



CITY OF BLACK DIAMOND
January 17, 2012 Special Meeting/Workstudy Agenda
25510 Lawson St., Black Diamond, Washington

Workstudies are meetings for Council to review upcoming and pertinent business of the City. Public testimony is only accepted at the discretion of the Council.

6:00 P.M. – CALL TO ORDER, ROLL CALL

1.) **AB12-008** - Resolution Rejecting Formation of Community Facilities District – Mr. Goodwin

2.) **Workstudy**

a.) Responses to general questions from Councilmember Goodwin – Mike Kenyon
Chris Bacha

b.) Discussion regarding formation of City Council committee regarding
future formation of CFDs

3.) **Executive Session** - to discuss with legal counsel potential litigation pursuant to RCW
42.30.110(1)(i)

4.) **Adjournment**

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:



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.