

ORDINANCE 3333
CITY OF PORT ANGELES, WASHINGTON

AN ORDINANCE creating the Port Angeles Harbor Works Public Development Authority; authorizing a charter and bylaws therefor; establishing a Board of Directors to govern the affairs of the PDA; and describing how the PDA shall conduct its affairs.

PASSED: May 20, 2008

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THE CITY COUNCIL OF THE CITY OF PORT ANGELES DO HEREBY
ORDAIN, as follows:

Section 1. Findings and Recitals. The City Council makes the following findings and determinations:

(a) The City is authorized, in RCW 35.21.730 through 35.21.759, to create public corporations, commissions and authorities to receive and administer private funds, goods or services for any lawful public purpose in order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, and to improve the general living conditions.

(b) The City Council finds that:

- (1) The former Rayonier mill site (the "Rayonier Site") is located within the corporate boundaries of the City.
- (2) The Washington State Department of Ecology ("DOE") is currently responsible for cleanup of the former Rayonier mill site (the "Rayonier Site") located in Port Angeles, which was closed in 1997. DOE has sought participation from local government agencies in the final stages of the cleanup, to facilitate redevelopment of the site, and the City desires to redevelop and enhance this site to provide economic, cultural and community benefits and resources to improve the lives of the citizens of the City.
- (3) The DOE is currently investigating the entire Port Angeles harbor for the existence of toxic materials in the marine environment. Depending on the outcome of that investigation, DOE will formulate plans and strategies for responding to toxic substances in the marine environment. DOE seeks participation from local government agencies on these issues as well.
- (4) Both the City and the Port might be potentially liable parties for toxic materials within the marine environment.

- (5) Cleanup and redevelopment of the Rayonier Site and the Port Angeles Harbor are vital to the health and economy of the community and in the best interest of the City and its taxpayers.
- (6) The City Council finds that it is in the best interest of the City and its taxpayers to participate with the Port (a) in the implementation of appropriate measures to remediate and redevelop the Rayonier Site and the Port Angeles Harbor so that they may contribute to the economic development and general welfare of the region; and (b) in the investigation of the nature and extent of hazardous waste and wood waste in Port Angeles Harbor and the development of reasonable, necessary and feasible remediation measures for such conditions
- (7) The City and the Port are authorized by Chapter 39.34 RCW to contract with each other in order to effectively and efficiently operate, administer and carry out their programs and public projects, and pursuant to this authorization and Resolution 2-08 of the City Council, the City and the Port have entered into an interlocal agreement whereby the City has agreed to exercise its powers under RCW 35.21.730-.759 to create a public development authority
- (8) The City and the Port are further authorized to cooperate in the exercise of certain powers relating to community renewal under Chapter 35.81 RCW and RCW 53.08.400, and certain community revitalization activities under Chapter 39.89 RCW and RCW 53.08.049.

Section 2. Definitions. The following terms shall have the following meanings unless the context clearly indicates otherwise:

“*PDA*” means the Port Angeles Harbor Works Public Development Authority created under this ordinance.

“*Bonds*” means any bonds, promissory notes, interim certificates, debentures, certificates of indebtedness or other short-term or long-term obligations issued by the PDA.

“*Bylaws*” means the rules adopted under this ordinance for regulating or managing the PDA’s affairs, as they may be amended from time to time.

“*Charter*” means the PDA’s articles of organization as adopted under this ordinance or as amended from time to time.

“*Director*” means a member of the PDA Board.

“*PDA Board of Directors*” or “*PDA Board*” means the governing body of the PDA vested with the management of its affairs.

Section 3. PDA Created - City Liability Limited.

(a) PDA Created. In order to administer and execute federal grants or programs; receive and administer private funds, goods or services for any lawful public purpose; and perform any lawful public purpose or public function within the limits of City of Port Angeles, the Port Angeles Harbor Works Public Development Authority, a public corporation, is hereby created for the purposes as set forth in its Charter and this ordinance.

(b) City Liability Limited. The PDA is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by the PDA shall be satisfied exclusively from the assets and credit of the PDA; no creditor or other person shall have any recourse to the assets, credit or services of the City on account of any debts, obligations, liabilities, acts, or omissions of the PDA.

Section 4. Charter; Bylaws.

(a) Charter. The Charter of the Port Angeles Harbor Works Public Development Authority, attached as Exhibit A and incorporated by reference, is approved. Upon the effective date of this ordinance, the Charter shall be issued in duplicate originals, each bearing the City's seal attested by the City Clerk. The City Clerk shall retain one original on file as a public record and shall deliver the second duplicate original to the PDA. The City Clerk shall give notice of the issuance of the Charter to the Secretary of State.

(1) *Charter Amendments*. Except if the City is required to intervene under Section 8 of this ordinance or as otherwise may be required by law, any amendment to this Charter must be approved by an ordinance of the City Council and by 80% of the PDA Board.

(i) *Amendments Initiated by PDA Board*. Any PDA Board member may introduce a proposed Charter amendment at any regular or special meeting of the PDA Board. Upon approval of a Charter amendment proposal by 80% of the Members of the PDA Board, the PDA shall file the proposed amendment with the City Clerk for consideration by the City Council at the Council's earliest convenience.

(ii) *Amendments Initiated by City Ordinance*. If the City Council adopts an ordinance to amend the Charter, the PDA Board shall consider and vote on the proposed amendment at its next regular meeting. If no regular meeting is to be held within 30 days of the adoption of the City ordinance, the Secretary of the PDA Board shall call a special meeting within 45 days of the adoption of the City ordinance to consider the proposed amendment. If the PDA Board fails to vote upon the proposed amendment within 45 days, the PDA Board shall be deemed to have concurred and the amendment shall become effective.

(2) *Notice of Meeting to Consider Charter Amendment*. Notice of a PDA Board meeting during which action is to be taken on a proposed Charter amendment shall be given

in writing to each Director and to all other persons entitled to receive notice at least 7 days before the meeting. The notice shall specifically state that a Charter amendment is to be considered and shall include a statement of its purpose and effect. The notice to be given to each Director shall also include a copy of the proposed amendment.

(3) *Effective Date of Charter Amendments.* Except if the City is required to intervene under Section 8 of this ordinance or as otherwise may be required by law, a Charter amendment shall become effective only upon adoption by the City Council and concurrence by the PDA Board.

(b) Commencement of Corporate Existence. The PDA shall commence its existence upon the issuance of the Charter and shall conduct its affairs in accordance with the Charter. Except as against the State or the City in a proceeding to cancel or revoke the Charter, delivery of a duplicate original Charter shall conclusively establish that the PDA has been established in compliance with the procedures of this ordinance.

(c) Bylaws. The PDA Board is vested with the power to adopt, amend or repeal Bylaws so long as those bylaws are consistent with the Charter and this ordinance. The PDA Board, at its organizational meeting shall adopt Bylaws. Thereafter, the Bylaws may be amended or repealed as necessary by the PDA Board consistent with the Charter and this Ordinance. Upon adoption, amendment or repeal of the Bylaws, the PDA shall place one true and complete copy on file as a public record with the City Clerk, and shall retain a true and complete copy in its files.

Section 5. Powers of the PDA.

(a) Generally. Except as otherwise limited by state law, an ordinance of the City or the Charter, the PDA shall have and may exercise within the territorial boundaries of the City all lawful power necessary or convenient to effect the purposes for which the PDA is organized and to perform authorized corporate functions as provided in the Charter. Such powers shall include:

- (1) All powers that may be exercised by a public corporation under RCW 35.21.735 and the Public Corporations Act generally;
- (2) All powers that may be assigned to it or conferred on it by the City or by the Port of Port Angeles.

(b) Limitation of Powers. The PDA shall be limited in all activities and transactions in the following respects:

(1) *No power of eminent domain.* The PDA shall have no power of eminent domain nor any power to levy taxes.

(2) *No recourse to City for debts.* The PDA may not incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources or credit of the City. All liabilities incurred by the PDA shall be satisfied exclusively from

the assets and credit of the PDA; no creditor or other person shall have any recourse to the assets, credit or services of the City on account of any debts, obligations, liabilities, acts or omissions of the PDA.

(3) *Transfer or encumbrance of certain real estate subject to RCW 35.21.747.* The PDA may sell, transfer or encumber any real property transferred to the PDA by the City only in accordance with the requirements of RCW 35.21.747.

(4) *Activities must serve public purpose.* As long as the principal object of an activity is to enhance the public mission of the PDA and not to generate a profit, the PDA may: (i) sell assets for a consideration greater than their reasonable market value or acquisition cost; (ii) charge more for services than the expense of providing them; or (iii) carry out any other activity that is consistent with its purpose and applicable law.

Section 6. PDA Board of Directors.

(a) PDA Board of Directors. The Port Angeles Harbor Works Public Development Authority Board of Directors (the "PDA Board") is established to govern the PDA's affairs. The PDA Board shall be composed and its officers chosen as set forth in the Charter. The directors' qualifications, terms of office and the filling of vacancies shall be as set forth in the Charter

(b) Appointment of Directors. The initial Directors shall be as follows:

1. Karen McCormick (City Nominee) – Group II;
2. Bart Irwin (Port Nominee) – Group II;
3. Howard Ruddell (City Nominee) – Group III;
4. Jerry Hendricks (Port Nominee) – Group III;
5. Orville Campbell, President.

(c) Organizational Meeting. The City Council shall call an organizational meeting of the initial directors within 60 days of the effective date of this ordinance, and shall cause at least 7 days advance written notice to be given to each director, unless waived in writing. At such meeting, the PDA Board shall organize itself, appoint officers, adopt Bylaws, and take such other action as may be necessary.

(d) Removal of Directors By City Council. The City may remove any or all directors from office by resolution adopted after 30 days notice to all of the directors. Any director removed pursuant to this section shall cease to be a director upon adoption of the City Council resolution. A director appointed to fill a vacancy created under this Section shall serve out the remainder of the term and shall be eligible for reappointment.

Section 7. Exercise of Corporate Powers.

(a) Exercise of Corporate Powers. All corporate powers of the PDA shall be exercised by or under the authority of the PDA Board or its Officers; and the PDA's business, property, and other affairs shall be managed under the direction of the PDA Board or its Officers, except as may be otherwise provided for by law or in the Charter. Any person who assumes to act for the PDA without actual authority to do so shall be liable for the debts and liabilities incurred or arising as a result thereof.

(b) Deposit of Funds. All moneys belonging to or collected for the use of the PDA, coming into the hands of any corporate official or officer of the PDA, shall be deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission. Such moneys may be invested at the direction of the PDA Board, by resolution, in investments that would be lawful for the investment of City funds.

(c) Actions Requiring Authorization. In addition to such transactions, duties or responsibilities as the Charter or the PDA Board may reserve, the following actions require specific authorization by a PDA Board resolution:

(1) *Budget Adoption.* Adoption of an annual operating budget and a separate capital budget;

(2) *Real Estate Transactions.* Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term more than one year;

(3) *Contracting or Guaranteeing Debts.* The contracting of debts, the issuing of bonds, and the mortgaging or pledging of PDA assets or credit to secure the same or any action by the PDA as a surety or guarantor;

(4) *Major Transactions or Expenditures.* Capital expenditures that are not contained in the adopted budget and are in excess of \$10,000, and all other transactions involving:

- (i) An amount greater than one percent of the previous year's operating budget;
- (ii) A commitment by the PDA extending over more than one year from the date of execution of the agreement; or
- (iii) The transfer or assignment of duties or responsibilities to or from a governmental entity.

(5) *Certification of Annual Reports.* Certification of annual reports and statements to be filed with the City Treasurer as true and correct in the opinion of the PDA Board and of its members except as noted.

Section 8. City Oversight and Intervention.

(a) *Oversight by the City Council.* In order to correct any deficiency and to assure that the purposes of the PDA are reasonably accomplished, the City may audit the PDA's books and records, modify the Charter consistent with this ordinance, intervene in an appropriate case, or remove directors.

(b) *Reports and Information.* At least once each year, the PDA Board shall review statements of monthly income and expenses that compare budgeted expenditures to actual expenditures and shall file a report summarizing this review with the City Council. The PDA Board shall review all such information at a regular or special meeting, the minutes of which shall specifically note such reviews and include such information.

(c) *Audits and Inspections.* To assist the City or any state agency in its review and oversight functions, the PDA shall make available for examination all of its financial and other records during normal business hours.

(d) *City Intervention.* Under the following circumstances, the City may intervene in and exercise control over the affairs of the PDA to the extent necessary and appropriate to correct any deficiency or to assure that the purposes of the program undertaken may reasonably be accomplished:

- (1) The PDA Board has requested such intervention by resolution;
- (2) The PDA has failed to set forth the statement required by its charter to be included in written contracts, bonds or other documents;
- (3) The PDA has represented to the public or to creditors that recourse may be had to the assets, property or credit of the City on account of acts or omissions of the PDA, unless such secondary or direct liability has expressly been authorized by the City Council by ordinance in the form of a contingent loan agreement or other guaranty;
- (4) The PDA has failed to file an annual report with the City Council;
- (5) A deadlock has occurred on the PDA Board, or the membership of the PDA Board is insufficient to constitute a quorum for conduct of affairs so that the PDA is unable to conduct its operations or perform its projects or activities;
- (6) The PDA Board has continuously failed to conduct meetings at least annually, or no regular or special meetings have been held for the preceding 12 months;
- (7) The PDA Board has unreasonably impaired public participation in the conduct of projects and activities;
- (8) The assets of the PDA have been or are committed to being misapplied, wasted or illegally expended;

- (9) The PDA has committed or is about to commit a material violation of its charter.

Section 9. Dissolution; Procedure for Dissolution. Dissolution shall be accomplished as provided in this Section, and shall not take effect until proper provision has been made for the disposition of all PDA assets.

(a) City Council Determination. If the City Council makes an affirmative finding, in accordance with this ordinance, that dissolution of the PDA is warranted for good cause, the existence of the PDA may be terminated by ordinance of the City Council adopted after public hearing held upon 30 days' notice to the Directors and affording them a reasonable opportunity to be heard. Good cause for the purposes of dissolution shall include only:

- (1) A majority of the PDA Board has in writing requested dissolution;
- (2) The PDA has discontinued all activities for which it was chartered or has remained inactive for 12 successive months;
- (3) The PDA becomes insolvent or otherwise unable to carry out its contractual obligations;
- (4) The charter or an amendment to the charter was procured through fraud or misrepresentation of any material matter that has an effect upon the projects or activities to be undertaken;
- (5) The PDA has filed an annual report with the City Council that contains false or misleading representations of material facts;
- (6) The PDA is incompetent or ineligible to carry out the public purposes for which it was chartered;
- (7) The PDA has repeatedly misused, abused or exceeded the grant of authority conferred upon it by the Ordinance or other law, or committed repeated violations of the Ordinance or this charter;
- (8) The PDA Board has authorized the misapplication, waste or illegal expenditure of PDA funds or assets;
- (9) Other circumstances under which the City Council would be warranted in intervening, if the City Council affirmatively finds that extraordinary circumstances require immediate dissolution and that intervention would be insufficient to correct the problem.

(b) Statement of Dissolution. Upon the effective date of an ordinance by the City Council for termination of the PDA, the PDA shall file a dissolution statement with the Secretary of State and the City Clerk setting forth: (i) the name and principal office of the PDA; (ii) the debts, obligations and liabilities of the PDA, including conditions of grants and donations, and the property and assets available to satisfy the same; the provisions to be made

for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution; (iii) any pending litigation or contingent liabilities; and (iv) a list of persons to be notified upon completion of dissolution.

(c) Winding Up of PDA Affairs. The City Council shall review the statement filed and oversee the dissolution to protect the public interest, or if so authorized by law, authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

(d) Disposition of Assets. The City Council shall provide for the transfer of the rights, assets and property of the PDA to the Port of Port Angeles, as provided pursuant to interlocal agreement between the Port and the City, and may transfer additional rights, assets and property to any other qualified entity or entities which will fulfill the purposes for which the PDA was chartered. Otherwise, title to all remaining property or assets of the authority shall vest in the City upon the dissolution of the PDA.

(e) Termination of Corporate Existence. Upon satisfactory completion of dissolution proceedings, the City Council shall indicate such dissolution by inscription of "Charter Canceled" on the original Charter of the PDA, on file with the City Clerk and, when available, on the duplicate original of the PDA, and the existence of the PDA shall cease. The City Clerk shall give notice thereof to the Secretary of State and other persons requested by the PDA in its dissolution statement.

Section 10. Miscellaneous Provisions.

(a) Establishment and Maintenance of Office and Records. The PDA shall maintain a principal office at a location within the limits of the City; shall file and maintain with the City Clerk a current listing of all PDA officials, their positions and their business telephone numbers, the address of its principal office, and a current set of its Bylaws; and shall maintain all of its records in a manner consistent with the Public Records Act, RCW 42.56, as amended from time to time. The PDA shall keep an official journal containing the minutes of proceedings at all PDA Board meetings and ordinances. Any person shall have access to records and information of the PDA to the extent required by State law.

(b) Public Meetings. The PDA Board shall be the governing body of a public agency as defined in the Open Public Meetings Act, and all meetings of the PDA Board shall be held and conducted in accordance with the Open Public Meetings Act. It shall hold a regular meeting at least one time each year; and may hold such special meetings as may be required to conduct PDA business, in accordance with such notice and other requirements as are contained in the Charter, the Bylaws and applicable law.

(1) All PDA Board meetings, including executive Committee meetings, all other permanent and ad hoc committee meetings shall be open to the public to the extent required by the Open Public Meetings Act or otherwise by law. The PDA Board and committees may hold executive sessions to consider matters enumerated in the Open Public Meetings Act, or privileged matters recognized by law, and shall enter the cause therefor upon its official journal.

(2) The Charter or Bylaws shall establish the requirements for a quorum. The act of a majority of directors present at a meeting at which a quorum is present shall be the act of the PDA Board; provided, however, that a quorum to commence a PDA Board meeting shall be no fewer than a majority of the PDA Board's total membership.

(c) Code of Ethics - Conflict of Interest. No member of the PDA Board or any officer or employee of the PDA shall derive a personal profit, direct or indirect, from any contract or in the sale to the PDA or to a contractor supplying the PDA of any land or rights or interests in any land, material, supplies, or services except as provided in Chapter 42.23 RCW. The PDA Board may adopt additional conflict of interest and ethical rules it considers appropriate within its bylaws.

(d) Insurance. The PDA shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the PDA, naming the City as an additional insured. The City may, pursuant to a lease or other contract with the PDA, agree to provide all or part of such insurance.

(e) Ancillary Authority. The City Manager and the City Clerk are each granted all such power and authority as reasonably necessary or convenient to enable him or her to administer this ordinance efficiently and to perform the duties imposed in this ordinance.


Section 11. Construction. This ordinance shall be liberally construed so as to effectuate its purposes and the purposes of this ordinance, RCW 35.21.730 – .759. The provisions of this ordinance are controlling as to the Port Angeles Harbor Works Public Development Authority, and any provision of Port Angeles Municipal Code, Title 4 (Public Corporations), that is in conflict with this ordinance is declared to be inapplicable and of no effect whatsoever as to the Port Angeles Harbor Works Public Development Authority.

Section 12. Severability. In the event any one or more of the provisions of this ordinance shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this ordinance, but this ordinance shall be construed and enforced as if such invalid provisions had not been contained herein; and any provision which shall for any reason be held by reason of its extent to be invalid shall be deemed to be in effect to the extent permitted by law.

Section 13. Effective Date. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law. This

ordinance is an exercise of an administrative function. As such, this ordinance is not subject to referendum.

PASSED by the City Council of City of Port Angeles, Washington, at a regular open public meeting held on May 20, 2008.



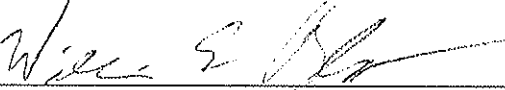
Mayor Gary Braun

ATTEST:



Becky J. Upton, City Clerk

APPROVED AS TO FORM:



William E. Bloor, City Attorney

PUBLISHED: May 25, 2008

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