

ITEMS DISCUSSED

1. WORKSHOP: CITY FINANCES
2. RECESS
3. CALL TO ORDER / PLEDGE OF ALLEGIANCE
4. PUBLIC COMMENT
5. MAYOR'S REPORT
 - A. 2008 YEAR-END REPORT
 - B. STATE OF THE CITY ADDRESS
6. COUNCIL COMMITTEE REPORT
 - A. COUNCIL CHAIR
 - B. FINANCE AND PERSONNEL / PUBLIC WORKS AND TRANSPORTATION COMMITTEES
7. ADDITIONS AND DELETIONS TO THE AGENDA
8. CONSENT AGENDA
 - A. VOUCHERS AND PAYROLL APPROVAL
 - B. SPECIAL CITY COUNCIL MEETING MINUTES DECEMBER 3, 2008
 - C. SPILL RESPONSE CONTRACT, NRC ENVIRONMENTAL SERVICES, INC. (EXPENDITURE AS NEEDED) AB 09-012
 - D. 2009 CITY JANITORIAL SERVICES NON-PROFESSIONAL SERVICES AGREEMENT, ACTION SERVICES CORPORATION (LEVEL OF SERVICE REDUCTION) \$40,000 AB 09-014
 - E. HORIZON VIEW LOCAL IMPROVEMENT DISTRICT NO. 21, HEARING EXAMINER PROFESSIONAL SERVICE AGREEMENT, RODNEY KERSLAKE \$2,500 AB 09-013
 - F. INTERLOCAL AGREEMENT WITH THE BAINBRIDGE ISLAND METROPOLITAN PARK AND RECREATION DISTRICT REGARDING INTERIM MAINTENANCE RESPONSIBILITIES OF THE TAYLOR ROAD-END NIKKEI MEMORIAL AREA \$1,000 AB 0580
 - G. ENGAGEMENT FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES PROFESSIONAL SERVICES CONTRACT FOSTER PEPPER PLLC \$56,100 AB 09-002
 - ~~H. ANIMAL CONTROL SERVICES AGREEMENT, KITSAP HUMANE SOCIETY \$51,480 AB 09-008~~
 - I. REVOCABLE LICENSE AGREEMENT WITH WATERFRONT COTTAGE LLC AND PAUL F. AND LINDA D. MUTTY AB 09-016
 - J. LICENSE AGREEMENT WITH WASHINGTON DEPARTMENT OF NATURAL RESOURCES, REMOVE CREOSOTE-TREATED PILING AND DEBRIS FROM STRAWBERRY PLANT, LUMPKIN, KANE AND HAWLEY COVE PROPERTIES (NO COST TO CITY) AB 09-011
 - K. 2008 ANNUAL REPORT, ROAD-ENDS ADVISORY COMMITTEE AB 09-015
 - L. 2008 ANNUAL REPORT, KITSAP CONSERVATION DISTRICT, KNOTWEED ERADICATION PROGRAM AB 09-017
 - M. 2008 ANNUAL REPORT, KITSAP CONSERVATION DISTRICT, BAINBRIDGE ISLAND AGRICULTURAL AND WATER QUALITY ASSISTANCE PROGRAM AB 09-008
9. ITEMS OVER \$100K
 - A. WINSLOW WASTE WATER TREATMENT PLANT UPGRADE DESIGN PHASE II, AMENDMENT #3 TO EXTEND CONTRACT DATE OF PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH/KCM (NO ADDITIONAL COST TO CITY) AB 0306
10. NEW BUSINESS
 - A. PLANNING COMMISSION APPOINTMENTS OF MICHAEL WANGEN AND MARTIN MINKOFF AB 08-0070
11. MEETING EXTENSION/RECESS
12. NEW BUSINESS (CONTINUED)
 - B. LODGING TAX FUNDING OF SUPPORTING ANALYSIS FOR FERRY SERVICES WITH KITSAP REGIONAL COORDINATING COUNCIL (UP TO \$15,000 CITY SHARE)
 - C. RESOLUTION TO CHANGE THE FORM OF GOVERNMENT
 - D. HORIZON VIEW LOCAL IMPROVEMENT DISTRICT NO. 21, HEARING EXAMINER PROFESSIONAL SERVICE AGREEMENT, RODNEY KERSLAKE \$2,500 AB 09-013
 - E. FOLLOW-UP ACTION FROM CITY FINANCES WORKSHOP
 - F. COUNCIL COMMITTEE APPOINTMENTS
13. ADJOURNMENT

**G. ENGAGEMENT FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES
PROFESSIONAL SERVICES CONTRACT FOSTER PEPPER PLLC \$56,100 AB 09-002**

Councilmember Brackett requested the words "all persons" as it appears in the contract (pg. 133) be changed to read "the Mayor and City's management team" only because as someone who does receive a "draft" document, she certainly does not receive the primary source documents backing up the statements made in that offering. She asked that it be limited to the people who actually have access to those documents. City Attorney McMurray partially responded that this was not a City document but rather a letter from Foster Pepper and there was no one from that firm to respond to that her question. Councilmember Brackett also spoke to a global waiver of conflict (pg. 134) and asked whether Foster Pepper provided the City with an existing list of conflicts and whether they would provide a list for the record. City Attorney McMurray replied the City could request that from them but what usually happens when there is a potential conflict, a firm would contact the City asking whether we would waive such conflict.

Referring to pg. 134, Councilmember Knobloch asked why Foster Pepper would request the City to waive the conflict of interest to which City Attorney McMurray replied so they could continue to represent those clients and gave an example of such a situation.

Councilmember Vancil indicated the discomfort she had was it appeared to be a blanket waiver. She hoped the City Attorney would ask them to include a written memo that would outline advantages or disadvantages. She also wanted to know more information before giving a waiver to which City Attorney McMurray suggested having a process setup that provides a waiver when they need one. He added there was a process in place with other legal service contracts.

There was discussion as to the firm's representation of potential conflicts related to the Winslow Way project. It was pointed out the blanket waiver was not being requested regarding particular matters.

Councilmember Brackett felt the issue was not really representation in an adverse situation but the sharing of confidential information. Councilmember Peter replied they have an independent duty as attorneys to not to share confidential information and that would not be waived.

City Attorney McMurray respectfully requested if Council was inclined to approve the contract otherwise that it be approved subject to staff working with them to address concerns raised.

Councilmember Snow asked whether these issues have come up before to which Director Konkel replied not to this date.

Councilmember Knobloch said personally he was going to be very careful about what he was on the hook for legally because this is the people's money. He was in accord with making sure as Councilmembers, that we understand completely what we are getting ourselves into when it comes to this kind of a bond issuance. He was not prepared to go forward unless it was unanimous.

MOTION: Approve a professional services contract with Foster Pepper PLLC for bond counsel and disclosure counsel services for the Wastewater Treatment Plant Upgrade bonds necessary to complete the project and the refinancing of the 1998 LTGO bonds in the amount of \$56,100 and authorize the Mayor to sign on behalf of the City subject to City Attorney presenting to Foster Pepper alternative language to satisfy the council's concerns about two paragraphs as discussed at this meeting and acceptance by Foster Pepper.

PETERS/BRACKETT – Motion carried unanimously 7-0.

**J. LICENSE AGREEMENT WITH WASHINGTON DEPARTMENT OF NATURAL RESOURCES,
REMOVE CREOSOTE-TREATED PILING AND DEBRIS FROM STRAWBERRY PLANT,
LUMPKIN, KANE AND HAWLEY COVE PROPERTIES (NO COST TO CITY) AB 09-011**

Councilmember Brackett asked whether this item came through committee to which Associate Planner Best replied it had not but rather came as a very late request from the Department of Natural Resources. He further explained this paperwork would have needed to have been completed at a time when the committee's were not established and there was barely enough time to place it tonight's agenda. He explained on two or three occasions Council has addressed the Strawberry Plant project as a whole or with this as an element. Councilmember Brackett read into the record a partial email sent today by Mayor Kordonowy stating, "the matter is on Council's agenda tomorrow night. My discussions with

Park Board members, City staff and some of the Councilmembers indicates the approval will go forward. She believed this email to be somewhat of a violation of the Open Public Meeting Act as it was predetermining a vote. Mayor Kordonowy asked that the rest of the email be read particularly about what she said about meeting with Peter and Jerry to which Councilmember Brackett read the paragraph and asked whether the historical aspects would be addressed and there was a brief discussion regarding the issue. Councilmember Vancil understood the consent agenda was reserved for items already vetted by committee, that were non-controversial and that the Council had a good chance of just voting for the whole thing at once. She believed if items were pulled from the consent agenda and being debated, it is because they are not really for prime time. Mayor Kordonowy pointed out had it gone to a committee it would not have gone forward so in de-facto the license would not have been approved and the City would have missed this window. Councilmember Vancil indicated a committee meeting was held the day the City received the letter and asked that this not happen again in the future. City Attorney McMurray replied it was standard practice to run contracts through committee however, in this case, the state provided us with a form license agreement at a very late date with very little time for them to complete the work at the Strawberry Plant and very little time for the City to review the document. He added staff was not attempting to avoid input, approval, or recommendations from the committee. Associate Planner Best said it was his understanding DNR felt that they had an agreement in place and discovered that they did not.

***MOTION:** Approve and authorize the Mayor to execute a license agreement in a form substantially similar to the attached license agreement with the Washington State Department of Natural Resources and to enter into discussions with citizens and historic preservation commission and representatives from the state on mitigation on impacts at the Strawberry Plant.*

***FRANZ/SNOW** – Motion carried unanimously 7-0.*

9. ITEMS OVER \$100K

A. WINSLOW WASTE WATER TREATMENT PLANT UPGRADE DESIGN PHASE II, AMENDMENT #3 TO EXTEND CONTRACT DATE OF PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH/KCM (NO ADDITIONAL COST TO CITY) AB 0306

City Engineer Earl explained the item was to extend the contract date and that no monies were being expended.

***MOTION:** That the City Council authorize the Mayor to execute amendment #3 to extend the contract date of the professional services agreement with TetraTech for the WWTP Upgrade Design Phase II contract to August 1, 2010 and, further, that the council authorize the PWTC to review all progress and payments on the WWTP project on a regular basis.*

***SNOW/VANCIL** – Motion carried unanimously 7-0.*

10. NEW BUSINESS

A. PLANNING COMMISSION APPOINTMENTS OF MICHAEL WANGEN AND MARTIN MINKOFF AB 08-0070

***MOTION:** That the City Council approve the Planning Commission appointments of Michael Wangen and Martin Minkoff to the Planning Commission.*

***VANCIL/KNOBLOCH** – Motion carried unanimously 7-0.*

11. MEETING EXTENSION/RECESS

***MOTION:** That City Council continued the meeting until completion of business or 10:00 PM whichever comes first.*

***SNOW/BRACKETT** – Motion carried unanimously 7-0.*

Following the recess, Mayor Kordonowy invited Chief Haney up to the podium, as it was his last City Council meeting. Chief Haney said overall it has been a marvelous experience working with the City. Mayor Kordonowy and several Councilmember's commented.