event. We will use local law enforcement to manage ingress/egress on highway. Lanes for emergency vehicles will be left open at all times.

We agree to use the Black Diamond Police Department for the following coverage:

- 1) Traffic Control: 0600-1100 hours, 1200-1700 hours (2 officers) both days --- 20 hours per officer
- 2) One officer to assist with overall security 0600-1100 (1 officer) both days --- 22 hours

Total hours: 62hr x \$75.00/hr = \$4650

Safety Plan Overview:

30-40 First Aid and EMT staff as well as a medical director of operations will be provided by a national vendor. Tough Mudder will coordinate with the national vendor to designate access for emergency vehicles as well as helicopter landing zones if necessary. Four first aid stations will be staged along the course, EMT staff will be roaming the course on utility vehicles, and a base tent or trailer will be set up and staged in the Post Party area. 6-10 water rescue technicians and lifeguards will also be contracted to ensure water safety at the event. Comprehensive Event Safety and Emergency Action Incident Plans will be developed closer to the event date.

Communications:

Incident Command System used. Handheld two-way radios will be ordered and used with designated channels for Tough Mudder Staff, Event Staff, Medical and Security.

High Risk Areas and Protection of Spectators (i.e. barriers, closures, restricted areas):

Barricades will be used around some obstacles, but spectators are allowed to access all parts of the course. Spectators are required to sign liability waivers before accessing the event.

Environmental Concerns:

Tough Mudder recognizes that several areas of the proposed site are designated as "Sensitive Areas"; specifically Rock Creek and Oak Lake. Tough Mudder is familiar with the City of Black Diamond Municipal Code Chapter 19.10: Sensitive Areas. We have proposed a course design which only crosses Rock Creek on the Palmer Coking Coal Access Road, and does not enter Oak Lake as we fully intend to avoid the lake and its associated buffer. No obstacles or trails will be built in sensitive areas or their buffers.

Please see Exhibit C: Course Map

There will be no surface water discharge as a result of our event. We do use water to create mud pits, however, following the event they will be allowed to dry and will be filled in.

We will not be using any chemicals for any portion of our event. We will be using gasoline and oil for our access vehicles and generators. All gas and oil will be stored inside containers, provided fueling tanks and oil shacks.

We will keep spill kits on hand to be sure that vehicles in our parking lots will not contaminate groundwater were they to leak fluids. We will be certain to distribute the spill kits to the hired parking attendants.

Insurance:

Tough Mudder is insured by GEM Insurance, with all participants personally insured under our policy. The City of Black Diamond will be named as an "additional insured" on the policy as well as other parties as requested.

Noise:

A band will play from 11:00am – 4:30pm. 4 small PA systems will be spread around the course, and we respectfully request that announcements and music be played starting at 9am.

Managing Organization:

Tough Mudder
55 Washington St Ste 329
Brooklyn, NY 11201

Contact:

Reed Raskin
718-412-1936
reed.raskin@toughmudder.com



Exhibit A: Sample Base Area

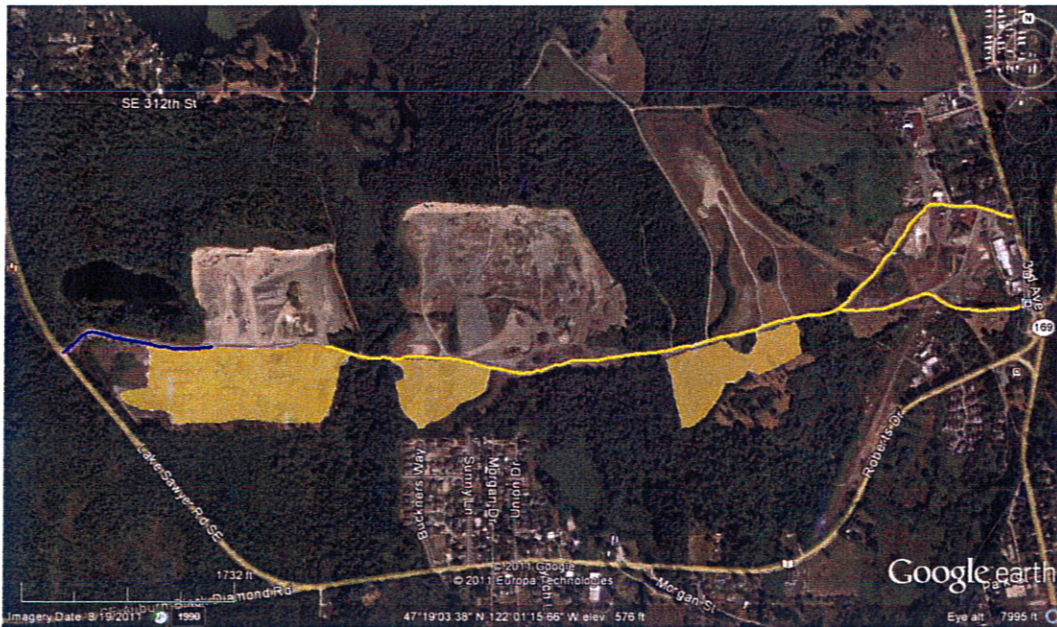
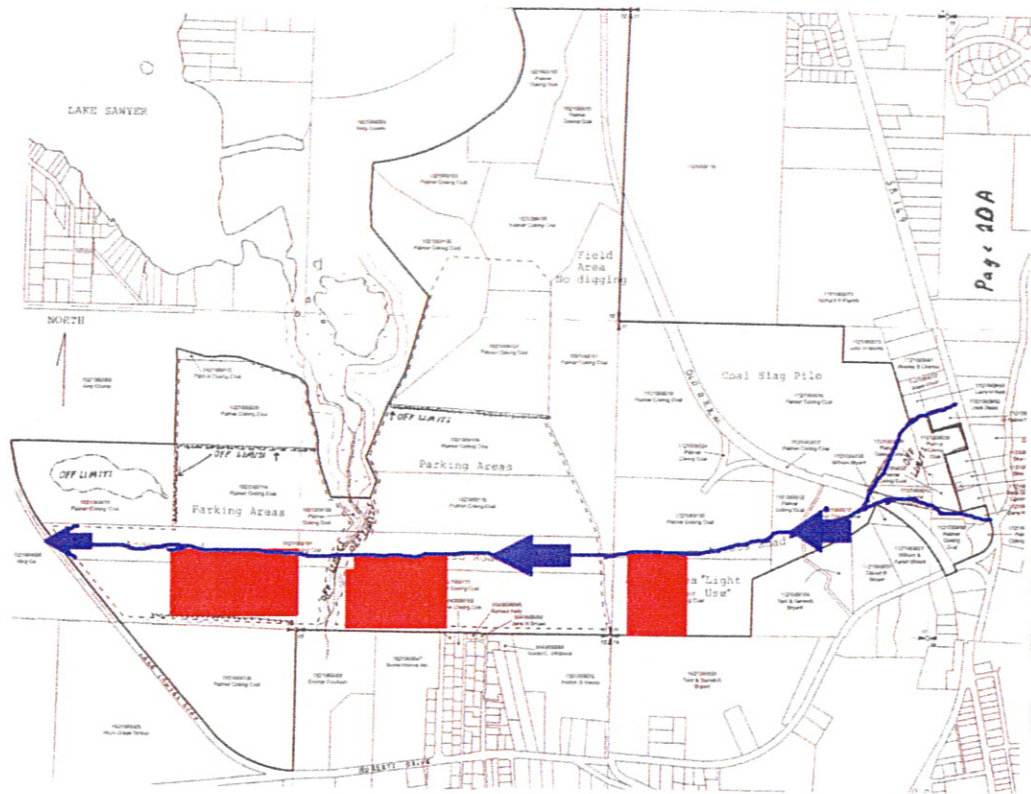
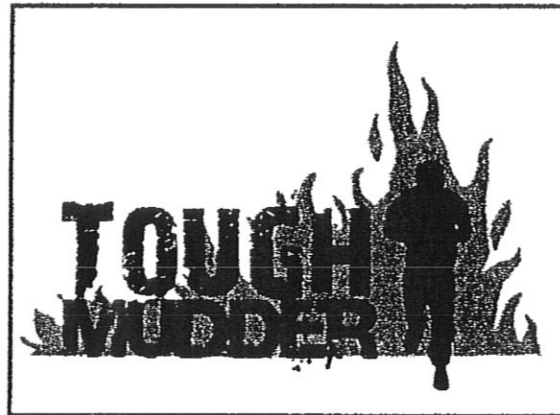


Exhibit B: Parking, Ingress & Egress



Exhibit C: Course Map



Date: December 16, 2011

To: Robert Young
Black Diamond Fire Department

From: Tina Fekula
Tough Mudder, LLC

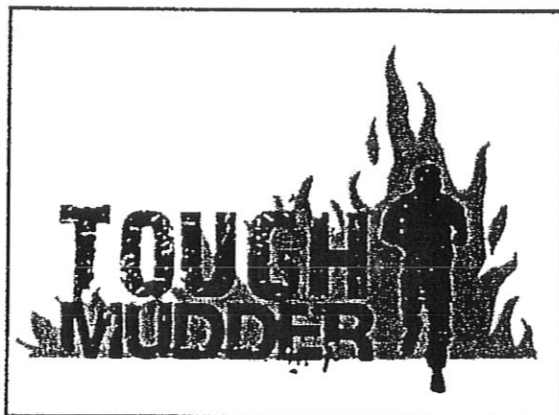
Subject: Tough Mudder 2012

Tough Mudder requests the assistance of the Black Diamond Fire Department to assist at our event on September 29th and 30th, 2012 on the Palmer Coking Coal Company property. We request two (2) ambulances with ALS units on site. We will hire an outside medical company with approximately 45 medics on site; the fire department will act as additional support.

Respectfully,

Tina Fekula
Tough Mudder, LLC

~~Greg Goral~~ Robert Young
Commander, Black Diamond Police Department
Asst. Chief, Mt View Fire + Rescue



Date: December 15, 2011

To: Commander Greg Goral
Black Diamond Police

From: Tina Fekula
Tough Mudder, LLC

Subject: Tough Mudder Parking Support 2012

Tough Mudder requests the assistance of the Black Diamond Police Department to assist with traffic flow at our event on September 29th and 30th, 2012. We request two (2) police officers and agree to pay the current, designated rate for services.

Respectfully,

A handwritten signature in black ink, appearing to be "Tina Fekula", written over a horizontal line.

Tina Fekula
Tough Mudder, LLC

A horizontal line representing a signature, with the name and title printed below it.

Greg Goral
Commander, Black Diamond Police Department



Permit Review Details

Permit: SEP11-0014

1010			Complete?	Y
12/29/2011	SWELSH	30	SINCE THIS IS A TWO DAY EVENT, PER BDMC SECTION 2.59.040.B, THE CITY COUNCIL IS RESPONSIBLE FOR APPROVING THIS SPECIAL EVENT PERMIT. A PUBLIC HEARING IS NOT REQUIRED.	Y
			<p>*****ADDITIONAL INFORMATION IS NEEDED FROM THE APPLICANT:</p> <ul style="list-style-type: none"> -DESCRIBE ANY PROPOSED IMPACTS/USE OF ROCK CREEK AND OAK LAKE. THIS INFORMATION IS NECESSARY TO DETERMINE ANY SENSITIVE AREAS IMPACTS/PERMITS NECESSARY. -PROVIDE A MORE DETAILED PARKING PLAN WITH DIMENSIONS TO PROVE THAT THE AREA SHOWN CAN ACCOMMODATE ADEQUATE PARKING & MANEUVERING AREAS FOR THE ESTIMATED 3500 CARS/DAY. -CLARIFY THE TRAIL MAP TO SHOW THAT THE EVENT WILL NOT INTRUDE ONTO NON-PALMER COKING COAL LAND (IN PARTICULAR NEED TO VERIFY AVOIDANCE OF THE REGIONAL PARK PROPERTY). -CLARIFY REGARDING THE MAP SUBMITTED AS PART OF PCC/TM CONTRACT WHETHER OR NOT AREAS SHOWN AS "OFF LIMITS" HAVE THE PROPOSED COURSE TRAIL SHOWN GOING THROUGH THEM OR NOT. 	
01/10/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
01/11/2012	SWELSH	30	THE RESUBMITTAL SATISFIED MY CONCERNS.	Y
			Total Time:	60
1030			Complete?	N
01/05/2012	RMEYERS	30	1) PROVIDE INFORMATION ABOUT THE LOCATION, NUMBER OF STANDARD RESTROOM UNITS, AND NUMBER OF ACCESSIBLE RESTROOM UNITS AND HAND WASHING STATIONS. 2) PROVIDE INFORMATION ABOUT STANDS/TENTS AND OTHER STRUCTURES SUCH AS TYPES, LOCATION ON PROPERTY AND SET UP INFORMATION.	Y
01/10/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
			Total Time:	30
1050			Complete?	N
01/04/2012	DDALSANTO	30	The only concern the public Works dept. has is additional litter along city streets. Maybe a road clean-up after the event if necessary.	Y
01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
			Total Time:	30
1060			Complete?	N
01/04/2012	RYOUNG	30	The fire department has concerns relating to the medical coverage of such an event, coordination with event staff relating to emergency response, and access to site and the planned route of the individuals who are participating in the event.	Y
			An emergency plan meeting the requirements of Chapter 4 of the International Fire Code will be required to be developed and approved by the fire marshal.	
			Presently there is not enough information provided for the fire department to make a recommendation to approve this special event permit.	
01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
			Total Time:	30
1070			Complete?	N
01/05/2012	JKIBLINGER	30	Traffic control: 0600-1100 hours, 12-5pm (2 officers) both days ---20 hours (40 hours- 2 officers) 1 officer to assist with overall security 0600-1700 (1 officer) both days ---11 hours (22 hours)	N
			Total hours: 62 x 75.00 per hour = \$4650.00	
01/05/2012	JKIBLINGER	0		Y
01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
			Total Time:	30
1080			Complete?	Y
12/29/2011	ANIX	120	1. It appears that the course route will utilize some sensitive areas and their associated buffers. The sensitive areas ordinance does allow for certain outdoor activities within sensitive areas and their associated buffers, but they cannot "degrade the sensitive area" and have "minimal adverse impact". It's unclear within the currently supplied materials what types	Y

of obstacles, trails or other elements will be needed within these sensitive areas. Specific detail is needed for any disruption to the function of these sensitive areas and their associated buffers. Please submit details associated with potential impacts to these areas.

2. Any surface water discharge into Rock creek, Oak lake, etc. shall meet water quality standards as mandated by the State of Washington.

3. Because of the porous nature of the ground underneath the proposed race area and proximity to groundwater, specific details with regard to the storage, use and handling of chemicals and other potentially polluting substances need to be identified and dealt with appropriately so that groundwater contamination does not occur. This also includes the parking of over 3500 vehicles which may pose a threat to groundwater/surface water contamination. Appropriate spill kits to handle fluids associated with motor vehicles shall be required onsite. Spills/leaks need to be cleaned up immediately.

01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
01/11/2012	ANIX	60	1. Limited information has been supplied in regards to impacts associated with course trail within the Oak Lake buffers. Although Oak Lake has not been formally delineated, buffer dimensions are based on wetland/lake class and can vary from 40' all the way up to 225'. The northern route around Oak Lake appears to be very close to the water's edge and may lie within this sensitive area's buffer. Trail construction is inevitable based on the current course map. Please detail trail construction in this area and contact the City prior to commencing work for a walk through in this area. 2. It appears, based on the new information submitted, that a central location will be utilized for the storage of gasoline and oil. In addition to spill kits being supplied for the parking areas, please have some available for this area in case of accidental spills.	Y
				Total Time: 180

1190	Complete?	N
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01/05/2012	ADONLAN	0	sent comment letter to Reed Raskin.	Y
01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
				Total Time: 0

1200	Complete?	Y
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01/05/2012	BMARTINEZ	10		Y
				Total Time: 10

1210	Complete?	Y
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01/05/2012	AWILLIAMSON	15		Y
01/11/2012	ADONLAN	0	REC'D ADDITIONAL INFORMATION AND UPDATED DOCUMENTS. AD	N
01/11/2012	AWILLIAMSON	15		Y
				Total Time: 30

Total Reviews:	21	Total Time:	400
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Michael R. Kenyon
Bruce L. Disend
Shelley M. Kerslake

Kari L. Sand
Chris D. Bacha
Margaret J. King
Bob C. Sterbank
Rachel B. Turpin
Ann Marie J. Soto

TO: Rebecca Olness, Mayor
Members of the City Council
Brenda Martinez, Assistant City Administrator

FROM: Chris Bacha, City Attorney
Mike Kenyon

DATE: January 11, 2012

RE: Workstudy Meeting Materials

On December 29, 2011 Councilmember Goodwin sent an e-mail to our office asking for a briefing regarding a number of general questions. As these questions would be of general interest to the full Council, the Mayor scheduled a Workstudy session. Our responses follow below.

1. *What ability/flexibility does the City Council have to rescind past Council adopted resolutions?*

The City Council, as the governing body, is vested with all policy-making authority of the City and is generally free to amend or rescind a resolution of the City Council. Depending on the nature of any particular resolution, however, such act of rescission may not operate to nullify actions already taken under authority of such resolution (e.g., rescinding a resolution authorizing the mayor to execute an installment contract for the purchase of a new copier would not invalidate the underlying purchase contract, and the City would remain liable to make the remaining installment payments or to pay damages for breach of the contract). Although a void contract may be repudiated, and an offer may be withdrawn prior to its acceptance, the general rule is that valid contracts of municipal corporations, like those of private corporations and individuals, cannot be revoked or rescinded without the consent of both parties. Accordingly, a municipality cannot rescind its contract except with the consent of the contractor, unless it has expressly reserved the right to revoke. It follows that where a council authorizes a purchase of lands, and the purchase is made pursuant to such authority, it cannot thereafter repeal its action; acts of a city council of a contractual nature cannot be repudiated by a subsequent council, regardless of whether or not membership is the same; a common council cannot, by resolution or ordinance, rescind a contract; and a city comptroller, who countersigned a contract formally

executed by the city register in accordance with authority vested in the comptroller by law, cannot withdraw the countersignature after the contract has been fully executed, delivered and filed with the register. 10A *McQuillin Mun. Corp.* § 29:126 (3rd ed.).

The term “resolution” is in most instances simply an expression of the opinion or mind of the City Council concerning some particular item of business or matter of administration coming before the City Council.¹ A resolution is thus, typically, nothing more than a policy statement or ministerial/administrative action which does not have a general legislative purpose.² For example, a resolution may establish a policy governing use of City e-mail. The Council can most certainly act to rescind the resolution establishing the e-mail policy or approve a resolution amending those policies.

Resolutions generally are not required to be in any particular format; however, when otherwise required by statute (e.g., the CFD statute), charter, or other authority, resolutions must comply with those applicable requirements.³ The City Council has adopted Rules of Procedure that govern the conduct of Council meetings and other matters. The Council rules establish at Rule 3.11.3 the process for bringing resolutions before the City Council for consideration. These rules do not contain any particular process for amending or rescinding a past resolution of the City Council. However, these rules do require a resolution to be in writing and to be brought before the Council in the manner set forth at Section 3.11.3. Thus, if the Council wishes to consider a resolution to amend or rescind a prior resolution of the City Council, it should conform to Rule 3.11.3.

2. *What ability does the City Council have to cancel contracts authorized by prior Councils consistent with contract cancellation provisions?*

The general power and authority of the City Council is set forth in Chapter 35A.11 RCW⁴:

[T]he legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title.

RCW 35A.11.020. Under RCW 35A.11.010, a code city through its city council “may contract and be contracted with; . . .” The question asked here, however, is more specific, relating to the authority of the City Council to terminate an existing contract after its approval by the Council. On the one hand, such authority may be implied within the above referenced statutory authority of the City Council to contract. On the other hand, this delegation of authority to the City Council is limited in circumstances where it may conflict with an express delegation of authority to the Mayor under Chapter 35A RCW (and vice-versa).

¹ See, *Baker v Lake City Sewer Dist.*, 30 Wn. 2d 510, 518 (1948).

² See, *State Ex Rel. Morrison v Seattle*, 6 Wn. App. 181, 189 (1971).

³ See Generally, *Baker v Lake City Sewer Dist.*, 30 Wn. 2d at 519.

⁴ See, RCW 35A.12.190.

Black Diamond is a non-charter optional code city with a Mayor-Council form of government. Under this form of government, the Mayor acts as the chief executive and administrative officer of the City. Under RCW 35A.12.100, the Mayor's power and authority specifically includes the authority to "see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, . . ." The Legislature has delegated the following authority to the Mayor:

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. . . . He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. . . . He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. . . .

RCW 35A.12.100.

The City Council has the authority to initially approve a contract. The Mayor is responsible for seeing that all contracts are thereafter faithfully kept and performed. This raises the question of whether the Mayor and City Council have overlapping authority regarding enforcement of contract terms, and which authority controls in the event of conflict.

There are no cases in Washington State that have addressed the above question, nor has a search of decisions in other states revealed any authorities directly on point. However, it may be useful to look at cases that distinguish between the legislative and administrative powers of local governments.

The cases that most often discuss the difference between legislative and administrative authority are those decisions that address the proper subject matter of referendums. In Washington, the subject matter of referendum elections is limited in scope to acts by a governmental body which are legislative in nature. *Leonard v Bothell*, 87 Wn.2d 847, 850 (1976). Thus, administrative acts of municipal legislative bodies are not subject to a referendum election. The Washington Courts have described the difference between legislative and administrative acts as follows:

Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative
...

The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make new law or to execute law already in existence. The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.

Leonard v. Bothell, 87 Wn.2d at 850 (1976).

Arguably, the authorization by the City Council to execute a contract may be legislative in nature to the extent that it prescribes a new policy or plan and clearly is within the statutory authority of the Council as discussed above. Likewise, the keeping and performing of the terms and conditions of a contract fits within the above definition of acts that are administrative in nature.

There are no decisions in Washington, or found elsewhere, that directly address the question that has been asked. Further, it is not clear how the courts would interpret the breadth and scope of the City Council's authority regarding enforcement of contract terms. The separation of power doctrine does not recognize a distinct and clear separation between the legislative and executive branches of government; thus, administrative power and authority often overlap between these two branches of government.⁵

⁵ A fundamental principle of our American constitutional system is that governmental powers are divided among three separate and independent branches - legislative, executive, and judicial. (*Citations Omitted.*) Our Washington State Constitution does not contain a formal separation of powers clause. Nonetheless, separation of powers is a vital doctrine, presumed throughout our state history from the division of our state government into three separate branches. (*Citations Omitted.*)

The separation of powers doctrine is grounded in flexibility and practicality; rarely does it offer a definitive boundary beyond which one branch may not tread. (*Citations Omitted.*) Thus, the separation of powers doctrine does not mandate that the three branches of government seal off hermetically from one another. (*Citations Omitted.*) Rather, the different branches remain partially intertwined to maintain an effective system of checks and balances, as well as an effective government. (*Citations Omitted.*)

State v. David, 134 Wn. App. 470, 478-479 (2006).

3. What is the appropriate process for the Council to use if two or more members of the Council wish to introduce new resolutions?

Introduction of a resolution for consideration by the City Council is governed by the City Council Rules of Procedure. The order of business at City Council meetings is established in the City Council Rules of Procedure at Section 3.

Rule 3.1 provides that all items to be included on the City Council agenda shall be submitted to the City Clerk in full no later than 10:00 a.m. on the Thursday preceding each regular City Council meeting. The City Council may disapprove adding any items to the agenda that are not timely filed. Rule 3.11.3 provides that a resolution may be presented to the City Council at the request of two Councilmembers, the chair of a Council committee, the Mayor or other presiding officer, or the City Administrator.

The Rules of Procedure thus provide that two Councilmembers may introduce a resolution to the City Council by timely submitting the resolution to the City Clerk. Two Councilmembers may also present a resolution to the City Council during a regular meeting. A majority of the City Council may disapprove adding the resolution to the Council agenda. However, once an agenda is set, the City Council must approve an amendment to the agenda to consider any items not on the agenda.

Please let us know if there are other questions. Thank you.