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**Port of Port Townsend
2nd Monthly Meeting Agenda
Wednesday, March 23, 2016, 5:30 PM
Port Commission Building
333 Benedict Street, Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Consent Agenda
 - A. Approval of Public Workshop Minutes – March 9, 2016.....1-2
 - Approval of Meeting Minutes – March 9, 2016.....3-5
 - B. Resolution No. 643-16 – Declaring Certain Items Surplus.....6-7
 - C. Approval of Warrants
- IV. Public Comments (not related to Agenda)
- V. Second Reading (action items)
 - A. US Navy “Right of Entry Agreement”.....8-12
- VI. First Reading (discussion only)
- VII. Potential Immediate Action Items (unanimous Commission approval required)
 - A. Legal Defense & Indemnification – Resolution No. 644-16.....13-15
 - Ⓢ B. *Legal Defense & Indemnification Authorization Request, Pursuant to Resolution No. 644-16*
- VIII. Other Business
 - A. Boatyard General Permit.....16
 - B. April 13, 2016 Workshop & Meeting – Proposed Date Change.....17
- IX. Staff Comments
- X. Public Comments
- XI. Commissioner Comments
- XII. **Next Public Workshop/Regular Meeting: Date: TBD – workshop at 9:30 AM, meeting at 1:00 PM, Port Commission Building, 333 Benedict Street, Port Townsend, WA.**
- XIII. Executive Session
 - A. Litigation, pursuant to RCW 42.30.110 (i)
- XIV. Adjournment

PORT OF PORT TOWNSEND

MEETING OF: March 23, 2016

AGENDA ITEM: VII. Potential Immediate Action Items
B. Legal Defense & Indemnification Authorization Request,
Pursuant to Resolution No. 644-16

BACKGROUND:

In recent litigation brought by a recently evicted tenant of the Port, Mr. Marc Landry, the former tenant seeks \$10,000,000 million dollars damages for emotional distress and other claims. The former tenant named as defendants the Port (as an entity) and Jim Pivarnik, as a Port employee, and also individually.

Washington State law allows the use of Port resources and legal services to defend against any lawsuit which is brought against any past or present officer, employee, or volunteer of a local governmental entity of this State, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties.

The Port Commission is asked pass a Motion finding as follows:

1. That the acts or omissions of the Deputy Director of the Port of Port Townsend which gave rise to the lawsuit were, or in good faith purported to be, within the scope of his official duties; and
2. In the event of any monetary judgment against Mr. Pivarnik, then the judgment creditor shall seek satisfaction for damages only from the Port, and any judgment for damages shall not become a lien upon any property of Mr. Pivarnik.

Statutory authority for this motion is found both in RCW 53.08.208, and RCW 4.96.041. RCW 4.96.041 reads as follows:

RCW 4.96.041 Action or proceeding against officer, employee, or volunteer of local governmental entity—Payment of damages and expenses of defense.

(1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.

(2) If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

(3) The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in *RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

(4) When an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this section and the court hearing the action has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer. The legislative authority of a local governmental entity may, pursuant to a procedure created by ordinance or resolution, agree to pay an award for punitive damages.

[1993 c 449 § 4; 1989 c 250 § 1; 1979 ex.s. c 72 § 1. Formerly RCW 36.16.134.]

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Upon consultation with Port legal counsel, the Executive Director has concluded that the claims against Mr. Pivarnik arise out of good faith actions occurring within the scope of his employment as Deputy Director of the Port of Port Townsend. Accordingly, the Executive Director recommends that the Commission formally authorize the use of Port legal counsel and Port funds to defend and indemnify Mr. Pivarnik, under the authority of Port Resolution 644-16, RCW 53.08.208, and RCW 4.96.041.