

May ____, 2016

Mayor Carol Benson
City of Black Diamond
24301 Roberts Drive
PO Box 599
Black Diamond, WA 98010

Re: Failure to Honor Council Rules of Procedure,
Council Agenda, and Allow a Contract for a New City Attorney

Dear Mayor Benson:

This firm was hired by the Council to provide the Council legal advice in connection with the controversy relating to the termination of the professional services agreement with Morris Law and regarding the revised rules of procedure for the Council. We provided our opinion to the Council on May 5, 2016. Whether that opinion is to be made public is a matter for the Council to decide.

In general terms, you have an obligation as the Council's presiding officer, a legislative function, that is distinct from your role as Mayor, an executive function. You are obliged, in your role as the Council's presiding officer, to follow the Rules of Procedure it sets for the conduct of legislative business.

It has come to our attention that you have continued your practice of not honoring the agenda as constituted under the revised Rules of Procedure adopted by the Council. As a result, you have refused to have the City Clerk give public notice of the agenda as provided for under Council Rules. By doing so, you have placed the City in legal jeopardy by failing to follow the notice requirements for agendas as required by law. Your on-going efforts to inappropriately assert personal and Executive Branch authority to control the co-equal legislative branch of City government has led to raucous Council meeting and dysfunctional government in the City of Black Diamond. Government works best when there is cooperation among its branches. The residents and taxpayers of

the City have the right to expect that you will discharge your duties as Mayor appropriately.

This letter is not going to belabor why your legal position is untenable. The opinion letter does that. Should the Council decide to make it public, the taxpayers and voters will be able to see for themselves our opinion on the subjects we were asked to review and address.

The purpose of this letter is to inform you that you must comply with your legal responsibilities or face consequences. In the event that you continue to usurp the Council's legislative function in setting its own agenda for Council meetings, or in adopting its own rules, the Council may decide to institute an action for mandamus to compel your performance under RCW 7.16.160. The Council may also authorize a declaratory judgment action to adjudicate the Council and the Mayor's legal rights and responsibilities.

In addition, your actions could also provide the basis for your recall from office. Recall is provided for under the Washington Constitution, Art. 1, §§33 and 34. The Legislature has adopted a statutory scheme to effectuate recall. The process is initiated by any person demanding a recall pursuant to RCW 28A.56.110. The charges must be based upon acts that demonstrate you have committed "an act or acts of malfeasance or misfeasance while in office." After the matter has been processed by the elections officer and a ballot synopsis is prepared by the King County Prosecutor, the Superior Court conducts a hearing to determine the sufficiency of the charges.

In conducting its review, the Court will accept the allegations as true to determine if the charges on their face support the conclusion that the officer has abused his or her position. *In re Recall of Wasson*, 149 Wn.2d 787, 72 P. 3d 170 (2003). "Misfeasance" and "malfeasance" in office both mean "any wrongful conduct that affects, interrupts, or interferes with performance of official duty." RCW 29A.56.110(1). "Misfeasance" in office also includes the performance of an official duty in an "improper manner," and "malfeasance" in office includes the commission of an unlawful act. RCW 29A.56.110(1)(a) and (b). "Violation of the oath of office" means the "neglect or knowing failure by an elective officer to perform faithfully a duty imposed by law." RCW 29A.56.110(2). Our prior opinion letter commented upon your duty to "faithfully" honor ordinances of the City.

May __, 2016
Page 3 of 3

We trust that you will carefully review the legal opinion we have given the Council on the Council's legislative power to set its agenda and establish its own rules, and that you will conduct yourself, consistent with applicable law and ordinances, accordingly.

Sincerely,

Philip A. Talmadge