

CITY OF BLACK DIAMOND
Per Council Rules of Procedure
August 17, 2017 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

CHANGES TO AND APPROVAL OF AGENDA (Per Council Rule 3.4)

Note: Black Diamond Council Rules state that prior to posting on the website, the draft agenda must be approved by the Council President and Council Mayor Pro Tem (Council Rule 2.2). It is part of the City Clerk's role to prepare the draft agenda, send it for approval or amendment per the Council Rules, and then post to the website. At the point of preparation of this document, an incorrect draft was posted to the city website. Although the mayor disputes the Council agenda process, the Council agenda process is legal according to the city's legal service providers.

For the preliminary agenda to be approved for public notice, it must follow the Council Rules including:

- Items of New Business are for first reading and Council committee assignment (Rule 9.1. This rule can be suspended by Council vote, Rule 7.3). Any Council member can add an item of New Business for first reading.
- For Unfinished Business, once an item is assigned to committee, a committee recommendation or vote of the Council is required to relieve it from committee (Rule 18.1.1 and Rule 18.1.3.c).
- The "Consent Agenda" contains minutes and claim checks and comes after "New Business" (Rule 3.12).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

- 4) **AB17-047** – Resolution Approving Special Event Permit for Tough Mudder *Council Morgan*
This item is under review by the Council Government Operations Committee. The Committee Chair anticipates asking the Council to consider this item with amendments at the meeting.
- 5) **AB17-048** – Professional Services Contract with DKS Associates *Councilor Pepper*
This item is under review by the Council Growth Management Committee. The Committee Chair anticipates asking the Council to consider this item with amendments at the meeting.

NEW BUSINESS:

- 6) **AB17-049** – Resolution Regarding King County Youth & Amateur Grant Agreement for Gym Lighting
Council Morgan
This item is for first reading and assignment to the Council Government Operations Committee.
- 7) **AB17-050** – Resolution Regarding Professional Services Contract with Anne Bremner, PC
Councilor Pepper
This item is for first reading and assignment to the Council Government Operations Committee.

CONSENT AGENDA:

- 1) **Claim Checks** – August 17, 2017 - No. 45193 through No. 45242 and EFTs in the amount of \$160,923.11

2) **Payroll** – July 31, 2017 – No. 19374 through No. 19390 and ACHs in the amount of \$303,310.52

3) **Minutes** – Council Meeting of August 3, 2017

DEPARTMENT REPORTS: None

MAYOR’S REPORT:

COUNCIL REPORTS:

- a. Councilmember Deady
- b. Councilmember Morgan
- c. Councilmember Edelman
- d. Councilmember Weber
- e. Councilmember Pepper

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

BLACK DIAMOND CITY COUNCIL MINUTES
August 17, 2017
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 Morgan, Edelman, Weber, and Pepper.

ABSENT: Councilmember Deady (excused).

Staff present: Andrew Williamson, MDRT/Ec Dev/Interim Community Development Director; Larry Colagiovanni, Police Commander; Jamey Kiblinger, Police Chief; May Miller, Finance Director; Seth Boettcher, Public Works Director; Stephanie Metcalf, Court Administrator; David Linehan, City Attorney, and Brenda L. Martinez, City Clerk.

CHANGES TO AND APPROVAL OF AGENDA:

Councilmember Pepper **moved** to adopt the Council approved agenda per Council Rules of Procedure; **second** Councilmember Morgan.

Councilmember Pepper spoke to her motion and discussed the changes to the agenda.

Councilmember Pepper asked Attorney Kohler to address our agendas and council rules.

Mayor Benson stated you may not have the floor, and further stated Ms. Koler is not our Attorney.

Councilmember Morgan appealed the decision of the chair; Councilmember Morgan called point of order.

Councilmember Pepper called point of order, interruption.

Mayor Benson ~~asked~~told Ms. Koler to please sit down.

Councilmember Pepper stated she has the floor several times as Mayor Benson noted she has a motion and a second.

Councilmember Pepper stated I have the floor, and I have invited Attorney Koler to speak to the motion.

Mayor Benson stated to Councilmember Pepper she has no authority several times.

Councilmember Pepper called point of order to Mayor stating you usurped the floor of a Councilmember.

Mayor Benson stated you have no authority and I am the Presiding Officer.

Councilmember Pepper appealed the decision of the chair.

Attorney Koler stated she was going to answer Councilmember Pepper's questions.

Mayor Benson told her to sit down. She further stated this is not public comments.

In unison, Councilmembers Pepper and Morgan called point of order for interruption, arguing and usurping the floor.

Again, Councilmember Pepper appealed the decision of the chair.

Mayor Benson told Ms. Koler she may speak during public comments and to please sit down.

In unison, Councilmembers Pepper and Morgan appealed the decision of the chair for interruption, arguing, usurping the floor held by the Council.

The mayor did not call for a vote on the appeal the decision of the chair motion.

Mayor Benson stated I am the presiding officer.

Councilmember Pepper further stated we will take a vote of the Council, and we will have a vote by Councilmember.

Councilmember Pepper asked Councilmember Morgan if she was in favor of.... (never finished as the Mayor spoke).

Mayor Benson stated this is not subject to vote, you have a motion and a second on the floor, you need to vote on the agenda.

Councilmember Pepper stated that before voting on the agenda, we should hear from the attorney on the agenda and right now we are appealing the decision of the chair, and we are taking a vote and we are going to make sure this vote is recorded in the minutes.

Councilmember Pepper again asked Councilmember Morgan if she agrees that the Chair may interrupt, argue and usurp the floor held by a Councilmember. Councilmember Morgan stated she did not agree.

Mayor Benson stated to Councilmember Pepper you have no authority.

Councilmember Pepper called a point of order, and stated that Mayor Benson usurped the floor.

Councilmember Pepper again asked Councilmember Edelman if she agreed that we appeal the decision of the Chair may interrupt, argue and usurp the floor held by a Councilmember.

~~Mayor Benson stated to Councilmember you are not the Mayor.~~

Councilmember Edelman stated that Councilmember Pepper was ruled out of order and her appeal was ruled out of order.

Councilmember Pepper appealed the decision of the chair, interrupting arguing, usurping the floor by a member of the Council.

Mayor Benson ruled Councilmember Pepper out of order.

Councilmember Pepper asked Councilmember Weber, what is your choice, yes or no? Councilmember Weber stated he does not agree with the Chair, Councilmember Pepper stated she does not agree with the Chair.

The vote on the appeal of the chair was is 3-1. (Edelman). The Chair has been appealed. _

Councilmember Pepper explained that whether the mayor agrees with the decision of the body or not, the chair must abide by the decision of the body.

Mayor Benson stated you have no authority.

Councilmember Pepper stated that while she has the floor, she has invited Attorney Koler to come up and speak to us about the agenda.

Mayor Benson stated I am sorry, only during public comments.

Councilmember Morgan appealed the decision of the chair.

Councilmember Pepper continued to appeal the decision of the Chair. Mayor Benson stated you have no authority.

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~~There was Council discussion.~~

Mayor Benson again stated you have a motion and a second on the floor. Then Mayor Benson said, "OK, everybody get up and speak."

Councilmember Weber stated he wants to amend the **motion** to accept the agenda that is provided and to **move** that Attorney Koler ~~be allowed to speak at the podium~~ to Council

member Pepper's question as requested by Councilmember Pepper; **second** Councilmember Morgan.

Mayor Benson stated this is not proper, she can speak during public comments.

Councilmember Edelman asked the audience to be quiet.

Councilmember Pepper called for order for the audience speaking out. Mayor

Benson called Councilmember Pepper out of order.

Councilmember Pepper stated that the Mayor as the presiding officer has certain duties

Mayor Benson asked Ms. Koler to please sit down and stated Councilmember Pepper has no authority to bring you here.

Councilmember Pepper stated that she has the floor and she has invited Attorney Koler to come up and speak to us about the agenda.

Mayor Benson stated to Councilmember Pepper that she has no authority to invite Ms. Koler here to speak.

Mayor Benson again stated to Councilmember Pepper that she has no authority to invite her to speak, and to please ask her to sit down.

Attorney Koler spoke out and the Mayor reminded her that she is not recognized as the City Attorney.

Councilmember Morgan stated that Koler is the contracted city attorney and called Mayor Benson out of order ~~called a point of order to Mayor~~.

Mayor Benson stated her contract is not legal.

Point of order was raised by Councilmember Pepper several times to Mayor.

Attorney Koler then told Mayor Benson that she signed a contract. Mayor Benson asked her to please sit down.

Attorney Koler expressed concern that people are surrounding her, and it's unusual. Mayor Benson again asked told her to please sit down. ~~You can~~ and talk during public comments.

There were four members of the public standing, and one of them argued with attorney Koler, and interjected in Council discussion.

The Chair did not call for a vote on the motion on the floor, which was the amendment to

the motion accepting the agenda that attorney Koler speak to Council to address Council member Pepper's question about the agenda.

Councilmember Edelman **moved** for a recess.

Councilmember Morgan would like to amend the recess **motion** to adjourn. (No second).

Councilmember Pepper stated we have a motion on the floor.

Mayor Benson stated she amended it to adjourn.

Councilmember Morgan ~~acknowledged~~ stated there is no second to her amendment and it is just sitting out there until she does.

Councilmember Pepper **second** the motion for a recess.

Councilmember Edelman stated that Morgan's motion died for lack of a second.

VOTE: 4-0 motion **passed** to have a five-minute recess.

The meeting was called back to order at 7:16 p.m.

~~Mayor Benson said she was willing to compromise to let Attorney Koler speak for three minutes.~~

Attorney Koler addressed Council to follow up on an issue brought up at the last meeting about the Council Rule that the preliminary agenda is approved by the Mayor Pro Tempore and the Council President.

Ms. Koler consulted with Paul Sullivan who is an experienced attorney at Municipal Research Service Center and he opined that the approval of the preliminary agenda is not a meeting of a governing body, and is not a council action under the OPMA. He consulted with three experts including the author of the this section of the OPMA, who said "definitely this would not be viewed as an OPMA violation."

Councilmember Weber withdrew his amended motion.

Mayor announced there is a motion on the floor for the agenda.

Vote: Motion **passed** 3-1 (Edelman) to adopt the approved agenda per Council Rules of Procedure.

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS: None

PUBLIC COMMENTS:

Leslie Cooley, Black Diamond spoke to Council.

Erin Stout, Black Diamond spoke to Council.

Gary Davis, Black Diamond spoke to Council.

Pat Nelson, Black Diamond spoke to Council.

Councilmember Pepper stated no political comment.

Kristen Bryant, Bellevue spoke to Council.

Aaron, Black Diamond spoke to Council.

Ron Carroll, Black Diamond spoke to Council.

Judy Carrier, Auburn spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Dan Glenn, Black Diamond spoke to Council.

Melissa Oglesbee, Black Diamond spoke to Council.

Rena Mix, Black Diamond spoke to Council.

Mayor Benson went to close public comments and Councilmember Pepper noted there was another person wishing to speak. Mayor Benson stated she has already spoke. Councilmember Pepper stated she has the right to speak and the Chair cannot deny her the right to speak. Mayor Benson noted she can speak again during the last public comment.

A point of order was raised by Councilmember Pepper.

Councilmember Pepper appealed the decision of the chair to not let Attorney Koler speak.

There was Council discussion.

Jane Koler, Attorney spoke to Council.

Jackie Buss, Black Diamond spoke to Council.

Point of order was raised by Councilmember Morgan stating that if the audience member speaks again it must be the Council's decision.

Councilmember Pepper **moved** that Robbin Taylor does not get to speak again, she already spoke once; **second** Councilmember Morgan. Motion **passed** 3-1 (Edelman).

Robbin Taylor continued to speak.

Councilmember Morgan called Robbin Taylor out of order and asked her to please go sit down or leave the room.

Councilmember Pepper stated that Robbin Taylor is creating a disruption and to please call this meeting to order.

Mayor Benson ruled her out of order as Koler was allowed to speak. Mayor Benson then closed the public comment section.

PUBLIC HEARINGS: None

UNFINISHED BUSINESS:

4) AB17-047 – Resolution Approving Special Event Permit for Tough Mudder

MDRT/Ec Dev/Interim Community Development Director Williamson addressed Council on this item.

Councilmember Pepper **moved** to relieve from committee and adopt this resolution approving a special event permit for Tough Mudder; **second** Councilmember Morgan. Motion **passed** 4-0.

Councilmember Edelman **moved** to adopt a resolution authorizing the Mayor to execute the approval of SEP17-0004 for Tough Mudder, LLC; **second** Councilmember Morgan. Motion **passed** 4-0.

Councilmember Morgan discussed her observation on this activity in Black Diamond.

5) AB17-048 – Professional Services Contract with DKS Associates

Mayor Benson spoke on this item and noted the contract is not ready yet.

NEW BUSINESS:

6) AB17-049 – Resolution Regarding King County Youth & Amateur Grant Agreement for Gym Lighting

Public Works Director Boettcher discussed this item with Council.

There was Council discussion.

Councilmember Morgan **moved** this for first reading to the Government Operations Committee; **second** Councilmember Pepper.

There was continued Council discussion.

VOTE: Motion **passed** 3-1 (Edelman).

7) AB17-050 – Resolution Regarding Professional Services Contract with Anne Bremner, PC

Councilmember Pepper asked Attorney Koler to address this item, and Ms. Bremner's

qualifications.

Attorney Koler spoke to Council on this.

Councilmember Morgan called Mayor Benson out of order for cross examination of a Councilmember.

There was Council and Attorney discussion.

Councilmember Pepper **moved** to suspend the rules immediately and to adopt the resolution approving a special services contract to hire Anne Bremner; **second** Councilmember Morgan.

Councilmember Pepper spoke to her motion.

Councilmember Pepper called point of order.

There was continued Council discussion on this item.

Mayor Benson noted to Councilmember Pepper that she has no contracting authority.

Vote: Motion passed 3-1 (Edelman).

CONSENT AGENDA:

Councilmember Morgan noted that she would like to address each consent item separately.

- 1) **Claim Checks** – August 17, 2017 - No. 45193 through No. 45242 and EFTs in the amount of \$160,923.11

Councilmember Morgan spoke to the four vouchers she would like to pull which were 4198 (AHBL), 45216 (HWA), 45228 (Parametrix) and 45230 (RH2).

Councilmember Morgan **moved** to accept the rest of the claim checks; **second** Councilmember Weber.

Councilmember Edelman noted for the record that she thoroughly disagrees that these vouchers get pulled every single month.

There was Council discussion.

Vote: Motion passed 4-0.

- 2) **Payroll** – July 31, 2017 – No. 19374 through No. 19390 and ACHs in the amount of

\$303,310.52

Councilmember Morgan **moved** to pay the payroll; **second** Councilmember Weber. Motion **passed** 4-0.

3) Minutes – Council Meeting of August 3, 2017

Councilmember Pepper discussed changes that are needed on page two of five in the minutes (first paragraph), where the chair refused to allow the vote on an appeal the decision of the chair even though a roll call vote was requested. She noted two times that it occurred on page 2 of 5. She noted verbiage changes that she would like added to reflect the decision of the chair for a vote.

Councilmember Pepper **moved** to accept the meeting minutes with those noted amendments; **second** Councilmember Morgan. Motion **passed** 4-0.

There was discussion on committee meeting minutes with Councilmember Morgan reading a statement.

Councilmember Weber called a point of order to Councilmember Edelman.

DEPARTMENT REPORTS:

MDRT/Ec Dev/Interim Community Development Director Williamson addressed Council on the road closure on August 23, 2107 from 7 p.m. to 5 a.m. on Roberts Drive for the final paving.

MAYOR'S REPORT:

Mayor Benson pointed out that we have had three City Attorney's in the last year and she has always followed the advice of the Attorney. She added the Attorney is not her personal use Attorney. She noted Mr. Linehan is doing a good job for the City negotiating contracts and stated he is not her personal attorney; she reported attending SCATBd, King County Fire District Meeting; Black Diamond Elementary School grand opening, Tahoma High School dedication, cemetery board meeting and approving the painting of the sewer flush station, Chamber luncheon and installation of officers. She also announced that Councilmember Edelman received her CML certification from AWC.

COUNCIL REPORTS:

Councilmember Morgan reported attending Fall City Beaver School and discussed what she learned about beaver relocation. She commented on her conversations with Anne Bremner and being excited about them and the hopeful resolve of problems.

Councilmember Edelman reported attending the Black Diamond Elementary School dedication, Tahoma High School dedication, meeting with Finance Director Miller and the Mayor to review vouchers, King County Fire Commissioners meeting at Station 95, and

commented on looking forward to a functioning City Council.

Councilmember Weber reported attending the Black Diamond Elementary School dedication. He read a prepared statement on the Open Public Meetings Act regarding public comments and the purpose of a Council meeting. He also read an excerpt from Council Rules. He discussed receiving emails regarding safe injection sites and asked if folks have an opinion one way or the other to let him know and to please email him at the City.

Mayor Benson stated they should email all Councilmembers and noted that it's on the agenda for the next meeting.

Councilmember Pepper reported on having the privilege of attending the dedications of the two new schools and discussed the guided tour of the Tahoma High School. She noted that she has maps that are on the table. She also noted they have a full fly performing arts center for 600 people and this being a wonderful opportunity.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Pat Nelson, Black Diamond spoke to Council.

Andy Williamson, MDRT/Ec Dev/Interim Community Development Director spoke to Council.

Leslie Cooley, Black Diamond spoke to Council.

Robbin Taylor, Black Diamond spoke to Council.

Councilmember Pepper asked the speaker to address the Council as a whole.

Councilmember Weber called point of order.

Councilmember Pepper called out of order as the speaker needs to address the Council as a whole. Councilmember Pepper stated she (Robbin Taylor) is done. Mayor Benson ruled Councilmember Pepper out of order.

Nancy Rogers, Cairncross Hempleman Attorney and legal counsel for Oakpointe spoke to Council.

Bob Edelman, Black Diamond spoke to Council.

Dan Glenn, Attorney spoke to Council.

Erin Stout, Black Diamond spoke to Council.

Kristen Bryant, Bellevue spoke to Council.


EXECUTIVE SESSION: None

ADJOURNMENT:


Councilmember Edelman **moved** to adjourn the meeting; **seconded** by Councilmember Weber. Motion **passed** 4-0.

Meeting ended at 9:13 p.m.

ATTEST:



Carol Benson, Mayor



Brenda L. Martinez, City Clerk