1. CALL TO ORDER AND ROLL CALL

Mayor Tim Matthes called the meeting to order at 7:00 p.m. Pro-Tem Cindy Lucarelli and Councilmembers Bek Ashby, Jeff Cartwright, Fred Chang, Jerry Childs, and John Clauson were present and constituted a quorum. City Clerk Rinearson, Public Works Director Dorsey, City Treasurer Martin, Human Resource Coordinator Howard, Deputy City Clerk Fernandez, and Interim City Attorney Morris were also present.

Absent: Rob Putaansuu

A. Pledge of Allegiance

Mayor Matthes led the audience and Council in the Pledge of Allegiance.

2. CITIZENS COMMENT

Mr. Paul Nuchims noted the traffic congestion on Bay Street during Ladies Night last Friday. He shared his ideas on how to mitigate the traffic congestion on Bay Street.

Ms. Karen Goon, Kitsap County Administrator, said she was here to answer any questions regarding Business Item 7F (Temporary Vendor License-The Pink-a-Nator).

Ms. Gerry Harmon said she is concerned about the discussion of rezoning of the Downtown Overlay District and building 600-700 square foot apartments with no parking. It was mentioned younger people would use the bus and ferry service, both of which are unreliable. The tenants will have cars, and they will park their cars on the streets taking up parking for customers. She thinks rezoning to the developers desires perpetuates a greed issue.

Mr. Nick Whittleton spoke regarding the POMC 13.06 proposed changes. At the Utilities Committee meeting on January 20, from minute 17:55 to 18:29, there was an exchange that specifically stated that home businesses were not only considered as, but sometimes charged as commercial for stormwater rates. He wants the definition in POMC 13.06.020 to state that commercial shall mean all properties zoned commercial. That definition will protect home-based businesses, where the current definition does not. At the same time during budget talks, he hopes a hard look is given at adding three FTEs to the stormwater utility. There may be a short-term need for a couple of them, and that should be addressed, but not a long-term need.

Mrs. Elissa Whittleton asked for back up when it comes to the recording process of Council Committee meetings that are held off-site. There was a malfunction of the
recording device on September 10, because the batteries failed. This situation could have been remedied by bringing extra batteries or use someone’s iPhone to record the meeting. The meeting minutes are very brief and don’t capture the whole meeting.

3. APPROVAL OF AGENDA

Councilmember Cartwright MOVED and Councilmember Ashby seconded the motion to remove Business Item 7D (N.L. Olson & Associates contract for the 2014 Paul Powers Park Improvements).

Councilmember Cartwright wants this item to go back to the Public Properties Committee. The $76,000 is a sticker shock, and he would like to understand a little bit more the future plans for Paul Powers Park in relationship to the overall Park Plan.

Upon vote, the motion passed unanimously.

Councilmember Ashby MOVED and Councilmember Cartwright seconded the motion to add discussion of the hiring procedure and protocol of the city attorney. Upon vote, the motion passed unanimously. Mayor Matthes added this as Business Item 7D.

Councilmember Chang MOVED and Councilmember Childs seconded the motion to move Business Items 7F and 7G (Approval of a Temporary Vendor License and ratifying the contract with Carol Morris) to the top of the Business Items, making them 7A and 7B. Upon vote, the motion passed unanimously.

Councilmember Clauson MOVED and Councilmember Cartwright seconded the motion to add to the Consent Agenda to excuse Councilmember Putaansuu from tonight’s meeting. Upon vote, the motion passed unanimously.

Councilmember Chang MOVED and Councilmember Childs seconded the motion approving the Agenda, as amended. Upon vote, the motion passed unanimously.

4. APPROVAL OF CONSENT AGENDA
   A. Approval of Checks Nos. 62633 through 62695 totaling $107,839.33
   B. Approval of September 9, 2014, Council Meeting Minutes
   C. Approval of a Contract Authorizing the Mayor to Execute an Agreement with Kitsap County for Jury Panels for Municipal Court
   D. Excusal of Councilmember Putaansuu from Tonight’s Meeting

Councilmember Clauson MOVED and Councilmember Lucarelli seconded the motion approving the Consent Agenda as modified. Upon vote, the motion passed unanimously.
5. PRESENTATION

No presentations were given.

6. PUBLIC HEARING

No public hearings were held.

7. BUSINESS ITEMS

A. Approval of a Temporary Vendor’s License Application: The Pink-a-Nator

City Clerk Rinearson presented the staff report, noting Ms. Michelle Roberts-Wash, owner of Pink-a-Nator Food Truck, is requesting permission to vend on City right-of-way around the Kitsap County Campus.

This matter was discussed at the July 28, 2014, Council Public Properties Committee and their recommendation to the Council was to allow a 90-day trial to see what public concerns may arise. At the August 19, 2014, Council Work Study Session, the Council wanted to receive feedback from the County Commissioners on a new proposed location at the corner of Cline & Division. Commissioner Garrido did submit a letter addressing the County’s concerns and was provide to the Council. She wrote that using the corner of Cline & Division would increase safety concerns. She proposed other locations to consider, which include:

- On-street parking on the southern portions of Cline Avenue, Taylor Street, and Sidney Avenue
- The northern side of Dwight Street, across from the Administration building
- Leasing county-owned parking stalls at one of the County’s parking lots to the food vendor

Discussion was held on where the proposed locations from Commissioner Garrido were located on the map of the County Campus.

Ms. Roberts-Wash said she was still interested in finding a spot to vend, even if it were located south of Taylor on Cline or Sidney, or leasing a spot from the County in one of their parking lots.

Ms. Goon suggested tabling this discussion until she and Ms. Roberts-Wash could have a chance to meet and tour the parking spots available for lease from the County.

Councilmember Lucarelli withdrew her motion.
B. Ratifying of a Contract with Carol Morris of Morris Law, P.C., for Interim Legal Services

Mayor Matthes presented the staff report, noting the Council was briefed at the September 16, 2014, Council Work Study Session, on the status of the appointment for interim legal services.

After the Council Work Study Session, it was determined that the City could not continue to operate without legal support due to the demand for legal review for various projects that department heads are working on. A contract for interim legal services was signed on September 17, 2014.

After further review, an engagement letter for services is not required to have Council approval. After discussions, it was best to enter into an interim agreement with Carol Morris Law for temporary legal services.

In response to Councilmember Childs, Mayor Matthes said there is about $55,000 left in the budget for legal services for 2014. This averaged out to around $13,000 a month. He does not anticipate needing to go over that amount, unless something catastrophic happens.

In response to Councilmember Childs, Ms. Morris said if there were a dollar amount that she cannot go over each month, she would make sure that happens.

In response to Councilmember Ashby, Ms. Morris stated that she is willing to extend the contract if her services are still needed after the term of the contract is reached.

**Councilmember Childs MOVED to amend the motion to not go over $14,000 a month in legal services. The motion failed for lack of a second.**

Councilmember Clauson noted he received a breakdown of the legal bills, and through August, $99,200 was spent in legal services. This averaged $14,400 for approximately 72 hours of services per month.

Councilmember Ashby reminded the Council regarding the costs of engaging with Foster Pepper if their services were needed.

In response to Councilmember Cartwright, Ms. Morris said she is hiring another attorney beginning on October 1, who has a tremendous amount of experience and background in public works and environmental law. With regard to specialty things, like personnel, she would recommend going out to a personnel attorney and hiring them. She does call in other attorneys when there is a problem because her clients need the best representation.
Councilmember Chang said Ms. Morris is an excellent choice for the interim legal representation. He thanked her for her work on Engley and making the issue comprehensible for the Council.

In response to Councilmember Lucarelli, Councilmember Clauson said the Mayor is within his right to hire an interim attorney, and the City needs an attorney. It is the Mayor’s responsibility and job to operate within the budget that has been approved.

In response to Councilmember Lucarelli, Councilmember Clauson said the Council is voting on it because it is a contract.

Councilmember Chang MOVED and Councilmember Clauson seconded the motion to authorize the Mayor to execute a Professional Services Agreement with Carol Morris of Morris Law, P.C., as the Interim City Attorney. Upon vote, the motion passed with four affirmative votes and two dissenting votes. Councilmembers Childs and Lucarelli cast the dissenting votes.

Mayor Matthes read Interim City Attorney Morris’ biography.

C. Adoption of a Resolution, Repealing Resolution No. 021-13, and Establishing Certain Employee Benefits for Non-Union Represented Employees Classified as FLSA Not Exempt

Human Resources Coordinator Howard presented the staff report, noting Wage Pay Rates are addressed on a yearly basis for non-union employees as requested by the Finance Committee. The following is a change that is recommended by the Finance Committee to match the union contracts:

1.1 Effective October 1, 2014 the rates of pay set forth above shall be increased by one hundred percent (100%) of that percentage increase set forth in the All Urban Consumers Index (CPI-U) (1982-1984=100) for the Seattle-Tacoma-Bremerton area for that period from June, 2013 to June, 2014, as is specified by the Bureau of Labor Statistics, United States Department of Labor; provided, however, the COLA increase (if any) shall not be less than zero percent (0%) nor more than two-and-a-half percent (2.5%).

Councilmember Clauson said this is providing the non-represented staff the same increase that represented staff gets.

In response to Councilmember Ashby, Councilmember Clauson said the entire range gets adjusted two percent.

Councilmember Childs said he is concerned about the overall effect of City spending and how much is spent on salaries. It is not just what is fair to the employees, but he is not sure where the City is in spending.
Councilmember Clauson said this body has approved the represented employee contracts, and in that approval, they specified how the increases would be determined. This is keeping the non-represented the same as the represented. Although he agrees with Councilmember Childs' bigger concern, he does not want that issue to be put on the backs of the non-represented employees, while giving the represented employees a raise.

City Treasurer Martin noted that 75 percent of the City's employees are represented.

In response to Councilmember Chang, City Treasurer Martin said around 65% of the budget is spent on salaries. He will get an exact amount emailed to Councilmember Chang.

Councilmember Lucarelli questioned where the fairness was for represented employees paying union dues and the non-represented employees not paying union dues but getting the same benefits.

Councilmember Clauson said if Councilmember Lucarelli wants the non-represented staff to get organized and pay union dues, they could do that. They are getting the same benefit as it relates to the COLA, but not all of the other benefits a represented employee gets.

Councilmember Cartwright said there are things to consider like interest-arbitration eligible employees, PERC decisions, etc. He is whole-heartedly in support of this. There is a complete difference, apples to oranges, when you talk about a represented employee that has either a guild or PERC behind them, or anything else, versus a non-represented employee. There are differences in accrual rates for vacation times, especially when you talk about who is eligible for overtime. He does not think giving two percent to the non-represented employees is going to bust the bank. He agrees with Councilmember Clauson's philosophy.

Councilmember Clauson MOVED and Councilmember Cartwright seconded the motion to adopt a Resolution, repealing Resolution No. 021-13 approving the Employee Benefits Policy to reflect a rate of pay increase for a 2% COLA effective October 1, 2014 for non-union represented employees classified as FLSA Non Exempt. Upon vote, the motion passed with five affirmative votes and one dissenting vote. Councilmember Childs cast the dissenting vote.

D. Adoption of a Resolution, Repealing Resolution No. 022-13, and Establishing Certain Employee Benefits for Non-Union Represented Employees Classified as FLSA Executive Exempt

Human Resources Coordinator Howard presented the staff report, noting Employee Wage Pay Rates are addressed on a yearly basis for non-union employees requested by the Finance Committee. The following is a change that is recommended by the Finance Committee to match the Union Contracts:
1.1 Effective October 1, 2014 the rates of pay set forth above shall be increased by one hundred percent (100%) of that percentage increase set forth in the All Urban Consumers Index (CPI-U) (1982-1984=100) for the Seattle-Tacoma-Bremerton area for that period from June, 2013 to June, 2014, as is specified by the Bureau of Labor Statistics, United States Department of Labor; provided, however, the COLA increase (if any) shall not be less than zero percent (0%) nor more than two-and-a-half percent (2.5%).

Councilmember Clauson MOVED and Councilmember Cartwright seconded the motion to adopt a Resolution, repealing Resolution No. 022-13 approving the Employee Benefits Policy to reflect a rate of pay increase for a 2% COLA effective October 1, 2014 for non-union represented employees classified as FLSA Executive Exempt. Upon vote, the motion passed with five affirmative votes and one dissenting vote. Councilmember Childs cast the dissenting vote.

E. Approval of a Contract Authorizing the Mayor to Execute an Agreement with Caseco Construction, Inc. for the Demolition of a Single Family Residential Building Located at 312 Alder Lane

Public Works Director Dorsey presented the staff report, noting On August 18, 2014, the City of Port Orchard Public Works Department issued a Request for Proposal (RFP) from three local construction companies listed on the City's MRSC Small Works Roster for the demolition and haul of a single-family residence and shed located at 312 Alder Lane. The lump sum bids received were as follows:

- Caseco Construction, Inc. $26,088.00 (tax incl.)
- RV Associates, Inc. Did Not Submit
- Sound Excavation, Inc. Did Not Submit

Upon review by Staff, it was determined that Caseco Construction, Inc. was the lowest qualified bidder with a bid of $26,088.00 (tax incl.). The Public Works Department has confirmed 1) that the Public Work Advertisement process was followed, 2) that the proposal can be funded within the Street Fund of the approved 2014 Budget and 3) no Asbestos or Lead is present within the project limits. The City will provide the Demolition Permit from PSCAA and the Certificate of Completion using contracted KCB Environmental Services.

Councilmember Chang said he was disappointed they are not attempting to recycle, and he is going to vote no.

Public Works Director Dorsey said this property does not have anything worth salvaging. Salvaging materials would also increase the cost to demolish the building.

Councilmember Ashby MOVED and Councilmember Cartwright seconded the motion to authorize the Mayor to execute a Small Works Contract with Caseco
Construction, Inc. in the amount NTE $26,088.00 for the demolition and haul of the single-family residence located at 312 Alder Lane. Upon vote, the motion passed with five affirmative votes and one dissenting vote. Councilmember Chang cast the dissenting vote.

F. Approval of a Contract Authorizing the Mayor to Execute an Agreement with N.L. Olson & Associates, Inc. for the 2014 Paul Powers Park Improvement Plan and Ad Ready PS&E

F. Discussion: Hiring Procedure and Protocol of the City Attorney

Councilmember Ashby said the Council does not have a procedure in place for the selection of a City Attorney. After researching MRSC, she found an opinion on the role of the City Council and hiring, and the Council can establish a process that the Mayor must use when filling a new or vacant position. If the Council does nothing, the Mayor need not advertise the position nor do anything else other than select someone to fill the vacancy. The Council may wish to establish a hiring process: how is it going to be advertised, what are the qualifications, and what the interview procedures are.

Councilmember Clauson said this could be performed by an ad-hoc committee to do some research and come back with a recommendation. It would also be valuable to identify the responsibilities and the tasks they expect the City Attorney be able to perform. POMC lays out some things in there now that the City Attorney should be doing. That needs to be looked at again.

Councilmember Childs liked the discussion of specialists in the different subjects. The Council needs to figure out what will be needed. He wants this discussion to happen in a Work Study.

Councilmember Cartwright said the Council should first look forward to see where our challenges are going to come from and look for heavy emphasis in that area.

Councilmember Clauson said the ad-hoc committee format has the ability to gather all pertinent pieces and then discuss it at Work Study.

Councilmember Cartwright said a fee structure would need to be spelled out based on who is working on what. He reiterated that the Council needs to look forward to what the future potential issues are going to be.

Councilmember Ashby said she brought this issue up to define the process, and the other ad-hoc committee could look at the issue of having an in-house attorney or a contracted attorney. Her concern was what the process would look like. The committees’ work would have to be done in a timely manner.
Councilmember Chang would like both proposed committees be combined together.

Interim City Attorney Morris said she could put that information together for the Council’s review of the different alternatives.

**Councilmember Clauson MOVED and Councilmember Childs seconded the motion to establish an Ad-Hoc Committee comprised of Councilmember Ashby, Councilmember Cartwright, and Councilmember Putaansuu to look into those issues.**

Councilmember Lucarelli would like to be on the committee.

**Councilmember Clauson MOVED and Councilmember Childs seconded the motion to amend the motion to have the members be Councilmember Ashby, Councilmember Cartwright, and Councilmember Lucarelli.**

Councilmember Cartwright said the process of selection should not really matter much if it is going to be an internal or an external contracted attorney. They are still going to look at the same things.

In response to Councilmember Lucarelli, Interim City Attorney Morris said the decision to have an in-house attorney versus an outside contracted attorney is based on the City’s size and needs. Mayor Matthes said this is just an opportunity to look at both options and assess the needs of the City.

*Upon vote, the amended motion passed unanimously.*

**G. Approval of Amendment No. 1 to Contract No. 041-14, Authorizing the Mayor to Execute an Employment Agreement with the Police Chief, Geoffrey Marti**

Human Resources Coordinator Howard presented the staff report, noting upon review of the April 24, 2014, Police Chief Employment Agreement, Contract No. 041-14, the Finance Department determined that the Police Chief’s salary would not continue to be at least 5% greater the annual salary of the Police Commander’s salary if calculated on the “annual gross base salary”. The Police Commander is receiving an additional longevity pay increase yearly on his anniversary date. This is in addition to the Commander’s base pay rate he is receiving. To maintain the Police Chief’s salary at 5% greater the annual salary of the Police Commander, the employment agreement needs to be amended to reflect the term “annual gross salary”.

In response to Councilmember Clauson, City Treasurer Martin said that should the Police Commander retire, the base rate would probably change, and that would change the calculation percentage between the Chief’s and Commander’s salaries. The contract
amendment is to maintain at least a five percent separation. He said the change is to fix an error when the previous contract had created a five percent separation between the Chief and Commander’s salaries. The longevity has to be added into the base pay before the five percent was calculated.

**Councilmember Clauson MOVED and Councilmember Cartwright seconded the motion to adopt the amendment to the Police Chief Employment Agreement approving Section 4. Salary and Benefits, that reflects “annual gross salary” in order to keep the Police Chief with at least five percent (5%) greater annual salary than the Police Commander. Upon vote, the motion passed unanimously.**

**H. Discussion: Ad-Hoc Committee for Providing Legal Counsel for the City of Port Orchard**

Mayor Matthes presented the staff report, noting the Council was briefed at the September 16, 2014, Council Work Study Session, on the status of interim legal services. The City needs to start the process of hiring legal counsel.

An Ad-Hoc Committee will be formed to review the City Attorney position and whether the position should be in-house or should continue to be contracted out. The committee will consist of the Mayor, two Councilmembers, the City Treasurer, and the Human Resources Coordinator. The Mayor is seeking two Council representatives to participate in these meetings. The meetings will be held at City Hall at 6:00 p.m. on the second and fourth Tuesdays of month.

Mayor Matthes withdrew this request, because an ad-hoc committee has already been formed to review the process of hiring a new city attorney.

Councilmember Chang said perhaps the recently established ad-hoc committee could review whether to have an in-house or contracted attorney, protocols for when the Mayor and Council are going in separate directions, and they could look whether a separate attorney could be hired for the Council.

Interim City Attorney Morris said the City of Seattle is the only jurisdiction that she is aware of where the council has a separate attorney. She said the best solution is for the council and mayor to work together whenever they can. Her philosophy on this is to make sure there is open communication with the council and the mayor. You can also run into problems on whether the second attorney is paid. There are cases where the council has gone out and hired its own attorney, and then the mayor is opposed to that. The issue is who is going to be paid. There are cases where the attorney whose opinion was not liked was stifled on their fees.
Councilmember Cartwright said that the ad-hoc committee could look at costing as one of the elements. It would not be too difficult to look at cost of internal versus external.

Mayor Matthes said that having two committees would create duplication of efforts.

Councilmember Clauson said both committees could run parallel paths.

Mayor Matthes said his intent was to move through the whole process with one committee. He hopes the current committee determines first whether the City should hire an in-house attorney or contract for services, and then provide a recommendation for the process of hiring the attorney. He withdrew his request for a separate committee.

I. Approval of the August 19, 2014, Work Study Session Meeting Minutes

Councilmember Chang MOVED and Councilmember Clauson seconded the motion to approve the August 19, 2014, Work Study Session meeting minutes. *Upon vote, the motion passed unanimously.*

J. Approval of the August 26, 2014, City Council Meeting Minutes

Councilmember Clauson MOVED and Councilmember Chang seconded the motion to approve the August 26, 2014, City Council meeting minutes. *Upon vote, the motion passed with four affirmative votes. Councilmembers Ashby and Lucarelli abstained from voting.*

8. COMMITTEE REPORTS

Councilmember Clauson announced the Finance Committee would meet November 3.

Councilmember Ashby announced the Economic Development/Tourism Committee would meet October 13 at 10:00 a.m. in the Council Chambers.

Councilmember Cartwright announced the Public Properties Committee would meet October 13 at 8:30 a.m. in the Council Chambers.

Councilmember Lucarelli announced the Chimes & Lights Committee would be moved from October 8 to October 15 at 3:30 p.m. at City Hall.

Councilmember Ashby reported the last PSRC Transpol meeting was an informational meeting with no action taken. Today at the KRCC Executive Board meeting they discussed the West Sound Transportation Alliance; made a minor change in KRCC funding requirement for this cycle only; had a presentation from Dave Williams of AWC on how to redesign and refocus how jurisdictions present their legislative ideas; and they heard the agency review team’s recommendations regarding the ongoing viability of KRCC.
Councilmember Childs reported that KEDA had a tour of Omahundo on September 18. He felt it was a spectacular facility, and he is proud they are located in Port Orchard.

9. MAYOR’S REPORT

Mayor Matthes reported Omahundo’s owner is an ingenious individual. He has 45 employees working for him in a clean environment. The reason they settled in Port Orchard was the quality of life in Port Orchard.

Mayor Matthes reported that the 3rd Quarter Mayor’s Report is now available.

Councilmember Clauson MOVED and Councilmember Childs seconded the motion to move the public hearing of the stormwater rates to October 28, 2014.

Councilmember Clauson said that he and Councilmember Putaansuu would be out of town on October 14, 2014, and they wanted to be available for that vote.

Public Works Director Dorsey and City Clerk Rinearson had no objections to moving the hearing.

Upon vote, the motion passed unanimously.

10. REPORT OF DEPARTMENT DIRECTORS

City Treasurer Martin reported his office is currently undergoing the 2013 audit, writing the 2015 budget, and managing the 2014 budget. His department has completed with the Mayor the interviews of the department heads the 2015 budget. He said the City is $752,797 out of balance between the budget requests and projected revenues. His staff will go back now and start working on balancing the budget before it is presented to the Council.

City Clerk Rinearson reported that Development Director Bond plans to send the Council an email this week asking the Mayor and Council to hold a special meeting on November 4 at 7:00 p.m. to discuss the 2014 Comprehensive Plan Amendments.

City Clerk Rinearson noted that Veteran’s Day falls on a Council meeting day this year. POMC dictates if a regular Council meeting falls on a holiday, the next business day will be the Council meeting. At this point she does not have a clear indication if it will be okay to cancel the meeting. She will report to the Council at the end of the October if the meeting will be needed.
11. CITIZENS COMMENTS

Mrs. Elissa Whittleton said she was disappointed there was no report for the Utility Committee meeting because the chair was absent tonight. She would expect one of the other committee members to give a report.

12. EXECUTIVE SESSION

No executive session was held.

13. ADJOURNMENT

At 9:07 p.m., Mayor Matthes adjourned the meeting.

Brandy Rinearson, CMC, City Clerk

Timothy C. Matthes, Mayor