

**OREGON GOVERNMENT ETHICS COMMISSION**  
**MEETING MINUTES**  
**December 14, 2018**  
9:00 a.m.

(File 1)

Chair Alison Kean called the meeting to order at 9:02 a.m. The meeting was held in the 2<sup>nd</sup> Floor Conference Room of the Morrow Crane Building at 3218 Pringle Rd SE Salem, Oregon. Other Commissioners present were Charles Starr, Daniel Mason, David Fiskum, Nathan Sosa, Sean O'Day, Richard Burke, and Karly Edwards. Kamala Shugar joined by telephone. Staff present were OGEC Counsel Amy Alpaugh, Executive Director Ron Bersin, Program Manager Virginia Lutz, Compliance and Education Coordinator Diane Gould, Investigator Susan Myers, Investigator Hayley Weedn, Trainer Monica Walker, and Administrative Specialist Kathy Baier.

AGENDA ITEM 1, Comments from the Chair. No comments.

AGENDA ITEM 2, Approval of minutes of the November 02, 2018 Commission meeting. Fiskum moved for approval of the minutes of the November 02, 2018 Commission meeting. Group vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 9-0.

**CONSENT CALENDAR**

Fiskum & Edwards declared a working relationship with Nolan, agenda item 3. Sosa is a colleague of Fagen, agenda item 9.

Burke moved for the approval of the Consent Calendar items 3 – 11 recommendation on each as follows:

Lobbyist Penalty Correspondence

AGENDA ITEM 3, Mary Nolan, 2017 Q4, Letter of Education

AGENDA ITEM 4, Amy Miller, 2018 Q3, Letter of Education

AGENDA ITEM 5, Marjorie Kafoury, 2018 Q1, Letter of Education

Lobbyist Client Penalty Correspondence

AGENDA ITEM 6, Beyond Toxics, 2018 Q3, Letter of Education

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Statement of Economic Interest Penalty Correspondence

AGENDA ITEM 7, Gaye Gibby, 2017 & 2018 SEI, Letter of Education

AGENDA ITEM 8, Val Hoyle, 2018 SEI, Letter of Education

AGENDA ITEM 9, Shemia Fagan, 2018 SEI, Letter of Education

AGENDA ITEM 10, Beau Buganski, 2018 SEI, Letter of Education

AGENDA ITEM 11, Xiomara Torres, 2018 SEI, Letter of Education

Group vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Mason requested Agenda Items 8 & 9 be removed from consent calendar for comment.

Burke moved to reconsider the Consent Calendar items 3 – 11. Group vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Burke moved for the approval of the Consent Calendar items 3 – 7, 10 – 11. Group vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

End of Consent Calendar

Statement of Economic Interest Penalty Correspondence

AGENDA ITEM 8, Val Hoyle, 2018 SEI, Letter of Education

Bersin summarized his recommendation. The Commission generally discussed. Burke moved to approve the recommendation of a Letter of Education. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 9, Shemia Fagan, 2018 SEI, Letter of Education

Bersin summarized his recommendation. The Commission generally discussed. Fiskum moved to approve the recommendation of a Letter of Education. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

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### Lobbyist Penalty Correspondence

AGENDA ITEM 12, Loyd Henion, 2018 Q3, \$110; Q4 2016 received Letter of Education. Recommendation: \$50 for 2<sup>nd</sup> violation. Starr moved that the Commission approve staff recommendation of \$50 for Q3 2018 Lobbyist Expenditure Report. Roll call was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 13, Brian Nieubuurt, Q4 2016, \$90; Q4 2017, \$5,000. Recommendation: Letter of Education for both quarters. Nieubuurt was present but did not address the Commission. Fiskum disclosed a working relationship with respondent. The Commission generally discussed the matter. Sosa moved to waive the penalties and issue a Letter of Education for the late filing of the Q4 2016 and Q4 2017 Lobbyist Expenditure Reports. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

### Lobbyist Client Penalty Correspondence

AGENDA ITEM 14, COFA Alliance National Network - CANN, Q3 2018, \$110. Recommendation: \$50 for 2<sup>nd</sup> violation. Burke moved to approve the recommendation of \$50 for the late filing of the Q3 2018 Lobbyist Client Expenditure Report. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Shugar, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

### Statement of Economic Interest

Commissioner Shugar left the meeting telephonically.

AGENDA ITEM 15, Susan Silodor, 2017 SEI, \$5,000 and 2018 SEI, \$5,000. Recommendation: 2017 SEI, Letter of Education; 2018 SEI, \$500. The Commission generally discussed the matter. Burke moved to issue Letter of Education for 2017 and reduce penalty to \$250 for 2018. Roll call vote was taken as follows: Fiskum, aye; Mason, nay; O'Day, nay; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 6 - 2.

AGENDA ITEM 16, James A. King, 2017 & 2018 \$1,160. Recommendation: Letter of Education. Bersin summarized his recommendation. O'Day moved to issue a Letter of Education for 2017 & 2018 late filings. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

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AGENDA ITEM 17, Herman Ortmann, request for reconsideration of sanctions for 2016 SEI \$150 and 2017 SEI \$500. The Commission generally discussed and did not reconsider.

STIPULATED FINAL ORDERS

AGENDA ITEM 18, 16-151EDG, Linda Hald

Office Manager, Community Justice Dept. for Columbia County. Gould summarized the case. Hald did not address the Commission. The Commission generally discussed the matter. Bersin and Alpaugh addressed the Commission. Burke moved that the Commission approve the proposed stipulated final order as the final order in this matter and that the chairperson be authorized to sign it as such. Roll call vote was taken as follows: Fiskum, nay; Mason, nay; O'Day, nay; Sosa, nay; Starr, aye; Burke, nay; Edwards, nay; Kean, aye. Motion failed 6 – 2

AGENDA ITEM 19, 17-093XMT, Jim Hamsher  
AGENDA ITEM 20, 17-097XMT, Frank Primozić.

Councilors, City of Prairie City. Myers summarized the cases. Hamsher and Primozić did not address the Commission. The Commission generally discussed the matters.

Jim Hamsher. Fiskum moved that the Commission approve the proposed stipulated final order as the final order in this matter and that the chairperson be authorized to sign it as such. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Frank Primozić. Fiskum moved that the Commission approve the proposed stipulated final order as the final order in this matter and that the chairperson be authorized to sign it as such. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 21, 18-091EMT, Travis Ward. Network Administrator for Yamhill County. Myers summarized the case. Ward did not address the Commission. The Commission generally discussed the matter. Starr moved that the Commission approve the proposed stipulated final order as the final order in this matter and that the chairperson be authorized to sign it as such. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, nay; Starr, aye; Burke, nay; Edwards, aye; Kean, aye. Motion passed 6 – 2.

DEFAULT FINAL ORDERS

None.

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The Commission recessed at 10:20 a.m. and resumed at 10:33 a.m.

REPORTS OF INVESTIGATIONS

(File 2)

AGENDA ITEM 22, 17-137EMT, John Phelan, Public Works Director, Yamhill County. Myers summarized the case. Phelan did not address the Commission. The Commission generally discussed the matter. Burke moved that the Commission find that there is sufficient evidence to find a violation of ORS 244.040 by John Phelan, if this evidence is not rebutted by contrary evidence, and that this public official be offered a contested case proceeding. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 23, 18-065EMT, Marc Hellman. Former staff member and Administrator, Oregon Public Utility Commission. Myers summarized the case. Hellman did not address the Commission. Counsel Jill Gibson addressed the Commission. Fiskum disclosed an acquaintance and O'Day disclosed a former working relationship with Hellman. The Commission generally discussed. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 24, 18-100XMT, Mike Anderson, Chair

AGENDA ITEM 25, 18-101XMT, Tim Rogers

AGENDA ITEM 26, 18-102XMT, Natalie Smathers

AGENDA ITEM 27, 18-103XMT, Dave Eusted

AGENDA ITEM 28, 18-104XMT, Lacey Risdal

AGENDA ITEM 29, 18-105XMT, Paul Randall

Board of Directors, Lane County School District #40. Gould summarized the cases. Respondents did not address the Commission. The Commission generally discussed the matters.

Mike Anderson. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Tim Rogers. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows:

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Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Natalie Smathers. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Dave Eusted Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Lacey Risdal. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Paul Randall. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 29-A, 18-107EMT, Craig Horrell, Central Oregon Irrigation District, District Manager. Weedn summarized the case. Horrell addressed the Commission. Counsel Kathryn Tank, present. The Commission generally discussed the matter. Alpaugh addressed the Commission. Burke moved that the Commission find that there is sufficient evidence to find two violations of ORS 244.040(1) by John Phelan, if this evidence is not rebutted by contrary evidence, and that this public official be offered a contested case proceeding. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 30, 18-113XMT, Phil Evans, President

AGENDA ITEM 31, 18-114XMT, Barb Ayers

AGENDA ITEM 32, 18-115XMT, Joe Sacamano

AGENDA ITEM 33, 18-116XMT, Joanne Rubin

AGENDA ITEM 34, 18-117XMT, Todd Reeves

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Board of Directors, Mosier Fire District. Myers summarized the cases. Respondents did not address the Commission. The Commission generally discussed the matters.

Phil Evans. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Barb Ayers. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Joe Sacamano. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Joanne Rubin. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Todd Reeves. Burke moved that the Commission find that the information before the Commission is insufficient to infer a violation of ORS Chapter 244 or warrant further investigation and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

**The Commission recessed at 11:28am then convened into executive session at 11:36 a.m. to consider Preliminary Reviews pursuant to ORS 244.260(4)(d), and ORS 192.685(1) and to conduct the annual Executive Director performance review pursuant to ORS 192.660(2)(i).**

**Media present: Jeff Reynolds, PJ Media; Ben Botkin, Statesman Journal; Paris Achen, Portland Tribune; Anne Scheck, The Independent.**

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## EXECUTIVE SESSION CONSENT CALENDAR

### Reports of Preliminary Review

(All items removed from consent calendar for discussion.)

End of Executive Session Consent Calendar.

### OTHER ITEMS

Reports of Preliminary Review  
(removed from consent calendar)

(File 3)

AGENDA ITEM 40, 18-198SHW, Alexander Flores, Republican candidate, Oregon Legislative Assembly, Senate District 15. Mason and Sosa disclose that they live in this district. Weedn summarized the case. Flores did not address the Commission. The Commission discussed the matter. Burke moved that the Commission find that the complaint and information before the Commission do not indicate a violation of ORS Chapter 244 or warrant further review and that this complaint be dismissed and that a Letter of Education be issued to the respondent. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; O'Day, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 41, 18-207XDG, Richard Anderson

AGENDA ITEM 42, 18-208XDG, Judy Casper

AGENDA ITEM 43, 18-209XDG, Diana Hinton

AGENDA ITEM 44, 18-210XDG, Dennis Hoagland

AGENDA ITEM 45, 18-211XDG, Susan Wahlke

AGENDA ITEM 46, 18-212XDG, Don Williams, Mayor (not represented, not present)

City Councilors, City of Lincoln City. Myers summarized the cases. Andrea Coit, attorney for Anderson, Casper, Hinton, Hoagland, and Wahlke addressed the Commission. Anderson, Casper, Hinton, Hoagland, and Wahlke, present but did not address the Commission. The Commission discussed the matter. O'Day disclosed a relationship with the League of Oregon Cities and left the room.

Richard Anderson. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Richard Anderson may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

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Judy Casper. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Judy Casper may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

Diana Hinton. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Diana Hinton may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

Dennis Hoagland. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Dennis Hoagland may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

Susan Wahlke. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Susan Wahlke may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

Don Williams. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Don Williams may have violated ORS 192.660 and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

AGENDA ITEM 51, 18-229ESM, William Graupp, Mayor, City of Aurora. Myers summarized the case. O'Day disclosed a business affiliation, and left the room. Burke disclosed personal relationship with the mayor. Graupp and Counsel Kenny Montoya addressed the Commission. Mason moved that the Commission find that the complaint and information before the Commission do not indicate a violation of ORS 244.025(1) and 244.060(8) or warrant further review and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 7-0.

AGENDA ITEM 50, 18-228EHW, Doobie Gutierrez, Community Health Worker II, Washington County. Weedn summarized the case. Gutierrez addressed the Commission. The Commission generally discussed the matter. Burke moved that the Commission find that the complaint and information before the Commission do not

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indicate a violation of ORS 244.040 (1) or warrant further review and that this complaint be dismissed and that a Letter of Education be issued to the respondent. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

**Commissioner Shugar rejoined the meeting via telephone.**

AGENDA ITEM 52, 18-239XDG, Russ Axelrod, Mayor

AGENDA ITEM 53, 18-240XDG, Brenda Perry, Councilor

AGENDA ITEM 54, 18-241XDG, Bob Martin, Councilor

City of West Linn. Weedn summarized the cases. Axelrod addressed the Commission. Perry and Martin did not address the Commission. The Commission generally discussed the cases and conferred with Alpaugh.

Russ Axelrod. Burke moved that the Commission find that there is a substantial, objective basis for believing that Russ Axelrod may have violated ORS 192.660(2) and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Burke, aye; Edwards, aye; Shugar, aye; Kean, aye. Motion passed unanimously.

Brenda Perry. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Brenda Perry may have violated ORS 192.660(2) and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Burke, aye; Edwards, aye; Shugar, aye; Kean, aye. Motion passed unanimously.

Bob Martin. Sosa moved that the Commission find that there is a substantial, objective basis for believing that Bob Martin may have violated ORS 192.660(2) and that the Commission should investigate accordingly. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Burke, aye; Edwards, aye; Shugar, aye; Kean, aye. Motion passed unanimously.

AGENDA ITEM 47, 18-217EDG, Stan Primozich, Commissioner, Yamhill County. O'Day declared a working relationship and recused himself. Myers summarized the case. Primozich did not address the Commission. The Commission generally discussed the matter. Burke moved that the Commission find that the complaint and information before the Commission do not indicate a violation of ORS 244 or warrant further review and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, abstained; Shugar, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed 8 – 0 with 1 abstention.

AGENDA ITEM 48, 18-219EHW, James Cook, Correctional Officer, Santiam Correctional Institution, Oregon Department of Corrections. Weedn summarized the case. Cook did

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not address the Commission. Fiskum moved that the Commission find that the complaint and information before the Commission do not indicate a violation of ORS 244 or warrant further review and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Shugar, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

(File 4)

AGENDA ITEM 49, 18-222EDG, Kate Brown, Governor, State of Oregon. Gould and Bersin summarized the case. Brown did not address the Commission. Mason declared a working relationship with the Complainant. Shugar recused due to a working relationship with the Governor's Office. Starr moved that the Commission find that the complaint and information before the Commission do not indicate a violation of ORS 244 or warrant further review and that this complaint be dismissed. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Shugar, abstained; Burke, aye; Edwards, aye; Kean, aye. Motion passed 8-0 with 1 abstention.

Own Motion Preliminary Reviews

None.

Other Items

(File 5)

AGENDA ITEM 55, Annual Executive Director Performance Review. The Commission conducted their annual Executive Director performance review.

**The Commission reconvened into open session at 2:30 p.m.**

ADVISORY OPINIONS

None.

CORRESPONDENCE RECEIVED/RESPONSES

Staff Opinions

(non-action, informational only items)

None.

Staff Advice

(non-action, informational only items)

The Commission reviewed the following items without comment:

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(File 6)

AGENDA ITEM 35, Roger Leachman re whether or not the Directors of Portland's District Coalitions would be considered as the "governing body of a public body."

AGENDA ITEM 36, Daneene Fry re the application of Oregon Government Ethics Law relevant to outside employment restrictions.

### MISCELLANEOUS ITEMS

AGENDA ITEM 37, Trainers' Report. Walker summarized the training activities from November 5 through December 14, 2018. The Commission generally discussed training opportunities.

AGENDA ITEM 38, Executive Director's Report. Bersin discussed the following:

- 2017-2019 biennial budget: Bersin reviewed the status of the 2017-2019 budget and budget surplus.
- 2019-2021 biennial budget: passed audit; small adjustment.
- Legislative Concepts: Discussion re concept content; lobbyist registrations; attorney fees; lobby opinions.
- SEI filing: reviewed status of non-filers for 2016 - 2018.
- Met with DAS IT to discuss agency needs.
- Lobbyist expenditure reports: reviewed status of non-filers for all 3 quarters of 2018.

Fiskum discussed with the Commission its ability to enforce public officials' gift giving/receiving, but cannot enforce the public's gift giving.

AGENDA ITEM 39, Election of Chair and Vice Chair for 2019. Kean thanks the Commission for her year of service as Chair. Bersin thanks Kean.

Shugar rejoined the meeting via telephone.

Election of OGEC Chair: Kean nominated Burke for Chair. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Shugar, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

Election of OGEC Vice Chair: Burke nominated Sosa for Vice Chair. Roll call vote was taken as follows: Fiskum, aye; Mason, aye; Sosa, aye; Starr, aye; O'Day, aye; Shugar, aye; Burke, aye; Edwards, aye; Kean, aye. Motion passed unanimously.

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THESE MINUTES CONTAIN MATERIALS WHICH PARAPHRASE AND/OR SUMMARIZE STATEMENTS MADE DURING THIS MEETING. ONLY TEXT ENCLOSED IN QUOTATION MARKS REPORT A SPEAKER'S EXACT WORDS. FOR COMPLETE CONTENTS OF THE PROCEEDINGS, PLEASE REFER TO THE AUDIO RECORDINGS AT <http://www.oregon.gov/OGEC/Pages/comissionmeet.aspx>.

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Chair Kean adjourned the meeting at 3:53 p.m.

The next scheduled meeting date of the Oregon Government Ethics Commission is set for Friday, January 25, 2019, at 9:00 a.m. The meeting will be held in the 2<sup>nd</sup> Floor Conference Room of the Morrow Crane Building at 3218 Pringle Rd SE, in Salem, Oregon.

DRAFT

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THESE MINUTES CONTAIN MATERIALS WHICH PARAPHRASE AND/OR SUMMARIZE STATEMENTS MADE DURING THIS MEETING. ONLY TEXT ENCLOSED IN QUOTATION MARKS REPORT A SPEAKER'S EXACT WORDS. FOR COMPLETE CONTENTS OF THE PROCEEDINGS, PLEASE REFER TO THE AUDIO RECORDINGS AT <http://www.oregon.gov/OGEC/Pages/comissionmeet.aspx>.

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

January 10, 2019

Lisa Arkin  
Beyond Toxics  
PO Box 1106  
Eugene OR 97440

Dear Ms. Arkin:

The written explanation of why your Q3 2018 Lobbyist expenditure report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, January 25, 2019, at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

The due date for the \$30 penalty will be extended to coincide with the January 25<sup>th</sup> meeting date. You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



# Lobbyist Activity

## Q3 2018

Lobbyist Code: 197  
User Name: Lisa Arkin  
Email: larkin@beyondtoxics.org

Lisa Arkin  
P.O. Box 1106  
Eugene, OR 97440-\_\_\_\_\_

Q3 2018 Filing: 10/18/2018  
Q3 2018 Expended: \$0.00  
Q3 2018 Penalty: \$30.00

### Activity Log - Q3 2018 to Date

07/08/18 05:35:20.417 - User Successfully Authenticated -  
07/08/18 05:36:08.810 - Lobbyist Report Submitted - Lobbyist Report Submitted for Q2 2018  
10/16/18 01:30:06.700 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018 Q3  
10/17/18 01:30:06.893 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018 Q3  
10/18/18 01:30:07.073 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018 Q3  
10/18/18 11:47:01.763 - Lobbyist Report Submitted - Lobbyist Report Submitted for Q3 2018  
01/08/19 12:35:06.480 - User Successfully Authenticated -  
01/08/19 01:06:10.817 - Lobbyist Report Submitted - Lobbyist Report Submitted for Q4 2018

PAST VIOLATIONS: NONE

RECOMMENDATION:

*Larkin JED*  
*(10)*

**BAIER Kathy \* OGEC**

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**From:** Lisa Arkin <larkin@beyondtoxics.org>  
**Sent:** Wednesday, January 09, 2019 3:40 PM  
**To:** OGEC Mail \* OGEC  
**Subject:** Fwd: Receipt of Late Quarterly Report

Dear Chair Kean and members of the OGEC Commission,

This email is part of my response to your inquiry about a Late lobbying Expenditure Report for the 2018 3rd Quarter.

In December 2018, I submitted a written explanation of the reasons I was unable to submit a 3rd Quarter Lobbying Expenditure Report. I received a Letter of Education from the Commission in response (dated 12/14/2018).

However, when I logged into my account on the OGEC website, I saw a \$30 pending fine. I spoke to the OGEC staff person on January 7, who advised me to resubmit my explanation to the Commission because I wasn't aware that the same explanation for a late Employer report submission also needed to be submitted separately related to my role as a Client lobbyist.

Please file this communication under my Client Lobbyist account and allow me to restate my reasons for the late 3rd Quarter Lobbying Expenditure Reports.

I was admitted to McKenzie Willamette Hospital in early October 2018 for emergency abdominal surgery which resulted in serious complications. I was in the hospital for weeks during October and November. Following my hospital stays, I had an arduous recovery period. I didn't return to work until mid-December.

I was physically unable to complete many work-related duties during that period, including filing my Employer and Client Lobbying Expenditure Reports. I request your understanding. May the \$30 fine please be waived and would the Commission consider issuing a Letter of Education for the Client account as you did for the Employer account?

Sincerely, Lisa

*Lisa Arkin, Executive Director*

**Beyond Toxics**

**541-465-8860**

**120 Shelton McMurphey Blvd. Suite 280, Eugene, OR 97401**

**107 West 1st Street, Phoenix, OR 97535**

[larkin@beyondtoxics.org](mailto:larkin@beyondtoxics.org)



## BAIER Kathy \* OGEC

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**From:** Adam Pener <adam@changethepallet.org>  
**Sent:** Thursday, December 20, 2018 11:50 AM  
**To:** BAIER Kathy \* OGEC  
**Subject:** Late Fee Waiver Request

**Importance:** High

Dear Commissioners –

In 2016, our nonprofit hired a lobbying firm in conjunction with a bill we were sponsoring. It was our one and only experience with hiring a lobbying firm.

All filings were correct, but I'm informed that we inadvertently filed the Q1 2016 expenditure report two months late.

I'm also informed that due to the tardy filing, we were fined \$100.

Our organization was formed in December 2015 and I was new to the nonprofit world at the time. The late filing was inadvertent and, when I became aware of missing the deadline, we immediately took steps to ensure that the Commission had all relevant information.

Accordingly, I'd appreciate your kind consideration of my request to waive the \$100 fine.

Thank you, Adam

Adam M. Pener, Executive Director  
Change the Pallet | Change the Planet  
Direct: 720.202.2206 | [www.changethepallet.org](http://www.changethepallet.org)

*Win or lose, I admire those who fight the good fight*

- George R.R. Martin







# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

January 10, 2019

Robert Mushen, MD  
PO Box 1370  
Cannon Beach OR 97110

Re: 2017 SEI late filing

Dear Dr. Mushen:

The written explanation of why your 2017 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, January 25, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



# SEI Activity

2017

SEI Code: 785  
User Name: Mushen  
Email: rlmushen@aol.com

2017 Filing: 5/18/2017  
2017 Penalty: \$90.00

Robert Mushen  
10 Pier 1, Suite 308  
Astoria, OR 97103

## 2017 Offices Held


PORT OF ASTORIA (State), COMMISSION - Appointed 06/03/14

## Activity Log - 2017 to Date

05/05/17 12:25:58.673 - User Profile Updated - The user's main profile was updated.  
05/05/17 12:26:07.173 - User Profile Updated - User profile updated for Robert Mushen  
05/07/17 01:30:35.240 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/09/17 01:30:12.213 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/11/17 01:30:12.697 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/12/17 02:20:00.870 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/12/17 02:56:16.017 - User Profile Updated - The user's main profile was updated.  
05/12/17 02:56:26.057 - User Profile Updated - User profile updated for Robert Mushen  
05/14/17 01:30:10.367 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/15/17 01:30:13.630 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/16/17 01:30:11.577 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/17/17 01:30:11.820 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/18/17 01:30:11.937 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2017  
05/18/17 08:59:14.647 - User Successfully Authenticated -  
05/18/17 08:59:23.233 - User Successfully Authenticated -  
05/18/17 09:19:22.757 - Late SEI Report Filed - SEI Report Filed Late for year 2017  
05/18/17 09:19:27.150 - Late SEI Report Filed - SEI Report Filed Late for year 2017  
05/18/17 09:24:11.787 - Date Appointed Updated - Date Appointed Updated  
05/18/17 10:49:35.037 - Admin User Reset Initiated - An admin user reset was initiated.  
05/18/17 10:50:29.217 - Admin User Password Reset Completed - A user reset their password using an admin reset.  
05/18/17 10:50:45.720 - User Successfully Authenticated -  
05/18/17 10:51:06.167 - User Profile Updated - User profile updated for Robert Mushen  
05/18/17 10:51:17.660 - User Profile Updated - The user's main profile was updated.  
05/18/17 10:51:36.683 - Admin User Reset Initiated - An admin user reset was initiated.  
08/23/17 03:47:13.917 - Seat Vacated - Seat Vacated

PAST VIOLATIONS: NONE

RECOMMENDATION:

*Letta Red* 



# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

December 20, 2018

Forward Edge Initiative  
Attn: Adam Pener  
PO Box 204  
Portland OR 97209

Dear Mr. Pener:

The written explanation of why the Q1, 2016 Client expenditure report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, January 25, 2019, at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

The due date for Q1, 2016 (\$100) penalty will be extended to coincide with the January 25<sup>th</sup> meeting date. You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



# Client/Employer Activity

## Q1 2016

Client Code: 1015  
User Name: forwardedge  
Email: adam@changethepallet.org

Q1 2016 Filing: 6/15/2016  
Q1 2016 Expended: \$10,000.00  
Q1 2016 Penalty: \$100.00

Forward Edge Initiative  
Attn: Adam Pener  
1720 NW Lovejoy  
Portland, OR 97209

### Activity Log - Q1 2016 to Date

01/26/16 08:49:21.970 - User Profile Created - User profile created for Adam Pener  
01/26/16 08:49:22.143 - User Profile Created - A new user profile was created.  
01/26/16 08:49:22.160 - Client Profile Created - The client profile was created.  
06/14/16 01:30:26.950 - Automated Late Fee Applied - Late fee of amount \$50.00 applied for reporting requirement 2016 Q2  
06/15/16 01:30:27.217 - Automated Late Fee Applied - Late fee of amount \$50.00 applied for reporting requirement 2016 Q2  
06/15/16 04:39:59.297 - User Successfully Authenticated -  
06/15/16 04:55:51.603 - Client Report Submitted - Client Report Submitted

PAST VIOLATIONS: NONE

RECOMMENDATION:

*Letter to Ed*  


RECEIVED

JAN 10 2019

OREGON GOVERNMENT  
ETHICS COMMISSION

PO Box 1370  
Cannon Beach, OR 97110  
[rlmushen@aol.com](mailto:rlmushen@aol.com)

Kathy Baier  
Oregon Govt Ethics Commission  
[kathyBAIER@oregon.gov](mailto:kathyBAIER@oregon.gov)

Dear Ms Baier:

I understand that I filed a late report for your organization in 2017 and that I owe a fine of \$90 because of the late filing.

I would like to explain the circumstances behind the late filing. I was in and out of the hospital several times during the spring of 2017, related to a stroke I had at a meeting of the Port of Astoria Board of Commissioners on April 5, 2017. I am glad to say I am completely recovered from that stroke and that I have no residual impairment as a result. However, a number of details escaped my attention during that time and one of them was the OEC filing. Once I had recovered sufficiently to deal with the filing, it was submitted late.

I feel I have a legitimate medical excuse for the late filing and I would appreciate anything you can do to get the situation solved and the fine abated. Thank you for calling my attention to this matter.

Sincerely,

s/

Robert Mushen, MD  
Former Port Commissioner  
Port of Astoria, OR



**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )

CARY CLARKE )

**STIPULATED FINAL ORDER**

**CASE NO. 16-112XMT**

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Cary Clarke.
  
2. JURISDICTION: At all material times, Mr. Clarke was a member of the City of Sumpter City Council (Council). As the governing body, the members of the Council are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 to ORS 192.685.
  
3. STIPULATED FACTS:
  - A. Mr. Clarke participated in an executive session held by the Council on 1/28/16. The executive session, according to the official notice, was held under ORS 192.660(2)(h), to consult with legal counsel. A review of the audio recording of the executive session revealed that the session was an interview of attorney Dan Van Thiel for the city attorney position.

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- B. ORS 192.660(2)(h) allows the governing body of a public body to convene an executive session during a regular, special or emergency meeting to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed, after the presiding officer has identified the statutory authorization or lawful basis for holding the executive session [ORS 192.660(1)]. The legal counsel with whom the governing body is consulting must participate in an executive session convened under ORS 192.660(2)(h).
  
- C. An executive session may be held by the governing body of a public body to consider the employment of an individual agent under ORS 192.660(2)(a), but this was not the statute provided in the official notice of the executive session.
  
- D. Mr. Clarke's participation in the 1/28/16 executive session violated the executive session provisions of Oregon Public Meetings law because topics not authorized by ORS 192.660(2)(h) were discussed.
  
- E. ORS 244.350(2)(a) authorizes the Commission to assess civil penalties of up to \$1,000 for each of the aforementioned violations of ORS 192.660(2).
  
- F. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 192.660(2).

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4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 9/23/16, the Commission moved to find a violation after considering the information developed in the investigation phase.
- B. Mr. Clarke will receive a letter of education, as authorized by ORS 244.350, to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Cary Clarke within the scope of the above-referenced proceedings.
- D. Cary Clarke will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

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By signing this agreement, Cary Clarke agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Cary Clarke agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Cary Clarke

3/10/18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
~~Alison R. Kean, Chair~~  
Oregon Government Ethics Commission  
RICHARD BURKE, CHAIR

\_\_\_\_\_  
Date

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of

Patrick Christopher Perry

STIPULATED FINAL ORDER

CASE NO. 16-133EMS

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Patrick Christopher Perry (Chris Perry).
2. JURISDICTION: At all material times, Chris Perry was the Wheeler County Judge and chairperson of the Wheeler County Court. Chris Perry was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.
3. STIPULATED FACTS:
  - A. In October 2014, Wheeler County purchased road paving supplies from Tidewater Contractors, Inc. (Tidewater). The decision to purchase these supplies was made by the County Road Department; however, the check was signed by Chris Perry, in his official position, and by the County Treasurer. At the time Chris Perry signed this check, his brother, who is a relative as defined in ORS 244.020(16)(a), was employed at Tidewater. Chris Perry did not disclose a conflict of interest prior to taking this action.
  - B. In August 2015, using his official position and without the approval of the governing body, Chris Perry instituted an hourly wage increase for Frank Jaeger. Although he had indicated he would cover that wage increase by reducing his own salary, Chris Perry only directed Frank Jaeger to increase

his own hourly wage and never directed him to reduce Chris Perry's salary. Only after the Commission initiated this investigation did Chris Perry submit a check to Wheeler County for \$4,145.25, the amount of money that should have been deducted from Chris Perry's salary to cover the increase to Frank Jaeger's hourly wage. But for the official position he held, Chris Perry would not have been able to institute Frank Jaeger's raise while avoiding the financial detriment of his own salary reduction. Chris Perry did not disclose a conflict of interest prior to taking this action.

- C. On May 19, 2016, Chris Perry participated in the Wheeler County Budget Meeting and then voted to approve the budget, including monies for economic development. At the time Chris Perry took these actions, Patti Jaeger, the director of economic development, was residing with Chris Perry, and was a member of his household, as defined in ORS 244.020(11). When he voted to approve the budget for economic development, Chris Perry did not disclose a conflict of interest and did not disclose that the director of economic development was a member of his household.
- D. ORS 244.040(1) prohibits any public official from using their official position or office to obtain financial gain or avoidance of financial detriment, other than official salary, honoraria or reimbursement of expenses, for the public official, a relative or a member of the household of the public official, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office. This prohibition applies even when a conflict of interest has been announced or disclosed. [ORS 244.040(7)].
- E. ORS 244.120(2) requires elected public officials to disclose conflicts of interest prior to taking official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which the public official or a relative are associated.

- F. Each of the actions described in paragraphs 3(A) and 3(B), above, constitute distinct violations of ORS 244.040(1).
- G. Each of the actions described in paragraphs 3(A), 3(B) and 3(C), above, constitute distinct violations of ORS 244.120(2).
- H. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$5,000 per violation as a result of these violations.
- I. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find two violations of ORS 244.040(1) and three violations of ORS 244.120(2).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On August 12, 2016, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Chris Perry has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Chris Perry will pay a civil penalty, as authorized by ORS 244.350, in the amount of \$100.00 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Chris Perry within the scope of the above-referenced proceedings.
- D. Chris Perry will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

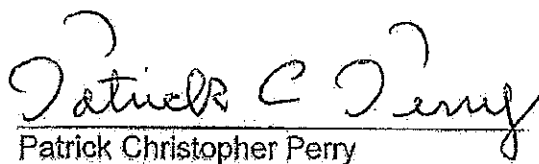
6. EFFECT:

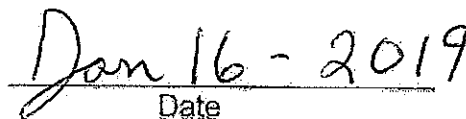
This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Chris Perry agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Chris Perry agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
Patrick Christopher Perry

  
Date

\_\_\_\_\_  
Richard Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date

**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )

Medessa Cheney )

**STIPULATED FINAL ORDER**

**CASE NO. 18-133XHW**

- 
1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Medessa Cheney.
  
  2. JURISDICTION: At all material times, Medessa Cheney was a member of the Board of Directors for the Portland Village School. As the governing body of a public body, the members of the Board of Directors are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  
  3. STIPULATED FACTS:
    - A. Medessa Cheney participated in an executive session held by the Portland Village School Board of Directors on 5/24/18. The statutory authorizations cited for the executive session were ORS 192.660(2)(a) – to consider the employment of an officer, employee, or agent, and ORS 192.660(2)(b) – to discipline, dismiss, or hear complaints about an officer, employee, or agent.
  
    - B. In addition to the topics cited above, the Board discussed several other topics in the 5/24/18 executive session, including: hiring an outside consultant, requiring an external equity assessment audit, and performing administrative and policy reviews. These topics are not authorized to be discussed in executive session under ORS 192.660(2). The Board reached

decisions on these topics during the executive session, in violation of ORS 192.660(6), which prohibits making a final decision in executive session.

- C. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660.
- D. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violation of ORS 192.660(2) and (6).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/10/18, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Medessa Cheney has indicated she wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Medessa Cheney will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Medessa Cheney within the scope of the above-referenced proceedings.
- D. Medessa Cheney will initiate no claims, litigation or other action against the Commission as a result of these proceedings.



5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

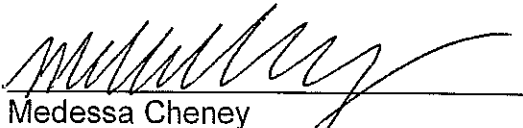
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Medessa Cheney agrees to waive her right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Medessa Cheney agrees to waive her right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Medessa Cheney

12-28-18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date





discussed in executive session under ORS 192.660(2). The Board reached decisions on these topics during the executive session, in violation of ORS 192.660(6), which prohibits making a final decision in executive session.

- C. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660.
- D. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 192.660(2) and (6).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/10/18, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Steve Dyer has indicated he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Steve Dyer will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Steve Dyer within the scope of the above-referenced proceedings.
- D. Steve Dyer will initiate no claims, litigation or other action against the

Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

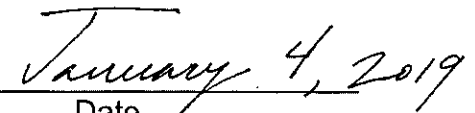
This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Steve Dyer agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Steve Dyer agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Steve Dyer

  
\_\_\_\_\_  
Date

Richard Burke, Chairperson  
Oregon Government Ethics Commission

Date

**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )

Lauren Rook )

**STIPULATED FINAL ORDER**

**CASE NO. 18-135XDG**

- 
1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Lauren Rook.
  
  2. JURISDICTION: At all material times, Lauren Rook was a member of the Board of Directors for the Portland Village School. As the governing body of a public body, the members of the Board of Directors are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  
  3. STIPULATED FACTS:
    - A. Lauren Rook participated in an executive session held by the Portland Village School Board of Directors on 5/24/18. The statutory authorizations cited for the executive session were ORS 192.660(2)(a) – to consider the employment of an officer, employee, or agent, and ORS 192.660(2)(b) – to discipline, dismiss, or hear complaints about an officer, employee, or agent.
  
    - B. In addition to the topics cited above, the Board discussed several other topics in the 5/24/18 executive session, including: hiring an outside consultant, requiring an external equity assessment audit, and performing administrative and policy reviews. These topics are not authorized to be

discussed in executive session under ORS 192.660(2). The Board reached decisions on these topics during the executive session, in violation of ORS 192.660(6), which prohibits making a final decision in executive session.

- C. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660.
- D. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 192.660(2) and (6).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/10/18, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Lauren Rook has indicated she wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Lauren Rook will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Lauren Rook within the scope of the above-referenced proceedings.
- D. Lauren Rook will initiate no claims, litigation or other action against the



Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

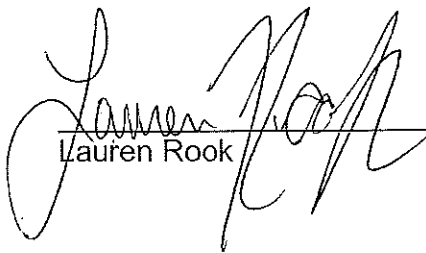
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Lauren Rook agrees to waive her right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Lauren Rook agrees to waive her right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Lauren Rook

01/05/2019  
\_\_\_\_\_  
Date

Richard Burke, Chairperson  
Oregon Government Ethics Commission

Date

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of )

Dennis Terzian )

) STIPULATED FINAL ORDER

) CASE NO. 18-137XDG

- \_\_\_\_\_ )
1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Dennis Terzian.
  2. JURISDICTION: At all material times, Dennis Terzian was a member of the Board of Directors for the Portland Village School. As the governing body of a public body, the members of the Board of Directors are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  3. STIPULATED FACTS:
    - A. Dennis Terzian participated in an executive session held by the Portland Village School Board of Directors on 5/24/18. The statutory authorizations cited for the executive session were ORS 192.660(2)(a) – to consider the employment of an officer, employee, or agent, and ORS 192.660(2)(b) – to discipline, dismiss, or hear complaints about an officer, employee, or agent.
    - B. In addition to the topics cited above, the Board discussed several other topics in the 5/24/18 executive session, including: hiring an outside consultant, requiring an external equity assessment audit, and performing administrative and policy reviews. These topics are not authorized to be discussed in executive session under ORS 192.660(2). The Board reached

decisions on these topics during the executive session, in violation of ORS 192.660(6), which prohibits making a final decision in executive session.

- C. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660.
- D. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 192.660(2) and (6).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/10/18, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Dennis Terzian has indicated he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Dennis Terzian will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Dennis Terzian within the scope of the above-referenced proceedings.
- D. Dennis Terzian will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

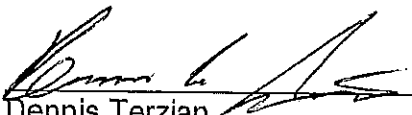
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Dennis Terzian agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Dennis Terzian agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
Dennis Terzian

1/7/19  
Date

\_\_\_\_\_  
Richard Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date



**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )  
 )  
 )  
 Dorine Nafziger ) **STIPULATED FINAL ORDER**  
 )  
 ) **CASE NO. 18-139XDG**  
 )  
 )  
 \_\_\_\_\_ )

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Dorine Nafziger.
  
2. JURISDICTION: At all material times, Dorine Nafziger was a member of the Board of Directors for the Portland Village School. As the governing body of a public body, the members of the Board of Directors are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  
3. STIPULATED FACTS:
  - A. Dorine Nafziger participated in an executive session held by the Portland Village School Board of Directors on 5/24/18. The statutory authorizations cited for the executive session were ORS 192.660(2)(a) – to consider the employment of an officer, employee, or agent, and ORS 192.660(2)(b) – to discipline, dismiss, or hear complaints about an officer, employee, or agent.
  
  - B. In addition to the topics cited above, the Board discussed several other topics in the 5/24/18 executive session, including: hiring an outside consultant, requiring an external equity assessment audit, and performing administrative and policy reviews. These topics are not authorized to be discussed in executive session under ORS 192.660(2). The Board reached

decisions on these topics during the executive session, in violation of ORS 192.660(6), which prohibits making a final decision in executive session.

- C. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660.
- D. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 192.660(2) and (6).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/10/18, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Dorine Nafziger has indicated she wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Dorine Nafziger will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Dorine Nafziger within the scope of the above-referenced proceedings.
- D. Dorine Nafziger will initiate no claims, litigation or other action against the Commission as a result of these proceedings.



5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.


6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Dorine Nafziger agrees to waive her right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Dorine Nafziger agrees to waive her right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Dorine Nafziger

1/2/19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date



**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )  
 )  
 )  
 Russ Axelrod )  
 )  
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 )  
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 \_\_\_\_\_ )

**STIPULATED FINAL ORDER**

**CASE NO. 18-239XDG**

1. **PURPOSE:** The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Russ Axelrod.
  
2. **JURISDICTION:** At all material times, Russ Axelrod was the mayor for the City of West Linn. Russ Axelrod was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.
  
3. **STIPULATED FACTS:**
  - A. Chapter III, Section 7, of West Linn’s City Charter indicates that city council is composed of a mayor and four councilors. Chapter IV, Section 17, of West Linn’s City Charter specifies the “Mayor’s Functions at Council Meetings,” stating that the mayor shall preside over and have a vote on all questions before city council.
  
  - B. Mayor Russ Axelrod participated in an executive session held by the city council on October 15, 2018. The agenda shows that the executive session preceded an open public meeting and listed the reason for the executive session as permissible per ORS 192.660(2)(i).
  
  - C. ORS 192.660(2) lists specific reasons why a governing body may convene

an executive session. ORS 192.660(2)(i) permits a governing body to convene an executive session to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. The governing body must provide sufficient advance notice of the purpose of the executive session to the affected person and of his or her right to decide whether to require that the performance evaluation be conducted in open session.

- D. During the executive session on October 15, 2018, Mayor Axelrod and members of city council conducted an informal review of city attorney Tim Ramis, based on preliminary findings of Mr. Ramis' performance by the city manager. Mr. Ramis was not provided notice of the executive session in advance and was not provided an opportunity to request an open hearing.
- E. Tim Ramis, is an attorney of the law firm Jordan Ramis PC, who is contracted to serve as the City of West Linn's city attorney. Chapter V (entitled "Powers and Duties of Officers"), Section 23A, of West Linn's City Charter designates the city attorney as the "chief legal officer" of the city, making Mr. Ramis an "officer" of the city for the purpose of applying ORS 192.660(2)(i).
- F. The conduct in section (D) violated the executive session provisions of Oregon Public Meetings law because the governing body did not give notice of the executive session to Mr. Ramis in order to provide him an opportunity to request an open hearing.
- G. During the executive session on October 15, 2018, Mayor Axelrod and members of city council also discussed next steps for conducting a formal review and evaluation of the city attorney's services with Mr. Ramis

present.

- H. The conduct in section (G) violated the executive session provisions of Oregon Public Meetings law because such conduct is not the same as reviewing or evaluating an officer pursuant to (2)(i) and is not otherwise a legally permissible topic to discuss in executive session.
  
- I. Upon becoming aware of the ORS 192.660 violation, Mr. Axelrod and the members of council who were present took two remedial measures: (1) instructed the city manager to call the Oregon Government Ethics Commission to inform the agency of the matter and receive guidance and information about training opportunities; and (2) informed Mr. Ramis of the occurrence of the executive session and its nature.
  
- J. Mr. Axelrod provided the following additional information for the Commission to consider as mitigating factors: (1) he serves in his position as a volunteer; (2) the violation was unintentional resulting from a lack of knowledge of relevant law; (3) there was no personal financial interest; (4) the executive session was scheduled in reliance of City staff other than legal counsel; (5) Mr. Axelrod has been cooperative in resolving this complaint; (6) Mr. Axelrod has no previous enforcement history with the Oregon Government Ethics Commission; and (7) when informed about the executive session, Mr. Ramis indicated that he appreciated the council discussing preliminary performance matters in executive session and would not have requested an open hearing on such preliminary information if the City would have provided proper notice.
  
- K. ORS 244.350(2)(a) authorizes the Commission to assess civil penalties of up to \$1,000 for each violation of ORS 192.660 unless the violation occurred when the governing body was acting on the advice of the public body's legal counsel [ORS 244.350(2)(b)]. Mr. Axelrod was not acting on

the advice of the public body's legal counsel when the aforementioned violations of ORS 192.660 occurred.

- L. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find the actions in paragraphs D and G above occurred, which caused a violation of ORS 192.660.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On December 14, 2018, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of this matter. Russ Axelrod has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Russ Axelrod will receive a letter of education, as authorized by ORS 244.350(5), in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Russ Axelrod within the scope of the above-referenced proceedings.
- D. Russ Axelrod will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

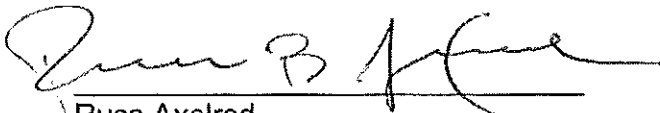
6. EFFECT:

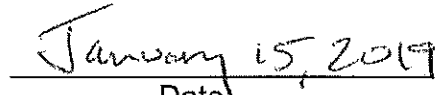
This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Russ Axelrod agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Russ Axelrod agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Russ Axelrod

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Alison Kean, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date





**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )  
 )  
 ) **STIPULATED FINAL ORDER**  
 Brenda Perry )  
 ) **CASE NO. 18-240XDG**  
 )  
 )  
 \_\_\_\_\_ )

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Brenda Perry.
  
2. JURISDICTION: At all material times, Brenda Perry was a city councilor for the City of West Linn. Brenda Perry was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.
  
3. STIPULATED FACTS:
  - A. Councilor Brenda Perry participated in an executive session held by the city council on October 15, 2018. The agenda shows that the executive session preceded an open public meeting and listed the reason for the executive session as permissible per ORS 192.660(2)(i).
  
  - B. ORS 192.660(2) lists specific reasons why a governing body may convene an executive session. ORS 192.660(2)(i) permits a governing body to convene an executive session to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. The governing body must provide sufficient advance notice of the purpose of the executive session to the affected person and of his or her

right to decide whether to require that the performance evaluation be conducted in open session.

- C. During the executive session on October 15, 2018, Ms. Perry, while participating as a member of city council, conducted an informal review of city attorney Tim Ramis, based on preliminary findings of Mr. Ramis' performance by the city manager. Mr. Ramis was not provided notice of the executive session in advance and was not provided an opportunity to request an open hearing.
- D. Tim Ramis, is an attorney of the law firm Jordan Ramis PC, who is contracted to serve as the City of West Linn's city attorney. Chapter V (entitled "Powers and Duties of Officers"), Section 23A, of West Linn's City Charter designates the city attorney as the "chief legal officer" of the city, making Mr. Ramis an "officer" of the city for the purpose of applying ORS 192.660(2)(i).
- E. The conduct in section (C) violated the executive session provisions of Oregon Public Meetings law because the governing body did not give notice of the executive session to Mr. Ramis in order to provide him an opportunity to request an open hearing.
- F. During the executive session on October 15, 2018, Ms. Perry also participated in city council discussions on next steps for conducting a formal review and evaluation of the city attorney's services with Mr. Ramis present.
- G. The conduct in section (F) violated the executive session provisions of Oregon Public Meetings law because such conduct is not the same as reviewing or evaluating an officer pursuant to (2)(i) and is not otherwise a legally permissible topic to discuss in executive session.

- H. Upon becoming aware of the ORS 192.660 violation, Ms. Perry and the members of council who were present took two remedial measures: (1) instructed the city manager to call the Oregon Government Ethics Commission to inform the agency of the matter and receive guidance and information about training opportunities; and (2) informed Mr. Ramis of the occurrence of the executive session and its nature.
- I. Ms. Perry provided the following additional information in request for mitigation: (1) she serves in her position as a volunteer; (2) the violation was unintentional resulting from a lack of knowledge of relevant law; (3) there was no personal financial interest; (4) the executive session was scheduled in reliance of City staff other than legal counsel; (5) Ms. Perry has been cooperative in resolving this complaint; and (6) Ms. Perry has no previous enforcement history with the Oregon Government Ethics Commission; and (7) when informed about the executive session, Mr. Ramis indicated that he appreciated the council discussing preliminary performance matters in executive session and would not have requested an open hearing on such preliminary information if the City would have provided proper notice.
- J. Brenda Perry's term as city councilor ended in January 2019 and she no longer holds the office.
- K. ORS 244.350(2)(a) authorizes the Commission to assess civil penalties of up to \$1,000 for each violation of ORS 192.660 unless the violation occurred when the governing body was acting on the advice of the public body's legal counsel [ORS 244.350(2)(b)]. Ms. Perry was not acting on the advice of the public body's legal counsel when the aforementioned violations of ORS 192.660 occurred.

- L. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find the actions in paragraphs D and G above occurred, which caused a violation of ORS 192.660.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On December 14, 2018, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of this matter. Brenda Perry has indicated that she wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Brenda Perry will receive a letter of education, as authorized by ORS 244.350(5), in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Brenda Perry within the scope of the above-referenced proceedings.
- D. Brenda Perry will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the

advice of counsel in comparing and reviewing this agreement.

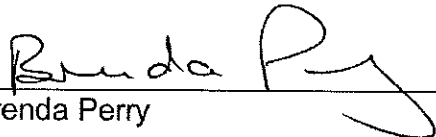
6. EFFECT:

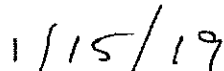
This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Brenda Perry agrees to waive her right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Brenda Perry agrees to waive her right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

  
\_\_\_\_\_  
Brenda Perry

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Alison Kean, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date



**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of

Bob Martin

\_\_\_\_\_

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)  
)  
)  
)  
)

**STIPULATED FINAL ORDER**

**CASE NO. 18-241XDG**

1. **PURPOSE:** The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Bob Martin.
  
2. **JURISDICTION:** At all material times, Bob Martin was a city councilor for the City of West Linn. Bob Martin was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.
  
3. **STIPULATED FACTS:**
  - A. Councilor Bob Martin participated in an executive session held by the city council on October 15, 2018. The agenda shows that the executive session preceded an open public meeting and listed the reason for the executive session as permissible per ORS 192.660(2)(i).
  
  - B. ORS 192.660(2) lists specific reasons why a governing body may convene an executive session. ORS 192.660(2)(i) permits a governing body to convene an executive session to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. The governing body must provide sufficient advance notice of the purpose of the executive session to the affected person and of his or her

right to decide whether to require that the performance evaluation be conducted in open session.

- C. During the executive session on October 15, 2018, Mr. Martin, while participating as a member of city council, conducted an informal review of city attorney Tim Ramis, based on preliminary findings of Mr. Ramis' performance by the city manager. Mr. Ramis was not provided notice of the executive session in advance and was not provided an opportunity to request an open hearing.
- D. Tim Ramis, is an attorney of the law firm Jordan Ramis PC, who is contracted to serve as the City of West Linn's city attorney. Chapter V (entitled "Powers and Duties of Officers"), Section 23A, of West Linn's City Charter designates the city attorney as the "chief legal officer" of the city, making Mr. Ramis an "officer" of the city for the purpose of applying ORS 192.660(2)(i).
- E. The conduct in section (C) violated the executive session provisions of Oregon Public Meetings law because the governing body did not give notice of the executive session to Mr. Ramis in order to provide him an opportunity to request an open hearing.
- F. During the executive session on October 15, 2018, Mr. Martin also participated in city council discussions on next steps for conducting a formal review and evaluation of the city attorney's services with Mr. Ramis present.
- G. The conduct in section (F) violated the executive session provisions of Oregon Public Meetings law because such conduct is not the same as reviewing or evaluating an officer pursuant to (2)(i) and is not otherwise a legally permissible topic to discuss in executive session.



- H. Upon becoming aware of the ORS 192.660 violation, Mr. Martin and the members of council who were present took two remedial measures: (1) instructed the city manager to call the Oregon Government Ethics Commission to inform the agency of the matter and receive guidance and information about training opportunities; and (2) informed Mr. Ramis of the occurrence of the executive session and its nature.
  
- I. Mr. Martin provided the following additional information in request for mitigation: (1) he serves in his position as a volunteer; (2) the violation was unintentional resulting from a lack of knowledge of relevant law; (3) there was no personal financial interest; (4) the executive session was scheduled in reliance of City staff other than legal counsel; (5) Mr. Martin has been cooperative in resolving this complaint; (6) Mr. Martin has no previous enforcement history with the Oregon Government Ethics Commission; and (7) when informed about the executive session, Mr. Ramis indicated that he appreciated the council discussing preliminary performance matters in executive session and would not have requested an open hearing on such preliminary information if the City would have provided proper notice.
  
- J. Bob Martin's term as city councilor ended in January 2019 and he no longer holds the office.
  
- K. ORS 244.350(2)(a) authorizes the Commission to assess civil penalties of up to \$1,000 for each violation of ORS 192.660 unless the violation occurred when the governing body was acting on the advice of the public body's legal counsel [ORS 244.350(2)(b)]. Mr. Martin was not acting on the advice of the public body's legal counsel when the aforementioned violations of ORS 192.660 occurred.

- L. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find the actions in paragraphs D and G above occurred, which caused a violation of ORS 192.660.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On December 14, 2018, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of this matter. Bob Martin has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. Bob Martin will receive a letter of education, as authorized by ORS 244.350(5), in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Bob Martin within the scope of the above-referenced proceedings.
- D. Bob Martin will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the

advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Bob Martin agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Bob Martin agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

Bob Martin  
Bob Martin

1/16/2019  
Date

\_\_\_\_\_  
Alison Kean, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date



# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 18-141XDG

**DATE:** January 16, 2019

**RESPONDENT:** VITTI, Ann Marie, Director of the Board, Portland Village School, a public charter school

**COMPLAINANT:** LAW, Erin

**RECOMMENDED ACTION:** Move to Dismiss the Complaint

1 **SYNOPSIS:** Ann Marie Vitti was a member of the Board of Directors (Board) for the  
2 Portland Village School during the period relevant to this case. The focus of this  
3 investigation was to determine if there is a preponderance of evidence to indicate that  
4 members of the Portland Village School Board of Directors, including Ms. Vitti, violated  
5 the executive session provisions of Oregon Public Meetings law by participating in the  
6 executive session held on 5/24/18 when topics were discussed that were not allowed and  
7 final decisions were made.

8  
9 Information reviewed in this investigation shows that, because Ms. Vitti was a teacher  
10 member of the Board, she did not attend the part of the executive session dealing with  
11 employee personnel issues, but she was brought into the executive session for the final  
12 15 minutes of the 2 hour session. During this final portion of the executive session Ms.  
13 Vitti and the other teacher member of the Board were brought into the executive session  
14 to review a consensus statement drafted by the other members of the Board which  
15 summarized the topics that were discussed in the earlier portion of the executive session  
16 and the decisions made during executive session concerning those topics. No evidence

1 is available that indicates that Ms. Vitti's attendance during the last 15 minutes of the  
2 executive session included any participation other than to listen to the summary of the  
3 impermissible topics that were discussed by the other members of the Board during the  
4 earlier portion of the session.

5  
6 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
7 issues addressed herein:

8 **192.660 Executive sessions permitted on certain matters; procedures; news media**  
9 **representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not prevent the  
10 governing body of a public body from holding executive session during a regular, special  
11 or emergency meeting, after the presiding officer has identified the authorization under  
12 ORS 192.610 to 192.690 for holding the executive session.

13 (2) The governing body of a public body may hold an executive session:

14 (a) To consider the employment of a public officer, employee, staff member or  
15 individual agent.

16 (b) To consider the dismissal or disciplining of, or to hear complaints or charges  
17 brought against, a public officer, employee, staff member or individual agent who  
18 does not request an open hearing. \*\*\*

19 (6) No executive session may be held for the purpose of taking any final action or  
20 making any final decision.

21 (7) The exception granted by subsection (2)(a) of this section does not apply to:

22 (a) The filling of a vacancy in an elective office.

23 (b) The filling of a vacancy on any public committee, commission or other advisory  
24 group.

25 (c) The consideration of general employment policies.

26 (d) The employment of the chief executive officer, other public officers, employees,  
27 and staff members of a public body unless:

28 (A) The public body has advertised the vacancy;

29 (B) The public body has adopted regular hiring procedures;

30 (C) In the case of an officer, the public has had the opportunity to comment

1 on the employment of the officer; and  
2 (D) In the case of a chief executive officer, the public body has adopted  
3 hiring standards, criteria and policy directives in meetings open to the public  
4 in which the public has had the opportunity to comment on the standards,  
5 criteria and policy directives. \*\*\*\*\*  
6

7 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
8 a preliminary review based on information in a signed complaint from Erin Law on 5/27/18  
9 (#PR1). Ms. Law alleged that Ann Marie Vitti, teacher and member of the Board of  
10 Directors for Portland Village School, may have violated executive session provisions of  
11 Oregon Public Meetings law when participating in an executive session on 5/24/18. The  
12 Commission found cause to investigate on 8/10/18 after considering the information  
13 developed in the preliminary review. The focus of the investigation was to determine if  
14 there is sufficient evidence to indicate that Ann Marie Vitti participated in an executive  
15 session when topics not authorized for executive sessions were discussed and final  
16 decisions were made. Ms. Vitti and Ms. Law have been notified of the Commission  
17 actions in this matter. Both have been invited to provide any information that would assist  
18 the Commission in conducting this investigation.  
19

20 The complaint alleged that the Board, including Respondent, and nine others, participated  
21 in an executive session on 5/24/18, and formulated a "consensus" statement during the  
22 executive session that outlined actions the Board had decided to take on several issues,  
23 including organizational matters, governance, and other topics which are outside those  
24 permitted to be discussed in executive session. (#PR1)  
25

26 The consensus statement is excerpted below: (#PR1)  
27

28 "Consensus Statement: Executive Session, 05/24/2018

29 Note: The consensus statement was co-created and written by all members of the  
30 board as part of the Executive Session..."

31 ///

1            "...We have found consensus around the following plan:

- 2            • We...will be performing an evaluation on the administration, board
- 3            governance, handbooks, policies, and overall well-being of the school..."
- 4            • We are ending [principal's] administrative leave and asking him to work off-
- 5            site in a transitional capacity...and helping the school initiate the process of
- 6            finding a new Executive Director.
- 7            • We are hiring a Crisis Management Consultant...
- 8            • The Board will prioritize thorough Board governance training for the 2018-
- 9            2019 members.
- 10           • We are requesting an external equity assessment audit....
- 11           • We are emphasizing equity training for teachers as part of their onboarding
- 12           prior to 2018-2019 school year an ongoing equity training....
- 13           • We are supporting our teachers in learning the culturally relevant PBIS and
- 14           compassionate communication models...
- 15           • We are continuing our restorative justice practice..." (#PR1)

16  
17           There were four votes made in the open session following the 5/24/18 executive session,  
18           three of which have to do with personnel issues. The records show that these votes were  
19           all "unanimous", however, there was no roll call vote to determine who participated in the  
20           "unanimous" votes listed below:

- 21
- 22           1) To uphold the recommendation of disciplinary action taken on a teacher from
- 23           the assistant principal.
- 24           2) To approve the decision of the Board chair to hire 2 temporary office staff.
- 25           3) To adopt a policy that all staff attend a racial equity training during the 2018-
- 26           2019 year.
- 27           4) To end [principal's] administrative leave... (#PR1)

28  
29           The 5/24/18 written minutes indicate that the PVS Board members held an executive  
30           session, citing two statutorily permissible topics for discussion: ORS 192.660(2)(a) to  
31           consider the employment of an employee or agent and ORS 192.660(2)(b) to discipline,



1 dismiss, or hear complaints about a current employee or agent. (#PR2)

2  
3 The minutes summarize 15 topics, or parts of topics, discussed during executive session.

4 The minutes relevant to this case are excerpted below:

5 "[f]ollowing creation of the consensus statement, Directors Harris and Vitti were  
6 brought into the meeting (they were excluded from the meeting as they are teacher  
7 representatives on the board) to listen to and contribute to the draft consensus  
8 statement." (#PR2)

9  
10 A recording of the executive session was provided by Steve Dyer, Board Vice-President.  
11 After listening to the audio file during investigation, it appears that near the end of the  
12 executive session, Ms. Vitti and Ms. Harris, the teacher members of the Board, joined the  
13 rest of the Board and were read the consensus statement, but there is no evidence that  
14 they otherwise participated in the prior executive session when discussions took place  
15 and decisions on these matters occurred. The audio recording of the executive session  
16 lasted 2 hours and 15 minutes. The audio file shows that the two teacher members of  
17 the Board joined the executive session at about the 2 hour mark and it does not appear  
18 that either teacher contributed to the already drafted consensus statement. (#PR2a)

19  
20 Steve Dyer described the teacher board members as non-voting members and stated  
21 that on 5/24/18, "they came in at the end to hear the response to our upset community.  
22 This was as we were ending exec session." (#PR4)

23  
24 Seven of the other Board members provided a joint response to the complaint, a relevant  
25 portion of which is excerpted below:

26  
27 "Directors Ellen Harris and Ann Marie Vitti, two teacher board representatives,  
28 were not included in much of the executive session and were only brought into the  
29 executive session to review the draft consensus statement for any inaccuracies or  
30 clarifications that may have been needed\* \* \* (#PR2b)

31 ///

1 Ms. Vitti and Ms. Harris responded to the complaint, as set out below: (#PR3)

2  
3 "We, Ellen Harris and Ann Marie Vitti, teacher representatives on the Portland  
4 Village School Board, have not violated the executive session provisions of ORS  
5 192.660. As teacher representatives on the board, we are not allowed to be  
6 present in executive sessions that discuss personnel issues. Therefore, we were  
7 not present at the session in question. The board met, and then prior to sharing  
8 their outcomes to the public, they reviewed the outcomes and statement with us."  
9

10 Ms. Vitti confirmed that she does not vote on personnel issues and is excluded from any  
11 executive session held to discuss personnel issues, as was the case on 5/24/18. She  
12 does not remember if she voted following the executive session on 5/24/18, but she does  
13 remember that she did not vote on any matter having to do with the principal. (#INV1)  
14

15 **CONCLUSIONS:** Ann Marie Vitti was a member of the Board of Directors (Board) of the  
16 Portland Village School, a public charter school, during the period relevant to this  
17 investigation. The Portland Village School (PVS) is a public body and the Board of  
18 Directors is its governing body. As a member of a governing body of a public body,  
19 Respondent is required to comply with the executive session provisions of Oregon Public  
20 Meetings law found in ORS 192.660.  
21

22 An executive session is a meeting or part of a meeting held by a governing body which is  
23 closed to certain persons for deliberation on certain matters. [ORS 192.610(2)].  
24 Contained in ORS 192.660 are specific provisions allowing members of the governing  
25 body of a public body to convene and participate in executive sessions to discuss limited  
26 and specific topics once certain conditions and prerequisites are met.  
27

28 The Board listed two statutorily authorized topics for its executive session held on 5/24/18:  
29 1) to consider the employment of a public officer, employee, staff member or individual  
30 agent per ORS 192.660(2)(a) and  
31 2) to consider the dismissal or disciplining of, or to hear complaints or charges brought

1 against, a public officer, employee, staff member or individual agent who does not  
2 request an open hearing, per ORS 192.660(2)(b)

3  
4 In addition to discussing these permissible topics during executive session, the Board  
5 also wrote a consensus statement during executive session which includes eight bulleted  
6 Board actions or decisions arrived at in executive session. Most of the issues contained  
7 in the consensus statement are policy and organizational topics that are not permissible  
8 executive session topics under ORS 192.660.

9  
10 Information available indicates that Ms. Vitti, as a teacher representative on the Board,  
11 did not participate in executive sessions held to discuss "personnel matters" and therefore  
12 the teacher representatives on the Board were excluded from the 5/24/18 executive  
13 session. Ms. Vitti stated that the "board met, and then prior to sharing their outcomes to  
14 the public, they reviewed the outcomes and statement with us [she and the other teacher  
15 on the Board]." The minutes of the meeting show that Ms. Vitti and her colleague on the  
16 Board were brought into the executive session "to listen to and contribute to the draft  
17 consensus statement." The response from seven board members to the complaint  
18 describe the teacher board members' participation in the executive session as being "only  
19 brought into the executive session to review the draft consensus statement for any  
20 inaccuracies or clarifications that may have been needed."

21  
22 A review of the audio file indicates that Ann Marie Vitti and the other teacher member of  
23 the Board did not attend the executive session until about the last 15 minutes of the  
24 session, after the consensus statement had been drafted and the decisions concerning  
25 these impermissible topics had been reached. Also, the information indicates that Ms.  
26 Vitti and the other teacher member of the Board may have commented on the information  
27 in the consensus statement, but that their comments did not alter or amend the already  
28 drafted consensus statement.

29  
30 In this case, Ms. Vitti was excluded from the substance of the discussions and  
31 recommendations that took place in the executive session held on 5/24/18. It is evident

1 from the information available, that she and the other teacher member of the governing  
2 body were physically excluded from the executive session wherein the other members of  
3 the governing body engaged in a discussion of topics not authorized for executive session  
4 and drafted the consensus statement that memorialized their decision on those topics.  
5 Ms. Vitti and the other teacher member of the Board were then brought into the executive  
6 session for the limited purpose of commenting on inaccuracies and providing clarification  
7 on the consensus statement drafted by the other Board members. In this unique instance,  
8 it is not clear that there is sufficient information to conclude that Ms. Vitti participated in  
9 an executive session violation.

10

11 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to  
12 dismiss the complaint. [Motion 7]

13

14 **ASSOCIATED DOCUMENTS:**

- 15 #PR1 Complaint received from Erin Law on 5/27/18.  
16 #PR2 Written minutes of the 5/24/18 executive session held by Portland Village  
17 School, received via 6/11/18 email from Steve Dyer, Board Vice-President.  
18 #PR2a Email to Commission staff from Steve Dyer, Board Vice-President, 6/18/18,  
19 with audio of executive session attached.  
20 #PR2b Joint letter in response to the complaint from seven board members, sent  
21 via email from Steve Dyer, 6/11/18.  
22 #PR3 Ellen Harris and Ann Marie Vitti, response to complaint, via 6/8/18 email.  
23 #PR4 6/25/18 email from Steve Dyer and 6/25/18 investigator memo summarizing  
24 contact with Steve Dyer.

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

31 ///

1 #INV1 Email from Ms. Vitti to investigator, dated 12/26/18 and email from Ms.  
2 Harris to investigator on 12/23/18.

PREPARED BY Diane Gould 1/16/19  
Diane Gould / Date  
Investigator

APPROVED BY Ronald A. Bersin 1/16/19  
Ronald A. Bersin / Date  
Executive Director

REVIEWED BY Amy E. Alpaugh 1/16/19  
Amy E. Alpaugh / Date  
Assistant Attorney General



# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 18-142XDG

**DATE:** January 16, 2019

**RESPONDENT:** HARRIS, Ellen, Director of the Board, Portland Village School, a public charter school

**COMPLAINANT:** LAW, Erin

**RECOMMENDED ACTION:** Move to Dismiss the Complaint

1 **SYNOPSIS:** Ellen Harris was a member of the Board of Directors (Board) for the Portland  
2 Village School during the period relevant to this case. The focus of this investigation was  
3 to determine if there is a preponderance of evidence to indicate that members of the  
4 Portland Village School Board of Directors, including Ms. Harris, violated the executive  
5 session provisions of Oregon Public Meetings law by participating in the executive  
6 session held on 5/24/18 when topics were discussed that were not allowed and final  
7 decisions were made.

8

9 Information reviewed in this investigation shows that, because Ms. Harris was a teacher  
10 member of the Board, she did not attend the part of the executive session dealing with  
11 employee personnel issues, but she was brought into the executive session for the final  
12 15 minutes of the 2 hour session. During this final portion of the executive session Ms.  
13 Harris and the other teacher member of the Board were brought into the executive session  
14 to review a consensus statement drafted by the other members of the Board which  
15 summarized the topics that were discussed in the earlier portion of the executive session  
16 and the decisions made during executive session concerning those topics. No evidence

1 is available that indicates that Ms. Harris' attendance during the last 15 minutes of the  
2 executive session included any participation other than to listen to the summary of the  
3 impermissible topics that were discussed by the other members of the Board during the  
4 earlier portion of the session.

5  
6 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
7 issues addressed herein:

8 **192.660 Executive sessions permitted on certain matters; procedures; news media**  
9 **representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not prevent the  
10 governing body of a public body from holding executive session during a regular, special  
11 or emergency meeting, after the presiding officer has identified the authorization under  
12 ORS 192.610 to 192.690 for holding the executive session.

13 (2) The governing body of a public body may hold an executive session:

14 (a) To consider the employment of a public officer, employee, staff member or  
15 individual agent.

16 (b) To consider the dismissal or disciplining of, or to hear complaints or charges  
17 brought against, a public officer, employee, staff member or individual agent who  
18 does not request an open hearing. \*\*\*

19 (6) No executive session may be held for the purpose of taking any final action or  
20 making any final decision.

21 (7) The exception granted by subsection (2)(a) of this section does not apply to:

22 (a) The filling of a vacancy in an elective office.

23 (b) The filling of a vacancy on any public committee, commission or other advisory  
24 group.

25 (c) The consideration of general employment policies.

26 (d) The employment of the chief executive officer, other public officers, employees,  
27 and staff members of a public body unless:

28 (A) The public body has advertised the vacancy;

29 (B) The public body has adopted regular hiring procedures;

30 (C) In the case of an officer, the public has had the opportunity to comment



1 on the employment of the officer; and  
2 (D) In the case of a chief executive officer, the public body has adopted  
3 hiring standards, criteria and policy directives in meetings open to the public  
4 in which the public has had the opportunity to comment on the standards,  
5 criteria and policy directives. \*\*\*\*\*  
6

7 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
8 a preliminary review based on information in a signed complaint from Erin Law on 5/27/18  
9 (#PR1). Ms. Law alleged that Ellen Harris, teacher and member of the Board of Directors  
10 for Portland Village School, may have violated executive session provisions of Oregon  
11 Public Meetings law when participating in an executive session on 5/24/18. The  
12 Commission found cause to investigate on 8/10/18 after considering the information  
13 developed in the preliminary review. The focus of the investigation was to determine if  
14 there is sufficient evidence to indicate that Ellen Harris participated in an executive  
15 session when topics not authorized for executive sessions were discussed and final  
16 decisions were made. Ms. Harris and Ms. Law have been notified of the Commission  
17 actions in this matter. Both have been invited to provide any information that would assist  
18 the Commission in conducting this investigation.  
19

20 The complaint alleged that the Board, including Respondent, and nine others, participated  
21 in an executive session on 5/24/18, and formulated a "consensus" statement during the  
22 executive session that outlined actions the Board had decided to take on several issues,  
23 including organizational matters, governance, and other topics which are outside those  
24 permitted to be discussed in executive session. (#PR1)  
25

26 The consensus statement is excerpted below: (#PR1)  
27

28 "Consensus Statement: Executive Session, 05/24/2018

29 Note: The consensus statement was co-created and written by all members of the  
30 board as part of the Executive Session..."  
31

///

1        “...We have found consensus around the following plan:

- 2            • We...will be performing an evaluation on the administration, board
- 3            governance, handbooks, policies, and overall well-being of the school...”
- 4            • We are ending [principal's] administrative leave and asking him to work off-
- 5            site in a transitional capacity...and helping the school initiate the process of
- 6            finding a new Executive Director.
- 7            • We are hiring a Crisis Management Consultant...
- 8            • The Board will prioritize thorough Board governance training for the 2018-
- 9            2019 members.
- 10           • We are requesting an external equity assessment audit....
- 11           • We are emphasizing equity training for teachers as part of their onboarding
- 12           prior to 2018-2019 school year an ongoing equity training....
- 13           • We are supporting our teachers in learning the culturally relevant PBIS and
- 14           compassionate communication models...
- 15           • We are continuing our restorative justice practice...” (#PR1)

16  
17        There were four votes made in the open session following the 5/24/18 executive session,  
18        three of which have to do with personnel issues. The records show that these votes were  
19        all “unanimous”, however, there was no roll call vote to determine who participated in the  
20        “unanimous” votes listed below:

- 21  
22           1) To uphold the recommendation of disciplinary action taken on a teacher from
- 23           the assistant principal.
- 24           2) To approve the decision of the Board chair to hire 2 temporary office staff.
- 25           3) To adopt a policy that all staff attend a racial equity training during the 2018-
- 26           2019 year.
- 27           4) To end [principal's] administrative leave... (#PR1)

28  
29        The 5/24/18 written minutes indicate that the PVS Board members held an executive  
30        session, citing two statutorily permissible topics for discussion: ORS 192.660(2)(a) to  
31        consider the employment of an employee or agent and ORS 192.660(2)(b) to discipline,

1 dismiss, or hear complaints about a current employee or agent. (#PR2)

2

3 The minutes summarize 15 topics, or parts of topics, discussed during executive session.

4 The minutes relevant to this case are excerpted below:

5 "[f]ollowing creation of the consensus statement, Directors Harris and Vitti were  
6 brought into the meeting (they were excluded from the meeting as they are teacher  
7 representatives on the board) to listen to and contribute to the draft consensus  
8 statement." (#PR2)

9

10 A recording of the executive session was provided by Steve Dyer, Board Vice-President.  
11 After listening to the audio file during investigation, it appears that near the end of the  
12 executive session, Ms. Harris and Ms. Vitti, the teacher members of the Board, joined the  
13 rest of the Board and were read the consensus statement, but there is no evidence that  
14 they otherwise participated in the prior executive session when discussions took place  
15 and decisions on these matters occurred. The audio recording of the executive session  
16 lasted 2 hours and 15 minutes. The audio file shows that the two teacher members of  
17 the Board joined the executive session at about the 2 hour mark and it does not appear  
18 that either teacher contributed to the already drafted consensus statement. (#PR2a)

19

20 Steve Dyer described the teacher board members as non-voting members and stated  
21 that on 5/24/18, "they came in at the end to hear the response to our upset community.  
22 This was as we were ending exec session." (#PR4)

23

24 Seven of the other Board members provided a joint response to the complaint, a relevant  
25 portion of which is excerpted below:

26

27 "Directors Ellen Harris and Ann Marie Vitti, two teacher board representatives,  
28 were not included in much of the executive session and were only brought into the  
29 executive session to review the draft consensus statement for any inaccuracies or  
30 clarifications that may have been needed\* \* \* (#PR2b)

31 ///

1 Ms. Harris and Ms. Vitti responded to the complaint, as set out below: (#PR3)

2  
3 "We, Ellen Harris and Ann Marie Vitti, teacher representatives on the Portland  
4 Village School Board, have not violated the executive session provisions of ORS  
5 192.660. As teacher representatives on the board, we are not allowed to be  
6 present in executive sessions that discuss personnel issues. Therefore, we were  
7 not present at the session in question. The board met, and then prior to sharing  
8 their outcomes to the public, they reviewed the outcomes and statement with us."

9  
10 Ms. Harris confirmed that she did not participate in executive sessions concerning  
11 personnel issues and she does not vote on any personnel issues. (#INV1)

12  
13 **CONCLUSIONS:** Ellen Harris was a member of the Board of Directors (Board) of the  
14 Portland Village School, a public charter school, during the period relevant to this  
15 investigation. The Portland Village School (PVS) is a public body and the Board of  
16 Directors is its governing body. As a member of a governing body of a public body,  
17 Respondent is required to comply with the executive session provisions of Oregon Public  
18 Meetings law found in ORS 192.660.

19  
20 An executive session is a meeting or part of a meeting held by a governing body which is  
21 closed to certain persons for deliberation on certain matters. [ORS 192.610(2)].  
22 Contained in ORS 192.660 are specific provisions allowing members of the governing  
23 body of a public body to convene and participate in executive sessions to discuss limited  
24 and specific topics once certain conditions and prerequisites are met.

25  
26 The Board listed two statutorily authorized topics for its executive session held on 5/24/18:

- 27 1) to consider the employment of a public officer, employee, staff member or individual  
28 agent per ORS 192.660(2)(a) and  
29 2) to consider the dismissal or disciplining of, or to hear complaints or charges brought  
30 against, a public officer, employee, staff member or individual agent who does not  
31 request an open hearing, per ORS 192.660(2)(b)

1 In addition to discussing these permissible topics during executive session, the Board  
2 also wrote a consensus statement during executive session which includes eight bulleted  
3 Board actions or decisions arrived at in executive session. Most of the issues contained  
4 in the consensus statement are policy and organizational topics that are not permissible  
5 executive session topics under ORS 192.660.

6  
7 Information available indicates that Ms. Harris, as a teacher representative on the Board,  
8 did not participate in executive sessions held to discuss "personnel matters" and therefore  
9 the teacher representatives on the Board were excluded from the 5/24/18 executive  
10 session. Ms. Harris stated that the "board met, and then prior to sharing their outcomes  
11 to the public, they reviewed the outcomes and statement with us [she and the other  
12 teacher on the Board]." The minutes of the meeting show that Ms. Harris and her  
13 colleague on the Board were brought into the executive session "to listen to and contribute  
14 to the draft consensus statement." The response from seven board members to the  
15 complaint describe the teacher board members' participation in the executive session as  
16 being "only brought into the executive session to review the draft consensus statement  
17 for any inaccuracies or clarifications that may have been needed."

18  
19 A review of the audio file indicates that Ellen Harris and the other teacher member of the  
20 Board did not attend the executive session until about the last 15 minutes of the session,  
21 after the consensus statement had been drafted and the decisions concerning these  
22 impermissible topics had been reached. Also, the information indicates that Ms. Harris  
23 and the other teacher member of the Board may have commented on the information in  
24 the consensus statement, but that their comments did not alter or amend the already  
25 drafted consensus statement.

26  
27 In this case, Ms. Harris was excluded from the substance of the discussions and  
28 recommendations that took place in the executive session held on 5/24/18. It is evident  
29 from the information available, that she and the other teacher member of the governing  
30 body were physically excluded from the executive session wherein the other members of  
31 the governing body engaged in a discussion of topics not authorized for executive session

1 and drafted the consensus statement that memorialized their decision on those topics.  
2 Ms. Harris and the other teacher member of the Board were then brought into the  
3 executive session for the limited purpose of commenting on inaccuracies and providing  
4 clarification on the consensus statement drafted by the other Board members. In this  
5 unique instance, it is not clear that there is sufficient information to conclude that Ms.  
6 Harris participated in an executive session violation.

7  
8 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to  
9 dismiss the complaint. [Motion 7]

10  
11 **ASSOCIATED DOCUMENTS:**

- 12 #PR1 Complaint received from Erin Law on 5/27/18.  
13 #PR2 Written minutes of the 5/24/18 executive session held by Portland Village  
14 School, received via 6/11/18 email from Steve Dyer, Board Vice-President.  
15 #PR2a Email to Commission staff from Steve Dyer, Board Vice-President, 6/18/18,  
16 with audio of executive session attached.  
17 #PR2b Joint letter in response to the complaint from seven board members, sent  
18 via email from Steve Dyer, 6/11/18.  
19 #PR3 Ellen Harris and Ellen Harris, response to complaint, via 6/8/18 email.  
20 #PR4 6/25/18 email from Steve Dyer and 6/25/18 investigator memo summarizing  
21 contact with Steve Dyer.

22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///  
29 ///  
30 ///  
31 ///

1 #INV1 Email from Ms. Harris to investigator, dated 12/23/18 and email from Ms.  
2 Vitti to investigator on 12/26/18.

PREPARED BY Diane Gould 1/16/19  
Diane Gould Date  
Investigator

APPROVED BY [Signature] 1/16/19  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY Amy E. Alpaugh 1/16/19  
Amy E. Alpaugh Date  
Assistant Attorney General

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**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-146XMT

**DATE:** January 16, 2019

**RESPONDENT:** ANDERSON, Dick, Councilor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Dick Anderson was a City Councilor for the City of Lincoln City and  
2 participated in an executive session relevant to this investigation. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to indicate that  
4 a representative of the news media was impermissibly excluded from attendance at the  
5 executive session, in violation of ORS 192.660(4).

6

7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 although he was known in advance to several City staff members who corresponded  
13 regularly with him as a representative of the publication. It appears that he and his  
14 publication were also known to several members of the governing body.

15

16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

1 in answer to questions from the Commission concerning its enforcement responsibilities  
2 under the statute. The Commission must follow the AG's Opinion in enforcing ORS  
3 192.660(4). According to the AG Opinion, a public body is allowed to have a media policy,  
4 but if enforcement of that policy's definitions or requirement of advance notice of  
5 attendance would result in the exclusion of a representative of the news media from an  
6 executive session, then the exclusion is a violation of ORS 192.660.

7  
8 There is sufficient evidence to indicate that Dick Anderson participated as a City Councilor  
9 when a representative of the news media was excluded from attendance at an executive  
10 session in violation of ORS 192.660(4).

11  
12 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
13 issues addressed herein:

14  
15 **192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to 192.690:

16 (1) "Decision" means any determination, action, vote or final disposition upon a motion,  
17 proposal, resolution, order, ordinance or measure on which a vote of a governing body is  
18 required, at any meeting at which a quorum is present.

19 (2) "Executive session" means any meeting or part of a meeting of a governing body  
20 which is closed to certain persons for deliberation on certain matters. \*\*\*

21 (5) "Meeting" means the convening of a governing body of a public body for which a  
22 quorum is required in order to make a decision or deliberate toward a decision on any  
23 matter.\*\*\*

24 **192.660 Executive sessions permitted on certain matters; procedures; news media**  
25 **representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not prevent the  
26 governing body of a public body from holding executive session during a regular, special  
27 or emergency meeting, after the presiding officer has identified the authorization under  
28 ORS 192.610 to 192.690 for holding the executive session. \*\*\*

29 (2) The governing body of a public body may hold an executive session: \*\*\*

30 (d) To conduct deliberations with persons designated by the governing body to

1 carry on labor negotiations.

2 (e) To conduct deliberations with persons designated by the governing body to  
3 negotiate real property transactions. \*\*\*

4 (h) To consult with counsel concerning the legal rights and duties of a public body  
5 with regard to current litigation or litigation likely to be filed. \*\*\*

6 (4) Representatives of the news media shall be allowed to attend executive sessions  
7 other than those held under subsection (2)(d) of this section relating to labor negotiations  
8 or executive session held pursuant to ORS 332.061(2) but the governing body may  
9 require that specified information be undisclosed.

10 (5) When a governing body convenes an executive session under subsection (2)(h) of  
11 this section relating to conferring with legal counsel on current litigation or litigation likely  
12 to be filed, the governing body shall bar any member of the news media from attending  
13 the executive session if the member of the news media is a party to the litigation or is an  
14 employee, agent or contractor of a news media organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or making  
16 any final decision. \*\*\*

17 (10) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not  
18 adopt rules that establish what entities are considered representatives of the news media  
19 that are entitled to attend executive sessions under subsection (4) of this section.

20  
21 **192.685 Additional enforcement of alleged violations of ORS 192.660.** (1)  
22 Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have  
23 been committed by public officials may be made to the Oregon Government Ethics  
24 Commission for review and investigation as provided by ORS 244.260 and for possible  
25 imposition of civil penalties as provided by ORS 244.350.

26  
27 **244.350 Civil penalties; letter of reprimand or explanation.** (1) The Oregon  
28 Government Ethics Commission may impose civil penalties not to exceed: \*\*\*

29  
30 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may

1 impose civil penalties not to exceed \$1,000 for violation of any provision of ORS  
2 192.660.

3 (2)(b) A civil penalty may not be imposed under this subsection if the violation  
4 occurred as a result of the governing body of the public body acting upon the  
5 advice of the public body's counsel.  
6

7 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
8 a preliminary review based on information in a signed written complaint from Justin  
9 Werner on 6/6/18 (#PR1). The complainant alleged that Dick Anderson, a member of the  
10 Lincoln City Council (Council), along with other Council members, may have violated  
11 executive session provisions of Oregon Public Meetings law when participating in an  
12 executive session on 6/4/18. The Commission found cause to investigate on 8/10/18  
13 after considering the information developed in the preliminary review. The focus of the  
14 investigation was to determine if there is sufficient evidence to indicate that Dick Anderson  
15 participated in the 6/4/18 executive session from which a representative of the news  
16 media was excluded in violation of ORS 192.660(4). Respondent and complainant have  
17 been notified of the Commission actions in this matter. Both have been invited to provide  
18 any information that would assist the Commission in conducting this investigation.  
19

#### 20 **COMPLAINANT ALLEGATIONS**

21 The complainant attended the Council's 6/4/18 public work session, which was followed  
22 by an executive session. The complainant alleges that the City Recorder, Cathy Steere,  
23 informed him that he could not sit in on the subsequent executive session because he did  
24 not apply beforehand. According to the complainant, he asked Ms. Steere if the Newport  
25 News Times or The News Guard had applied and was told by Ms. Steere that "they were  
26 considered institutional news media before the statute went into effect." The complainant  
27 alleges that Ms. Steere told him that he did not meet the criteria for institutional  
28 news/media. The complainant states,  
29

30 "Don Williams, Mayor of Lincoln City,\*\*\* said we can just let Justin sit in as long as  
31 he's not disruptive. Then four council members, Dick Anderson, Susan Wahlke,

1 Judy Casper and Diana Hinton \*\*\*voiced loudly 'No!' That's when Dick Anderson  
2 said 'Or we don't have a meeting.' Then the city manager, Ron Chandler, said 'We  
3 have informed Mr. Werner that he does not meet the criteria to be considered news  
4 media \*\*\* Mr. Werner you have to leave.' \*\*\*[Councilor] Riley Hoagland\*\*\*was also  
5 in attendance but he didn't say anything. The city attorney, Richard Appicello, was  
6 there and should have advised his clients that they can't vote or discuss the issue  
7 in this meeting.\*\*\*" (#PR1)

8  
9 The complainant states that he showed everyone who was present the Oregon Attorney  
10 General opinion (AG Opinion), #8291. The AG Opinion, published on 4/18/16, specifically  
11 answers the questions asked by the Commission concerning the Public Meetings Law  
12 requirement that representatives of the news media be allowed to attend executive  
13 session meetings. (#PR2)

14  
15 After the initial complaint, during the preliminary review period, Mr. Werner supplied the  
16 following information via email on 6/20/18: (#PR3)

17  
18 "\*\*\*\*[T]his incident occurred after the regular meeting. I walked with the Mayor, Don  
19 Williams, down the hall and entered the conference room that holds the executive  
20 session. Williams told me, 'media sits in those chairs.' I sat down next to Jeremy  
21 Ruark, the News Guard Editor. The City Recorder, Cathy Steere said, "You can't  
22 sit in on this session because you didn't apply first.' I showed her the 2016 Attorney  
23 Genreal's opinion and said I should be allowed to sit in. She said 'You do not meet  
24 the criteria for news media.' Again I showed her the AG's opinion and tried to  
25 explain why I qualified. I told her I had staff\*\*\*and gather news and give it to the  
26 public via website, print and Facebook.

27  
28 She sat down and Williams said, 'I don't have a problem with Justin being here as  
29 long as he's not disruptive, we can get this meeting started.' That's when the  
30 council said 'No!' in unison. Dick Anderson said, 'Or...we don't have a meeting.'  
31 Then City Manager Ron Chandler said, "\*\*\*\*[W]e have informed Mr. Werner he does

1 not meet the criteria for news media. Mr. Werner you have to leave.' I asked what  
2 would happen if I stayed anyway. Chandler said, 'Then we will have the police  
3 remove you from the building.'

4  
5 So I left. On my way out I left the conclusion from the AG on the table and told  
6 them I thought it was wrong and illegal and why punish us for doing a good job?"

7  
8 COMPLAINANT INFORMATION

9 The complainant is with LincolncityHomepage.com, a web based publication, which has  
10 advertisers, and covers local news in the Lincoln City area including sports, public interest  
11 stories, local government, and Letters to the Editor. The complainant states,

12  
13 "I clearly do meet the criteria as I have staff, publish regularly, cover the city council  
14 meetings, high school events/sports, city events. ... I told them they all know that  
15 I am news/media and provide better coverage than any other news source in  
16 Lincoln City and couldn't understand why they didn't want me to attend given the  
17 depth of coverage our news organization provided." (#PR1)

18  
19 In a 6/20/18 email to Commission staff, the complainant states the following:

20 "lincolncityhomepage.com has been around since 2015. We cover Taft High 7-12  
21 sports, student council, feature articles on the students and everything else. We  
22 cover the city council in depth with highlights and links to the YouTube page that  
23 we created. \*\*\*We cover the Visitors Convention Bureau and all that entails. \*\*\*We  
24 cover Lincoln City, Depoe Bay and Otis.

25  
26 We hired Jim Fossum as a Senior Reporter and Sports Editor. He covers the  
27 NFL's Raiders and all Taft High Sports. Steve Walker from the Oregon School  
28 Activities Association issued me a press pass for 2017-18 and added our feed to  
29 their "Media" section on OSAA.ORG.

30  
31 Advertisers come and go but most stay. During the election we had Thomas

1 Branford for Judge, Russel[i] Baldwin for Judge, Kaety Jacobson for County  
2 Commission and Lincoln County Sheriff's Office. Robben Heating has been with  
3 us for close to a year. Lil Sambos has been with us since the first day we went  
4 live. Gerber Tire has been with us for a couple months. I just landed a year-long  
5 contract with Samaritan Health Services from Corvallis to advertise the Samaritan  
6 North Lincoln Hospital. Game Over Arcade has been with us since we started  
7 also. We have been running a free ad for a local charity shop \*\*\*because they  
8 have a great cause. Subway just signed up with us \*\*\*."(#PR3)

9  
10 Records obtained from the Oregon Secretary of State's Business Registry shows that  
11 Lincoln City Homepage is currently registered as an assumed business name in the state  
12 of Oregon. The filing occurred on 6/20/18, the business activity shows as "reports local  
13 Lincoln City news," and the owner and agent is Justin Werner. (#INV4)

14  
15 During the investigation, Commission staff requested that Mr. Werner provide evidence  
16 of articles published through lincolncityhomepage concerning the Lincoln City Council  
17 prior to filing this complaint. He provided links to 29 articles published between 2015 and  
18 June of 2018, revealing that his coverage of the Lincoln City Council rose over that period:  
19 In 2015 – 1 article, 2016 – 2 articles, 2017- 8 articles, and during the first 6 months of  
20 2018 – 18 articles. (#INV5)

21  
22 The first article published in 2015 concerned allegations of criminal official misconduct  
23 lodged by Richard Appicello, the city attorney, against Mayor Don Williams and the article  
24 linked to the Department of Justice records that had been released concerning those  
25 allegations. A 5/18/18 article published by Mr. Werner was entitled "Dick Anderson  
26 Running for Mayor of Lincoln City". This article describes Mr. Anderson's prior positions  
27 with the City, his other interests such as golfing, and his future plans if he gets elected.  
28 (#INV5)

29  
30 On 12/11/17 the City Council held a public meeting. Video of the public meeting shows  
31 that, during the public comment period, Justin Werner addressed the City Councilors,

1 after identifying himself as "Justin Werner with lincolncityhomepage.com, a local news  
2 outlet", and spoke of safety concerns at a recent event on City property, noting that they  
3 did not have a permit. The City Manager stated that he had spoken with Mr. Werner and  
4 asked him "to send me an email with his questions because I was not sure if he was  
5 making a statement or asking as a reporter for his blog, and I haven't heard from him, so  
6 I am just waiting." The written meeting minutes identify him as "Justin Werner, Lincoln  
7 City Homepage". (#INV3)

8  
9 On 1/22/18 the City Council held an executive session at 3pm and a public meeting at  
10 6pm. Video of the public meeting shows that, during the public comment period, Justin  
11 Werner addressed the City Councilors and read a list of questions concerning a recently  
12 lodged complaint against the City Attorney, filed by a City employee. He identified himself  
13 as "Justin Werner, senior reporter with the local news outlet, LincolnCityHomepage.com".  
14 The written minutes for that 1/22/18 meeting also identify Justin Werner as "Senior  
15 Reporter for Lincoln City Homepage.com". Aside from Councilor Riley Hoagland, all of  
16 the current City Councilors were in attendance at these two meetings. (#INV3)

17  
18 LINCOLN CITY'S EXECUTIVE SESSION NEWS MEDIA ATTENDANCE POLICY

19 On 3/8/10, the Council adopted Resolution 2010-09 entitled: A Resolution of the City of  
20 Lincoln City Adopting Executive Session News Media Attendance Policy, which is  
21 excerpted below:

22  
23 Whereas, because at the time state law relating to media attendance at executive  
24 session was adopted "news media" consisted of entities that were institutionalized  
25 and structured to support compliance with the requirements of ORS 192.660(4),  
26 and the law includes no express mechanism for enforcing those requirements; and

27  
28 Whereas technological advances since the time the public meetings law was  
29 initially adopted have resulted in development of communication mechanisms  
30 allowing virtually any individual or entity to disseminate information widely; and  
31



1 Whereas the City of Lincoln City finds that in that absence of a statutory definition  
2 of "news media" as that term is used in ORS 192.660(4) it is necessary to adopt a  
3 policy that implements the intent of the public meetings law relating to executive  
4 session attendance without precluding attendance by Internet-based or other "non-  
5 traditional" information disseminators that are institutionalized and committed to  
6 compliance with ORS 192.660(4); \*\*\*\*\*  
7

8 1. Currently Recognized News Media Organizations.

9 The following entities are hereby recognized as news media organizations  
10 eligible to attend executive sessions because they have an established  
11 history of meeting the requirements of this policy: [The News Guard, News  
12 Times] No other entity shall be permitted to attend an executive session  
13 unless it is recognized through the process described in Section 2 below.  
14

15 2. Recognition of Other News Media Organizations.

16 a. The following entities are recognized as news media eligible to attend  
17 executive sessions:

18 (1) A general or associate member newspaper of the Oregon Newspaper  
19 Publishers Association, a broadcast member of the Oregon Association of  
20 Broadcasters or a member of the Associated Press; or

21 (2) A newspaper that the City of Lincoln City uses for publication of public  
22 notices and that meets the requirements of ORS 193.020; or

23 (3) An entity recognized by the City Council as being a news source that:

24 A. is organized and operated to regularly and continuously publish,  
25 broadcast, transmit via the Internet or otherwise disseminate news  
26 to the public, and that regularly reports on activities of the City of  
27 Lincoln City or matters of the nature under consideration by the City  
28 of Lincoln City; and

29 B. is determined by the City Council to be a business entity that is  
30 institutionalized [defined in footnote as "long-established or well-  
31 established"] and that is committed to, and is structured to support,

1 the terms of ORS 192.660(4). In making this determination, the City  
2 Council may consider and weigh any factors that it deems to be  
3 relevant, including, without limitation, the existence of any of the  
4 following factors:

- 5 i. the entity has multiple personnel with defined roles within its  
6 organizational structure;
- 7 ii. the names of news-reporting personnel, and responsible  
8 entity management personnel, together with addresses and  
9 contact telephone numbers, are readily available;
- 10 iii. the entity has an available process for correcting errors,  
11 including violations of executive session statutes, by a person  
12 with authority to take corrective measures.

13  
14 b. It shall be the entity's burden to persuade the City Council by substantial  
15 evidence that it should be recognized as a news media organization  
16 meeting the criteria in Section (2)(a) of this policy. Such evidence must be  
17 submitted at least thirty (30) days in advance of the first executive session  
18 that the entity desires to attend. The City Council shall make a  
19 determination within twenty-one (21) days of receiving the evidence  
20 submitted by the entity. The City Council may elect to forgo this procedure  
21 in cases where the City Council, in its sole discretion, determines that it can  
22 immediately recognize that an entity qualifies under this policy, or in cases  
23 where the City Council, in its sole discretion, determines that other good  
24 cause exists for making an expedited determination. A determination that  
25 the entity is not recognized shall be based upon written findings addressing  
26 the criteria in Section 2(a).

27  
28 Section 3 of the policy states that if a news media organization is "recognized pursuant  
29 to Sections 1 and 2", a representative of such a recognized entity, in order to attend an  
30 executive session, must meet further requirements to prove that they are a bona fide  
31 representative of that news media organization, such as a press badge, or a recently

1 published news article with the person's byline, or a letter on letterhead from an editor of  
2 a recognized news media organization confirming that the reporter is representing that  
3 organization, plus personal identification. Finally, the City may require that a  
4

5 "request to attend an executive session be made in writing on a form provided by  
6 the City. The form shall require disclosure of the person's name and the entity for  
7 which he or she is a news reporter, and shall require submission of  
8 evidence\*\*\*described [above]. The form shall also include a signature line  
9 whereby the person certifies that he or she is gathering news for a recognized  
10 news media organization, that the information given is true, and that he or she  
11 agrees to comply with ORS 192.660(4)." (#PR4)  
12

### 13 ATTORNEY GENERAL OPINION 8291, issued April 18, 2016

14 The Oregon Government Ethics Commission requested and received an opinion from the  
15 Oregon Attorney General as to the provisions in ORS 192.660 regarding the attendance  
16 of representatives of the news media at a governing body's executive session meetings.  
17 Below are excerpts relevant to the issues in this matter:  
18

19 This opinion addresses several issues pertaining to the commission's duty to  
20 investigate and enforce the requirement that representatives of the news media be  
21 allowed to attend executive sessions. \*\*\*\*\*[p. 1]  
22

23 \*\*\*[A] governing body may not lawfully enforce a policy that permits it to exclude  
24 from executive session a representative of the news media who would be  
25 permitted to attend under ORS 192.660(4) and (5).\*\*\*\*\* [p. 2]  
26

27 "Institutionalized news media" means an entity that is formally organized for the  
28 purpose of gathering and disseminating news.\*\*\*\*\* [p. 3]  
29

#### 30 QUESTION 4

31 When evaluating alleged violations of ORS 192.660(4), what is the significance of

1 policies adopted by governing bodies to implement the statutes? Specifically, what  
2 would be the legal significance of a policy to exclude a person who:

- 3
- 4 1. Does not meet adopted screening criteria to determine who qualifies as
- 5 a "representative of the news media";
- 6 2. Does not gain preapproval of media credentials in advance of executive
- 7 sessions;
- 8 3. Fails to give advance notice of attendance; or,
- 9 4. Is believed to have unlawfully reported on a prior executive session or to
- 10 represent a news media organization that did? [p. 3-4]
- 11

#### 12 SHORT ANSWER

13 Public bodies are required to comply with the statute. They cannot modify the  
14 statutory requirement by adopting a policy. In evaluating allegations that an  
15 individual was wrongly excluded from executive session, the commission must  
16 assess compliance with that statute regardless of a governing body's policies.

17  
18 With respect to the specific types of policies the commission asks about (numbered  
19 1 through 4 above) we answer as follows:

- 20 1. If enforcement of the policy definition results in the exclusion of a representative  
21 of the news media, that exclusion would violate ORS 192.660(4).
- 22 2. To the extent that a credentialing requirement simply requires an individual to  
23 demonstrate that he or she is a representative of the news media, its enforcement  
24 would be consistent with the law. But if a policy requires specific credentials, and  
25 an individual offering different credentials that are sufficient to demonstrate that he  
26 or she is a representative of the news media is excluded based on that policy, that  
27 exclusion would not be consistent with ORS 192.660(4).
- 28 3. Advance notice of attendance is not required by Oregon Public Meetings Law.  
29 Excluding a representative of the news media for failure to comply with a policy  
30 requiring advance notice of attendance would violate ORS 192.660(4).
- 31 4. The Oregon Public Meetings Law does not authorize any mechanism for

1 enforcing the requirement that representatives of the news media refrain from  
2 reporting designated information discussed in executive session. Enforcement of  
3 a policy excluding representatives of the news media on this basis would violate  
4 ORS 192.660(4). [p. 4]

5  
6 LINCOLN CITY RECORDS IN RESPONSE TO SUBPOENA

7 The records provided by Lincoln City in response to the subpoena include  
8 correspondence between Justin Werner of Lincolncityhomepage and employees of  
9 Lincoln City during the period between 1/1/18 and 6/6/18.

10  
11 City employees corresponded with Justin Werner frequently during the first 5 months of  
12 2018. Justin Werner's publication received numerous press releases of City events and  
13 other information from individuals with City email addresses. These correspondents  
14 included the City Manager's office, the Public Library staff, the City Community Center  
15 staff, the HR Department, the Planning Department, the IT Department, and the City  
16 Visitor and Convention Bureau. (#INV1)

17  
18 During 2018, Mr. Werner also received several emails from administrators about  
19 upcoming meetings of the City Council and the Planning Commission. Mr. Werner was  
20 also noticed by City staff when a meeting was cancelled due to lack of a quorum, or when  
21 late additions were made to the agenda. It appears that the meeting notices were sent  
22 and agendas were usually available about 4 days prior to the meeting. (#INV1)

23  
24 Set out below are some exchanges pertinent to this case. (Sender/recipient Justin  
25 Werner or Lincolncityhomepage are referred to as JW below.)

26  
27 1/5/18 from JW to City Attorney asking for comment on an article which was to be  
28 be published concerning a complaint against the City Attorney.

29  
30 1/5/18 and forwarded on 1/12/18 from JW to City Recorder asking to be added to the City  
31 lists to receive all meeting notices, press releases, and announcements.

1 1/24/18 from JW to City Recorder and cc'd to Mayor and City Manager.

2 "On January 5, 2018, I sent you a request to add me to your list of media  
3 representatives. Unfortunately, my records indicate I didn't receive a reply.\*\*\*  
4 Perhaps the problem is on my end, so let me supersede my Jan. 5<sup>th</sup> request with  
5 the following request: I am a media representative, and an "interested person" and  
6 respectfully request the City of Lincoln City, its employees,\*\*\*send me all  
7 communications regarding meetings, and all other communications provided to  
8 other media representatives and/or "interested persons\*\*\*\*" Included in this email  
9 was the desired email address for these notifications and his telephone number.

10  
11 1/30/18 - Email above was forwarded by the City Recorder to the City Attorney.

12  
13 1/31/18 –from City Recorder to JW (cc'd Mayor, City Attorney, City Manager):

14 "[P]lease be advised that we included you in the media group at your first request  
15 as an 'interested person'.\*\*\*You might want to check your trash or junk mail to see  
16 if it was sent there. As you have indicated in the second request, we have again  
17 changed the contact information to the gmail address provided as you requested.  
18 Please note, however, that most of the City's notices and information for the public  
19 is posted on our website\*\*\*[w]e don't send out notices as to when the information  
20 is uploaded to the website."

21  
22 4/26/18 –from JW to City Recorder and others:

23 "Is it possible to add Lincoln City Homepage to the list here  
24 [<http://www.lincolncity.org/community links>] ?"

25  
26 4/26/18 –from City Recorder to JW:

27 "Thank you for your email. During the past few weeks the City staff has embarked  
28 on a review of our media, social media and web page policy.\*\*\*After receiving your  
29 email, our City Manager looked at the links page and found that some "for profit"  
30 links were incorrectly added. He therefore removed this page from our webpage  
31 while we complete the policy review and correct any links that were incorrectly

1 added.\*\*\*"

2  
3 4/27/18 –From JW to City Recorder:

4 "I would like to attend Executive sessions. How would I go about doing that  
5 exactly? I understand I can't write about what I hear in the sessions."  
6

7 4/30/18 – email above forwarded by City Recorder to City Attorney.  
8

9 4/30/18 –From JW to City Recorder:

10 "I'm curious as to when the Community Links page will be back live on the city  
11 website and if your [sic] going to add lincolncityhomepage.com to it.\*\*\*The only  
12 reason I asked to be put on the list is because I saw The News Guard, Newport  
13 News Times, and newslincolncounty.com on that page." (NOTE: As of 1/11/19 the  
14 Community Links tab on the City webpage is still down due to policy review.)  
15

16 (Subsequent pertinent emails are described below under the TIMELINE heading.)  
17

18 In response to the Commission's request for a copy of the statutory authority for "work  
19 sessions" as distinguished from "public meetings," the City responded that they do not  
20 have any "any documents (i.e. statutes) responsive to your request."  
21

22 A 10/17/18 letter from the City Attorney, Richard Appicello, which was delivered along  
23 with the City Recorder's response to the subpoena, is excerpted below:  
24

25 "Work Session designation is part of the subject of the noticed public meeting. A  
26 meeting designated as a work session on a specific subject indicates that the City  
27 Council will not take any action at this noticed public meeting but instead will  
28 discuss the matter informally.\*\*\*The work session on June 4, 2018 was to  
29 discuss/ask questions about items on the City Attorney's project list. The fact that  
30 no action can be taken at such noticed public work session meetings is reflected  
31 in the Order of Business in the Lincoln City Municipal Code\*\*\*" (#INV1)

1 2.04.020 Order of Business.

2 "In the conduct of the business of the council, the order of business shall be substantially  
3 as follows, except as otherwise provided in LCMC 2.04.027 for time certain agenda items:

4 A. Roll Call;

5 B. Pledge of Allegiance;\*\*\*

6 L. Actions, if any, based on work session, executive session or citizen comment;\*\*\*

7

8 NOTE: On 2/12/18, LCMC 2.04.020 was amended by Ordinance No. 2018-04 to add the  
9 portion underlined above. (#INV6)

10

11 SUBMISSIONS ON BEHALF OF RESPONDENT AND FOUR OTHER COUNCILORS

12 The respondent, along with four other members of the governing body, is represented by  
13 attorney Andrea D. Coit of the law firm, Hutchinson Cox. The sixth member of the  
14 governing body, Mayor Don Williams, is represented by a different attorney.

15

16 On 6/15/2018 the Commission received a written response from Ms. Coit, the entirety of  
17 which was provided to the Commission with the preliminary review report, and will be  
18 provided again with this investigation report.

19

20 Ms. Coit concedes that any of the guidance provided by the AG opinion that was in conflict  
21 with the previously adopted Lincoln City Resolution would control. Based on the  
22 information contained in the complaint, along with the AG opinion, Ms. Coit states,

23

24 "Lincoln City is permitted to create and enforce a screening process for the  
25 purpose of determining whether a specific entity qualified as institutional media  
26 entity. Per ORS 192.660(10), Lincoln City is also permitted, within the bounds of  
27 the Opinion's guidance, to establish the criteria for evaluating what entities qualify  
28 as media for purposes of attending executive session." (#PR4)

29

30 Ms. Coit asserts that the Resolution's requirement that an applicant submit evidence  
31 relating to his or her status as a member of the news media prior to being approved to



1 attend an executive session is permissible under the circumstances. Ms. Coit states that  
2 the complainant was notified on 5/10/2018 that he would need to submit an application  
3 for review by the City Council at its next regularly scheduled City Council meeting on  
4 6/11/2018, and this application would need to be submitted by 6/4/2018.

5  
6 Ms. Coit's letter continues:

7  
8 "To comply with both ORS 192.610 and Lincoln City's Resolution, the City Council  
9 was required to consider Mr. Werner's application for media recognition at a  
10 properly noticed public meeting. The City Council had convened a work session  
11 prior to going into executive session on June 4. It had not been in a public session."  
12 (#PR4)

13  
14 During the investigation phase, Ms. Coit supplied a letter dated 1/3/19 in response to  
15 questions asked by Commission staff, which will be provided to the Commissioners in its  
16 entirety, and is excerpted below:

17  
18 I would just like to clarify that at no time during the interlude between the end of  
19 the public meeting work session and the commencement of the executive session  
20 did any of my clients participate in a "conversation as to whether Mr. Werner would  
21 be able to attend the executive session as a representative of the media."\*\*\*

22  
23 On June 4, 2018, the Councilors participated in the work session City Council  
24 Meeting. As a public meeting, it was attended by various members of the public.  
25 None of my clients took any particular note of Mr. Werner's presence. He did not  
26 speak at the meeting or otherwise do anything to indicate that he was at the  
27 meeting as a member of the media.

28  
29 When the work session concluded, the Councilors walked to the executive session  
30 room. Some of my clients noticed Mayor Williams walking with a young man.  
31 None of them recognized Werner by sight. None of them spoke with Werner,

1 walked with him, or asked any other person who he was.

2  
3 In response to the Commission staff's question: *You said a few times [in oral presentation*  
4 *to the Commission] that three of your clients did not know who Mr. Werner was and that*  
5 *two of your clients did know him. Could you identify the 2 who did know Mr. Werner and*  
6 *the 3 who did not? Does this mean that the three who did not know Mr. Werner were*  
7 *unfamiliar with him personally (i.e. his name and face meant nothing to them) or were*  
8 *unfamiliar with his publication, so that identifying himself as the editor/writer of*  
9 *LincolnCityHomePage would have had no meaning whatsoever to the 3?*, Ms. Coit  
10 replied:

11  
12 Councilor Anderson knew Mr. Werner as the writer of the blog called  
13 LincolnCityHomePage. Councilor Hinton had heard of Mr. Werner's blog, but had  
14 never met him and did not recognize him on June 4, 2018. \*\*\*

15  
16 On this particular issue, though, I would like to submit my opinion that any  
17 individual Councilor's knowledge that Mr. Werner wrote a blog should be of no  
18 relevance to the complaint raised here. On June 4, 2018, Mr. Werner had never  
19 previously been recognized by the Lincoln City Council as a member of institutional  
20 media such that he could legally be permitted to attend an executive session  
21 meeting. Regardless of the process required to obtain that recognition, giving the  
22 recognition itself would require a decision by the Council. For example, if the  
23 request was made in accordance with the City's written policy requiring the  
24 submission of an application or other evidence, a decision on that application  
25 would need to be made. Alternatively, if it is argued that perhaps some of the  
26 Councilors knew that Mr. Werner wrote a blog and, therefore, the Council should  
27 have just accepted his oral statement that he was media, a decision to ignore or  
28 override the City's policy on recognizing media and instead just allow him to attend  
29 would have been required. Those are final decisions that cannot be made in  
30 executive session. That is why the City Attorney advised my clients that they could  
31 not act one way or the other on his request. They followed his advice.\*\*\*

1 Attorney Coit also provided other material, including an affidavit from Lincoln City's legal  
2 counsel, Richard Appicello, a City employee. Appicello's 1/3/19 affidavit is excerpted  
3 below. (#INV2 and #INV2a)

4  
5 A work session meeting is a public meeting\*\*\*. Work session meetings are  
6 informal and no action can be taken – they are intended for discussion only.\*\*\*

7  
8 On June 4, 2018, the work session was adjourned and Council members headed  
9 down the hall to the executive session meeting room for an advertised stand-alone  
10 executive session meeting\*\*\*.

11  
12 The City Council did not recess a Regular Council meeting to go into executive  
13 session. The work session, which is not a regular meeting, was adjourned. Unlike  
14 a recess where the Council could return to the Regular Meeting for action, there  
15 was no ability to return to a public meeting for action.

16  
17 Contrary to Mr. Werner's complaint, Mr. Werner did not attend the executive  
18 session; after the work session, he walked down the hall with the Mayor and  
19 entered the executive session meeting room and took a seat. He was asked  
20 numerous times to leave the meeting room by the City Recorder and City Manager  
21 prior to the start of the executive session.

22  
23 Although Mr. Werner entered the meeting room, Councilors did not engage him.\*\*\*

24  
25 Weeks earlier, the City Recorder had sent Mr. Werner the 2016 Attorney General  
26 Opinion on media, together with the City's 2010 Media policy\*\*\*identical to the  
27 Model Policy developed in 2009 by a Task Force consisting of representatives of  
28 Open Oregon, Lake Oswego City Attorney, League of Oregon Cities, Lake  
29 Oswego Mayor, Clackamas County Counsel, the Oregonian, the Oregon  
30 Newspaper Publishers Association and the Oregon Association of Broadcasters.

31 \*\*\*\*\*

1 In response to the Recorder and Manager, Mr. Werner began soliciting the Council  
2 members directly to recognize him as media\*\*\*.

3  
4 Councilors were not engaging with Mr. Werner. Staff engaged him.\*\*\*Council had  
5 adjourned its work session and had not yet opened executive session. Frankly,  
6 Council was caught off-guard, most of them did not know who this person was or  
7 why he was here in their meeting room blustering at staff; Councilors had not been  
8 given any evidence (because none had been submitted) although Council had  
9 received the AG opinion on media from me on May 10, 2018.

10  
11 I specifically advised Council on June 4, 2018 that they could not act on the request  
12 being made by Mr. Werner to be recognized at this time. Council cannot legally  
13 act in the moments between public meetings or in an executive session.

14  
15 Contrary to Mr. Werner's statement in his complaint that I said nothing, I stated *at*  
16 *least three times* that no decision could be made by Council and that such decision  
17 needed to be made in open session "down the hall".\*\*\*\*\*

18  
19 I specifically stated that "the one thing we know for sure" is that the decision on  
20 whether or not Mr. Werner is or is not media, cannot be made now and needed to  
21 be made "down the hall" at a regular meeting. The Manager and Recorder made  
22 the decision to exclude Werner, not the Council.\*\*\*

23  
24 Contrary to my statements and the actions of the Recorder and Manager telling  
25 Werner to leave because Council could not act on his request, Mayor Don Williams  
26 suddenly and unilaterally declared that Werner could stay if he was not disruptive.  
27 This elicited a response of "WHAT!" and "NO!" from some Councilors present. The  
28 exclamations\*\*\*by Councilors were not votes on a motion of whether to admit  
29 Werner, but rather exclamations of frustration with the Mayor appearing to attempt  
30 to take action\*\*\*.

1 In sum, as a factual matter, Mr. Werner was asked to provide evidence to address  
2 how he met the standard expressed in the 2016 AG opinion, using the City's 2010  
3 policy as a guide so that Council could take action at a public meeting on his  
4 request. He refused to do so. He appeared and solicited Council to make a  
5 decision at a time they could not act under public meetings law, and without  
6 submission of any evidence. I advised the Council members that they could not  
7 act on Werner's solicitation to them to be recognized\*\*\*and they followed my legal  
8 advice. Werner's actions can be viewed as Solicitation of Official Misconduct I.  
9 Councilors refused to commit a crime and violate public meetings law for Werner's  
10 benefit. The Council did not make a decision to exclude Werner, the Manager and  
11 Recorder excluded him. (#INV2a)

12  
13 NOTE: In 2016, the City was being sued by Mr. Smith, in a lawsuit unrelated to Public  
14 Meetings Law. A court filing was made on behalf of the City in that case which argued  
15 that the AG's opinion on media supported a finding that plaintiff Smith did not have  
16 standing to sue because he was not a member of the news media. "[Smith] is not  
17 connected with any institutional news media. He is simply an individual who maintains a  
18 personal website where he posts his opinions about local politics and posts articles written  
19 by others about local politics." On 5/10/18, Mr. Appicello provided the City Councilors  
20 with the AG's Opinion on media, as well as this court filing. (#INV2a)

21  
22 TIMELINE OF EXECUTIVE SESSION COMMUNICATIONS:

23 4/27/18 (Friday) 8:13pm Email from Justin Werner to City Recorder, with the subject  
24 line "Re: meetings Scheduled for Monday, April 30, 2018" stating, "*I*  
25 *would like to attend Executive sessions. How would I go about doing*  
26 *that exactly?\*\*\*\**" (#INV1)

27  
28 4/30/18 (Monday) 11:39am 4/27/18 email above from Justin Werner was forwarded by  
29 City Recorder to City Attorney.

30  
31 5/1/18 (Tuesday) City Attorney sent the full 2016 AG opinion on media attendance at

1 executive sessions to the City Manager and the City Recorder,  
2 together with a court filing from the Smith v. Lincoln City case in  
3 which the attorney representing Lincoln City argued that the plaintiff  
4 was not "media" under the standard in the 2016 AG opinion, but  
5 rather an individual blogger. (#INV1 and #INV2a)  
6

7 5/2/18 (Wednesday) 3:46pm Email from City Recorder to Justin Werner, with the  
8 subject line: "Re: attending Executive Sessions and City Web Page"  
9 stating, "\*\*\*With regard to your request to attend an Executive  
10 Session Meeting, Council cannot make a decision in executive  
11 session so if you believe that you qualify as a representative of the  
12 news media under Oregon law, you must make application to City  
13 Council to be admitted to executive session meetings. The Council's  
14 decision will be based on the April 2016 Oregon Attorney General  
15 Opinion on the subject." (#INV1)  
16

17 5/3/18 (Thursday) 8:35pm Email from Justin Werner to City Recorder, with the subject  
18 line: "Re: attending Executive Sessions and City Web Page", stating,  
19 "I'll be attending the next Executive Session Meeting. Thank you for  
20 pointing me in the right direction." (#INV1)  
21

22 5/7/18 (Monday) 6:00pm Special Meeting of the City Council held. (#INV3)  
23

24 5/10/18 (Thursday) 3:36pm Email from City Attorney Appicello to the City  
25 Councilors (and City Manager) with the subject line "Media AG  
26 opinion from 2016 court filing", stating "The attached is something  
27 Jens Schmidt filed in the Smith case. It is a Supplemental  
28 Memorandum discussing the 2016 Oregon Attorney General's  
29 opinion regarding the meaning of "members of the media" for  
30 purposes of the Public Meetings Law. There is nothing on this  
31 Agenda regarding this as we anticipated but did not receive any

1 application (or evidence) from an individual who indicated he wished  
2 to be recognized as "media" and attend executive sessions. Cathy  
3 had informed him Council could take no action in executive session  
4 so he would need to bring up the issue so Council could act – prior  
5 to showing up. I am sending you the full AG opinion (attached to the  
6 motion) in case you wish to read it all. We have a policy as well, but  
7 to the extendt [sic] they are inconsistent this AG opinion will control.  
8 I will summarize the pertinent points in the opinion for Council prior  
9 to the meeting." (#INV1 and #INV2a)

10  
11 5/10/18 (Thursday) 5:03pm Email from City Recorder to Justin Werner, with the  
12 subject line: "Re: Attendance – City Executive Session Meetings",  
13 stating, "Justin, with regard to attending an Executive Session  
14 meeting, as stated below an application is required in advance for  
15 Council's consideration. Council then reviews the application at a  
16 regularly scheduled City Council meeting. Attached is Resolution  
17 2010-09 (Executive Session News Media Attendance Policy), as a  
18 guide for making application. Also attached is the 2016 Attorney  
19 General opinion on what constitutes news media that would control  
20 over anything inconsistent in the Resolution. If you wish to be  
21 considered, you must apply in advance. The next available City  
22 Council meeting date for consideration is June 11<sup>th</sup>. The agenda  
23 deadline to receive your completed application (addressing the  
24 required criteria to be met as stated in Resolution 2010-09), is noon  
25 Monday, June 4, 2018 for the June 11, 2018 City Council  
26 meeting.\*\*\*" (#INV1)

27  
28 5/14/18 (Monday) 6:00pm City Council Regular Meeting (#INV3)  
29 8:24pm-9:00pm Executive Session

30  
31 5/28/18 (Monday) 6:00pm City Council Regular Meeting cancelled (#INV3)

1 6/4/18 (Monday) 6:00pm City Council Work Session

2 6:45pm Executive Session (#INV3)

3  
4 A review of the 2018 City Council meetings posted on Lincoln City's website shows that  
5 the Council routinely held executive session meetings as "stand alone" meetings prior to  
6 their regular council meetings. Also, it appears that the Council held five distinct types of  
7 meetings during this period: Regular Meetings, Executive Sessions, Work Sessions,  
8 Special Sessions and Training Sessions. The executive session meetings were  
9 scheduled at 3pm, 4pm, 4:30pm, or 5pm, preceding the 6pm regular meetings. Only the  
10 May 14, 2018 6pm regular meeting was recessed into executive session a few hours after  
11 it commenced. The City Council held 8 executive session meetings in the first six months  
12 of 2018. The Council has not held an executive session since the 6/4/18 executive  
13 session at issue in this case. (#INV6)

14  
15 **CONCLUSIONS:** Dick Anderson was a member of the Lincoln City Council during the  
16 period relevant to this investigation and was a public official. The City of Lincoln City is a  
17 public body and the City Council is its governing body [ORS 192.610(3) and (4)]. As a  
18 member of the governing body of a public body, Dick Anderson is required to comply with  
19 the executive session provisions of Oregon Public Meetings law found in ORS 192.660.  
20 Under ORS 192.685(1), complaints concerning violations of ORS 192.660 alleged to have  
21 been committed by public officials may be made to the Oregon Government Ethics  
22 Commission for review and investigation as provided by ORS 244.260.

23  
24 An executive session is a meeting or part of a meeting held by a governing body which is  
25 closed to certain persons for deliberation on certain matters. [ORS 192.610(2)]

26  
27 ORS 192.660 states that members of the media shall be allowed to attend executive  
28 sessions except under three circumstances: when labor negotiations are the topic; when  
29 matters concerning expulsion or medical records of a student are the topic under ORS  
30 332.061(2); and when the topic is current or pending litigation and a member of the news



1 media is a party to the litigation or is an employee, agent or contractor of a news media  
2 organization that is a party to the litigation. [ORS 192.660(4) and (5)]

3  
4 Based on the evidence, there is no indication that the Council was relying upon any of  
5 the three permitted exceptions to exclude the complainant from the executive session.

6  
7 The Commission is prohibited by law from making a rule defining "representative of the  
8 news media," but it is imperative in order to enforce ORS 192.660(4), that the Commission  
9 make judgments on a case by case basis, guided by the application of the statute and  
10 AG's Opinion to the relevant factual circumstances.

11  
12 Mr. Appicello, the City's in-house legal counsel, advised the members of the City Council  
13 that when the City's policy on media conflicts with the AG's opinion, the AG's opinion  
14 controls. Also, Ms. Coit, the attorney representing five of the City Councilors in this matter  
15 has also stated the same. There seems to have been some hedging on this point by both  
16 the City's attorney and Ms. Coit since their initial positions, with the argument that  
17 because Lincoln City is a home rule jurisdiction, they need not defer to the AG's opinion.

18  
19 One difference between Resolution 2010-09 (City Policy) and the AG's opinion is the  
20 definition of "institutionalized" media. The City Policy defines "institutionalized" as "long-  
21 established or well-established", whereas the AG's Opinion states that "[i]nstitutionalized  
22 news media' means an entity that is formally organized for the purpose of gathering and  
23 disseminating news."

24  
25 Addressing the changes in delivery of the news between 1973 when ORS 192.660(4)  
26 was first adopted and today, the AG's Opinion's notes the following:

27 [W]hether an online publication or broadcast qualifies [as news media] depends  
28 on the same criterion for existing mediums: the entity must be institutional.  
29 "Blogs," for example, come in two general varieties. The first is "an online personal  
30 journal with reflections, comments and often hyperlinks, videos, and photos  
31 provided by the writer."\*\*\*The second is a "regular feature appearing as a part of

1 an online publication that typically relates to a particular topic and consists of  
2 articles and personal commentary by one or more authors[.]” The first type of  
3 “blogger” is an individual rather than a representative of a news media  
4 organization. But the second type of blogger might qualify as a representative of  
5 the news media depending on whether the particular facts demonstrated that the  
6 blogger represented an institutional news medium. Indications that an entity is  
7 institutional might include its business structure, the nature of its overall operations,  
8 regular public dissemination of news, and similar factors that demonstrate that it is  
9 formally organized for the purpose of gathering and disseminating  
10 news.\*\*\*[I]ndications that a blogger represents institutionalized media might  
11 include the existence of staff (rather than a single individual), a formal business  
12 structure within which the blog operates and regular publication. [AG Opinion p.  
13 15-16]

14  
15 Based on the evidence available, it appears that Lincolncityhomepage falls into the  
16 second category of “blog” and qualifies as “news media”. It is formally organized for the  
17 purpose of gathering and disseminating news. The business was registered with the  
18 Secretary of State as an assumed business name by Justin Werner on 6/20/18, but it was  
19 formally organized and operational during the period relevant to this case, and for at least  
20 a few years prior. The publication regularly covers local government, entertainment,  
21 events, sports, and includes letters to the editors. The site has several advertisers, and  
22 at least two staff members. Anyone may access the site on the internet to see the 18  
23 articles published during the first 5 months of 2018 concerning local government. The  
24 Oregon School Activities Association has recognized the entity as news media, has  
25 issued it a press pass and hosts the entity’s news feed.

26  
27 On 4/18/16, the Oregon Department of Justice published an Oregon Attorney General  
28 opinion (AG Opinion), #8291, specifically answering questions presented by the  
29 Commission concerning the Public Meetings Law requirement that representatives of the  
30 news media be allowed to attend executive sessions. The AG Opinion expressly states  
31 that there are no permissible grounds other than those identified in ORS 192.660(4) and

1 (5) for excluding representatives of the news media from attending executive sessions.  
2 [AG Opinion, p. 3]

3  
4 As pertinent to ORS 192.660(4) and a governing body enacting a policy that can exclude  
5 a representative of the news media, the AG Opinion states:

6  
7 "Public bodies are required to comply with the statute. They cannot modify the  
8 statutory requirement by adopting a policy. In evaluating allegations that an  
9 individual was wrongly excluded from executive session, the commission must  
10 assess compliance with that statute regardless of a governing body's policies."

11  
12 "If enforcement of the policy definition results in the exclusion of a representative  
13 of the news media, that exclusion would violate ORS 192.660(4).

14  
15 To the extent that a credentialing requirement simply requires an individual to  
16 demonstrate that he or she is a representative of the news media, its enforcement  
17 would be consistent with the law. But if a policy requires specific credentials, and  
18 an individual offering different credentials that are sufficient to demonstrate that he  
19 or she is a representative of the news media is excluded based on that policy, that  
20 exclusion would not be consistent with ORS 192.660(4).

21  
22 Advance notice of attendance is not required by the Oregon Public Meetings Law.  
23 Excluding a representative of the news media for failure to comply with a policy  
24 requiring advance notice of attendance would violate ORS 192.660(4)." [AG  
25 Opinion, p. 4]

26  
27 There seem to be several arguments made by the respondent's attorney as to why Mr.  
28 Werner's exclusion from attending the 6/4/18 executive session does not constitute a  
29 violation of ORS 192.660(4) by her clients.

30 ///

1 First, the respondents argue that Mr. Werner did not comply with the requirements of  
2 Resolution 2010-09 (City Policy). He did not supply "substantial evidence" of why he  
3 should be recognized as a representative of the news media to the Councilors at least 30  
4 days in advance of the first executive session he wished to attend. The City Policy states  
5 that upon such application, the City Council will make a determination within 21 days of  
6 receipt of this evidence. However, the City Council may

7  
8 "forgo this procedure in cases where the City Council, in its sole discretion,  
9 determines that it can immediately recognize that an entity qualifies under this  
10 policy, or in cases where the City Council, in its sole discretion, determines that  
11 other good cause exists for making an expedited determination. A determination  
12 that the entity is not recognized shall be based upon written finding addressing the  
13 criteria in Section (2)(a)."  
14

15 From the perspective of the Lincoln City Council, Mr. Werner did not make application to  
16 the City Council to be recognized as media prior to the 5/14/18 or 6/4/18 executive  
17 session. However, Mr. Werner's email to the City Recorder on 5/3/18 that he was going  
18 to attend the "next executive session" can easily be considered an "application" to be  
19 recognized as news media. Upon receipt of that email from Mr. Werner, which was  
20 forwarded to the City Attorney, no reply is sent to Mr. Werner until 5/10/18 and at that  
21 time, Mr. Werner was given a copy of the City Policy and the AG Opinion. However, he  
22 was still not given any specific form to submit or told how he would provide substantial  
23 evidence that his internet based publication should be recognized as media. It is obvious  
24 that his site was well known to City staff at that point, and any information needed to  
25 evaluate his publication was readily available by visiting his internet site. In fact, it is not  
26 clear exactly what would constitute an "application" other than informing the City staff that  
27 you wished to attend the next executive session. He was not given any help to aid him  
28 in how "exactly" he could go about being recognized as a representative of the news  
29 media, as he had initially asked in his 4/27/18 email to the City.

30 ///

1 However, even if there had been a formal application process or form, which there does  
2 not appear to have been, when he first informed the City staff on 5/3/18, that he would be  
3 attending the next executive session, he would not have had time to be recognized by the  
4 City Council before the 5/14/18 executive session. A week after his email stating that he  
5 would be at the "next executive session", Mr. Werner was first provided with the City  
6 Policy and the AG's Opinion by the City staff and informed that "an application is required  
7 in advance for Council's consideration" which will be reviewed "at a regularly scheduled  
8 City Council meeting." He was also informed that any "completed application" he submits  
9 would not be considered until 6/11/18, which would be too late for him to attend the  
10 executive session on 6/4/18, which turned out to be the last executive session held by the  
11 City Council that year.

12

- 13 • On 4/27/18, Werner asked the City Recorder how "exactly" he would go about  
14 attending executive sessions.
- 15 • On 4/30/18 City Recorder forwards Werner's email to City Attorney.
- 16 • On 5/1/18 City Attorney sends City Recorder the AG's Opinion.
- 17 • On 5/2/18, the City Recorder tells Werner he must apply to the City Council, but  
18 does not supply him with the City Policy which outlines the criteria and timeline,  
19 rather she instructed him that "the Council's decision will based on the April 2016  
20 Oregon Attorney General Opinion on the subject".
- 21 • On 5/3/18, Werner responds that he will be attending the next executive session.  
22 [The "next" executive session occurred on 5/14/18, but it doesn't appear that the  
23 agenda showing an executive session was available at that time.]
- 24 • On 5/7/18 Special Meeting of the City Council held.
- 25 • On 5/10/18, the City Recorder responds that he must apply in advance by 6/4/18  
26 to get on the agenda for the next regular meeting of the Council on 6/11/18. She  
27 also supplies Mr. Werner, for the first time, with the City Policy and the AG's  
28 Opinion.
- 29 • 5/14/18, the Council holds a regular meeting and an executive session. Werner  
30 apparently does not attempt to attend the executive session.
- 31 • 5/28/18, regular meeting cancelled.

- 1 • 6/4/18, Werner attends the Council's Work Session and attempts to attend the  
2 following executive session, but is told to leave.

3  
4 It is clear from the record that Mr. Werner was well known to numerous members of the  
5 City staff as a representative of his publication, including the City Manager, the City  
6 Recorder, and the City Attorney. The City staff supplied him with regular notices of  
7 events, council meetings, and press releases, which seems to undermine the statements  
8 alleged by complainant that the City Manager and City Recorder told him on 6/4/18 that  
9 he did not meet the criteria to be considered a representative of the news media. It also  
10 appears that he and his publication were known to some of the City Councilors. On  
11 5/10/18, the City's attorney sent all of the current City Councilors copies of the AG's  
12 opinion as well as an analysis (in another matter) arguing that an individual was a blogger,  
13 and did not qualify as news media. Mr. Werner appeared in person and gave public  
14 testimony during at least two City Council meetings, identifying himself as a  
15 representative of his publication. Also, he had published numerous articles about the City  
16 Council, individual City Councilors, staff members, and local government in general.

17  
18 The requirement that a representative of the news media submit "substantial evidence"  
19 to the City Council "30 days in advance of the first executive session that the entity desires  
20 to attend" is impractical, as one does not know until an agenda is published, usually a few  
21 days prior to a meeting, when an executive session is planned and for what purpose. The  
22 Lincoln City agendas are available approximately four days in advance of a meeting. This  
23 requirement would also result in the exclusion of persons who "applied" and were "news  
24 media" from executive sessions that took place before the next scheduled public meeting.  
25 And, because the City routinely held "stand alone" executive sessions prior to the public  
26 meetings held later on the same date, this policy would foreclose any newly recognized  
27 member of the news media from attending that executive session.

28  
29 The only two entities recognized as "news media" by Lincoln City are the News Guard  
30 and News Times. As applied to the facts in this case, although he had emailed the City  
31 Recorder on 5/3/18 that he would be attending the next executive session, Mr. Werner

1 was told on 5/10/18 that it was already too late for him to be recognized by the City Council  
2 in time to attend the 5/14/18 executive session or the 6/4/18 executive session. There is  
3 nothing in the City Policy that states the actual steps to be followed when one wishes to  
4 “apply” to the City Council, there is no specific form that was provided to Mr. Werner.  
5 There is nothing in the City Policy that states that the City Council’s determination must  
6 be made in a “regular” meeting of the City Council, as opposed to a “work session” or a  
7 “special session” meeting. Reporters are not privy to when an executive session will be  
8 scheduled and the topic for the executive session until a few days prior when an agenda  
9 is made public, so it is important that any determination that needs to be made under the  
10 City Policy is done swiftly to ensure compliance with ORS 192.660(4). There is no  
11 requirement in the City Policy that the City Council must take a formal vote in a regular  
12 meeting to make the determination that an entity should or should not be recognized as  
13 news media. Thus, it appears that the City’s Policy in this instance acted to frustrate the  
14 spirit and letter of ORS 192.660(4).

15  
16 According to the AG Opinion, excluding a representative of the news media from  
17 attending an executive session for failure to comply with a policy requiring advance notice  
18 of attendance would violate ORS 192.660(4). Also, the AG Opinion states that if an entity  
19 “does not meet adopted screening criteria”, and “enforcement of the policy definition  
20 results in the exclusion of a representative of the news media, that exclusion would violate  
21 ORS 192.660(4)”.

22  
23 Second, the respondents argue that the City Councilors did not exclude Mr. Werner, the  
24 City staff did.

25  
26 Information indicates that the City staff did exclude Mr. Werner prior to the executive  
27 session. According to the City Policy, however, it is within the sole discretion of the City  
28 Council as to whether or not to allow a person who claims to be the media to attend an  
29 executive session. The respondents seem to be arguing that the Council did not exercise  
30 their sole discretion in this instance, but sat by and allowed the staff to exclude Mr. Werner  
31 on 6/4/18 from attending the executive session.

1 The Mayor, at one point, did suggest that Mr. Werner be allowed to attend and four others  
2 responded "No" to that suggestion. It is argued by respondents that this did not constitute  
3 official action on their part. It appears that Mr. Anderson went even further, stating that  
4 they should not hold the executive session at all if Mr. Werner was allowed to attend.  
5 Members of the governing body voiced opposition to the suggestion by one member that  
6 Werner be allowed to attend the executive session, they abdicated their sole discretion in  
7 allowing the City staff to exclude Mr. Werner, they declined to exercise their option to  
8 override the City Policy to immediately recognize Mr. Werner as a representative of the  
9 news media, and they all participated in the executive session once Mr. Werner had been  
10 excluded. Thus, it appears that the members of the governing body, either through their  
11 action or inaction, did exclude Mr. Werner from the executive session on 6/4/18.  
12

13 Third, the respondents argue that the City Councilors could not and did not make a  
14 decision to exclude Mr. Werner from the executive session on 6/4/18 because they were  
15 advised by their attorney that they could not legally make a decision that day in either the  
16 public work session or in the executive session, or in the interim between the two  
17 sessions. The fact that they were advised by their attorney not to make a decision on Mr.  
18 Werner's attendance at the executive session on 6/4/18 prevents the assessment of a  
19 monetary penalty under ORS 244.350(2), which states that the commission may impose  
20 civil penalties up to \$1,000 for any violation of ORS 192.660, unless the violation occurred  
21 as a result of the governing body of the public body acting upon the advice of the public  
22 body's counsel. However, acting under the advice of counsel does not prohibit a finding  
23 of violation of ORS 192.660(4) and the imposition of a non-monetary sanction.  
24

25 ORS 192.660(4) states that representatives of the news media shall be allowed to attend  
26 executive sessions held by the governing body of a public body, except in a few specific  
27 circumstances, none of which apply in this case. A public body is allowed to have a media  
28 policy, but if enforcement of that policy's definitions or requirement of advance notice of  
29 attendance would result in the exclusion of a representative of the news media from an  
30 executive session, then the exclusion is a violation of ORS 192.660. The City Policy  
31 permits the City Council, in their sole discretion, to override their policy and immediately



1 recognize a person as a representative of the news media. They chose not to do so,  
2 even though Mr. Werner had been corresponding with staff and the attorney about his  
3 media status for months and information about his media status was readily available.  
4

5 The City Council had options to ensure that they did not violate ORS 192.660(4). For  
6 example, it could have deferred the executive session until they could determine whether  
7 or not Mr. Werner's publication qualified as a news media. It appears that deferring the  
8 executive session was an option, as Councilor Anderson suggested not holding the  
9 executive session at all if Mr. Werner was allowed to attend. The Council could have  
10 considered Mr. Werner's email on 5/3/18 that he would attend the "next executive  
11 session" as an application and followed up immediately with the form with which to do  
12 that. As stated above, it is unclear exactly what an "application" would entail for an  
13 internet based operation, and considering that the City staff had access to  
14 lincolncityhomepage.com site, it does not seem that any more of an "application" was  
15 necessary.

16  
17 In conclusion, there is a preponderance of evidence that a representative of the news  
18 media was excluded from attending an executive session held by the Lincoln City Council,  
19 in violation of ORS 192.660(4), and that Dick Anderson was participating as a member of  
20 the governing body when the violation occurred.  
21

22 **RECOMMENDATIONS:** The Commission should make a preliminary finding of 1  
23 violation of ORS 192.660(4) by Dick Anderson. [Motion 10]  
24

25 **ASSOCIATED DOCUMENTS:**

- 26 #PR1 Complaint submitted by Justin Werner, received on 6/6/2018.  
27 #PR2 Oregon Attorney General opinion #8291, published on 4/18/2016,  
28 concerning media and executive sessions.  
29 #PR3 Additional information via email from Justin Werner received on 6/20/2018.  
30 #PR4 Response from attorney Andrea D. Coit, received on 6/15/2018.

31 ///

- 1 #INV1 Records received 10/22/18 from Lincoln City's custodian of records in
- 2 response to Commission subpoena.
- 3 #INV1a Letter from Lincoln City attorney, Richard Appicello, in response to
- 4 Commission's subpoena.
- 5 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with
- 6 attachments.
- 7 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with
- 8 attachments, via email attachment from attorney Coit.
- 9 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by
- 10 the City of Lincoln City, obtained 1/9/19.
- 11 #INV4 Records from <https://sos.oregon.gov/business/Pages/default.aspx>,
- 12 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 13 #INV5 Correspondence and records from Justin Werner.
- 14 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and
- 15 meeting records obtained from website maintained by City of Lincoln City.

PREPARED BY *Diane Gould* 1/16/19  
 Diane Gould Date  
 Investigator

APPROVED BY *[Signature]* 1/16/19  
 Ronald A. Bersin Date  
 Executive Director

REVIEWED BY *Amy E. Alpaugh* 1/16/19  
 Amy E. Alpaugh Date  
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RECEIVED  
JAN -3 2019  
OREGON GOVERNMENT  
ETHICS COMMISSION

January 3, 2019

Via Email ([diane.gould@oregon.gov](mailto:diane.gould@oregon.gov))

Diane Gould  
Compliance and Education Coordinator  
Oregon Government Ethics Commission  
3218 Pringle Road SE, Suite 220  
Salem, OR 97302

RE: Dick Anderson, Case No. 18-146XMT  
Judy Casper, Case No. 18-149XMT  
Diana Hinton, Case No. 18-150XMT  
Dennis Hoagland, Case No. 18-151XMT  
Susan Wahlke, Case No. 18-148XMT

Dear Ms. Gould:

I am writing in response to your email to me today, in which you requested answers to three specific questions and invited me to submit any additional information that I thought may be of help to your investigation. Thank you for that opportunity.

I am submitting herewith an affidavit from Lincoln City Attorney Richard Appicello, along with the exhibits referenced in that affidavit. I had hoped that he would be interviewed as a part of your investigation because he has first-hand knowledge of events quite material to the complaints at issue here. To that end, I apologize if I appear to be overstepping my role by providing you with his unsolicited testimony, but I have concluded it is necessary for the benefit of my clients.

The majority of your questions are covered by Mr. Appicello's testimony. To the extent I have additional factual information to add or comment to make, I have included that below.

Q: *On 6/4/18 at the time when your clients and Mr. Werner were all assembled in the executive session room and the conversation began as to whether Mr. Werner would be able to attend the executive session as a representative of the media, did the City Attorney give advice to the City Councilors that Mr. Werner was not approved media at that moment because he had not applied to be recognized as such, that no determination by the City Council had been made at that time, and that such a determination could not be made presently?*

Mr. Appicello's affidavit fully answers this question. I would just like to clarify that at no time during the interlude between the end of the public meeting work session and the commencement of the executive session did any of my clients participate in a "conversation as to whether Mr. Werner would be able to attend the executive session as a representative of the media."

Q: *Did the City Attorney inform any of your clients prior to their arrival in the "executive session" room on 6/4/18, that Mr. Werner wished to attend the executive session as a representative of the media? This includes during the period when they were switching venues from the "work session" room to the "executive session" room?*

Again, Mr. Appicello's affidavit addresses this question and provides a timeline of pertinent events from his standpoint as the City Attorney. In addition to that helpful information from Mr. Appicello, I will add here the pertinent timeline of events from the standpoint of my clients who were not privy to any of the prior communications between the City and Mr. Werner.

The Councilors received an email from City Attorney Appicello on May 10, 2018, in which they were informed that an anticipated agenda item for the May 14, 2018 City Council meeting was not on the agenda. Specifically, the Councilors were told that the anticipated agenda item to review and take action on a request from an individual to be recognized as a member of the media for purposes of attending executive session meetings was not on the agenda because the individual in question had not submitted an application or other evidence. The individual was not identified by Mr. Appicello in that email. The Council was further reminded in the May 10 email that the decision to recognize an individual as a member of the media had to be made in a public session before that individual could attend an executive session meeting.

No one tried to attend the May 14 executive session meeting as a member of the media who had not previously been recognized as such. There were no regular session City Council meetings between May 14 and June 4.

On June 4, 2018, the Councilors participated in the work session City Council meeting. As a public meeting, it was attended by various members of the public. None of my clients took any particular note of Mr. Werner's presence. He did not speak at the meeting or otherwise do anything to indicate that he was at the meeting as a member of the media.

When the work session concluded, the Councilors walked to the executive session room. Some of my clients noticed Mayor Williams walking with a young man. None of them recognized Werner by sight. None of them spoke with Werner, walked with him, or asked any other person who he was.

When the Councilors were seated at the table they would sit at for executive session, they noticed that the man who was previously walking with the Mayor was now sitting in the room. They then saw and heard the exchange that has been described by Mr. Appicello between Werner and the City Manager and the City Recorder. When Werner was told by them that he had to leave because he had not submitted his application and a decision had not yet been made in public session on that application, Werner turned to the Councilors and tried to engage them, asking them to just let him stay. None of the Councilors responded to Werner. Instead, Mr. Appicello stated to them that they could not make any sort of decision on Werner's current request to them

to recognize him as media. Mr. Appicello told Mr. Werner at least three times that the Councilors could not make a decision at that moment on his request to be recognized as a member of the media and that the decision had to be made in public session.

As Mr. Werner continued with his pleas to the Councilors, Mayor Williams said that he thought they should just let him stay if he was quiet. It was to this statement that several Councilors stated "No." They had just been advised by the City Attorney that they could not make a decision to recognize Werner as media without being in violation of the public meeting laws.

Mr. Werner left the meeting room shortly thereafter. The executive session then began.

Q: *You also said that when Mr. Werner was asking the City Councilors to allow him to attend the executive session, the Mayor stated that he thought Werner should be allowed to stay and 4 of the 5 other councilors (except Hoagland) said "NO", in response to the Mayor's suggestion. Is this correct?*

Please refer to Mr. Appicello's affidavit and my response to the preceding question.

Q: *You said a few times that three of your clients did not know who Mr. Werner was and that two of your clients did know him. Could you identify the 2 who did know Mr. Werner and the 3 who did not? Does this mean that the three who did not know Mr. Werner were unfamiliar with him personally (i.e. his name and face meant nothing to them) or were unfamiliar with his publication, so that identifying himself as the editor/writer of LincolnCityHomePage would have had no meaning whatsoever to the 3?*

Councilor Anderson knew Mr. Werner as the writer of the blog called LincolnCity HomePage. Councilor Hinton had heard of Mr. Werner's blog, but had never met him and did not recognize him on June 4, 2018. I will update this information for the other three of my clients as soon as possible.

On this particular issue, though, I would like to submit my opinion that any individual Councilor's knowledge that Mr. Werner wrote a blog should be of no relevance to the complaint raised here. On June 4, 2018, Mr. Werner had never previously been recognized by the Lincoln City Council as a member of institutional media such that he could legally be permitted to attend an executive session meeting. Regardless of the process required to obtain that recognition, giving the recognition itself would require a decision by the Council. For example, if the request was made in accordance with the City's written policy requiring the submission of an application or other evidence, a decision on that application would need to be made. Alternatively, if it is argued that perhaps some of the Councilors knew that Mr. Werner wrote a blog and, therefore, the Council should have just accepted his oral statement that he was media, a decision to ignore or override the City's policy on recognizing media and instead just allow him to attend would have been required. Those are final decisions that cannot be made in executive session. That is why the City Attorney advised my clients that they could not

Diane Gould  
January 3, 2019  
Page 4

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act one way or the other on his request. They followed his advice. And, for what it matters, the advice was correct.

Very truly yours,

HUTCHINSON COX

*Andrea Coit*

Andrea D. Coit

ADC/jt



numerous times to leave the meeting room by the City Recorder and City Manager prior to the start of the executive session.

7. Although Mr. Werner entered the meeting room, Councilors did not engage him. Before the executive session was to start, the City Recorder addressed Mr. Werner. City Recorder Cathy Steere advised Mr. Werner that he could not attend the executive session as he had not been recognized by the City Council as a representative of institutional news media.
8. Weeks earlier, the City Recorder had sent Mr. Werner the 2016 Attorney General Opinion on media, together with the City's 2010 Media policy. The City's 2010-09 Media Policy is identical to the Model Policy developed in 2009 by a Task Force consisting of representatives of Open Oregon, Lake Oswego City Attorney, League of Oregon Cities, Lake Oswego Mayor, Clackamas County Counsel, the Oregonian, the Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters. See Oregon State Bar: *Circuit Training for Government Law 2014*, Chapter 2B "News Media in Executive Sessions."
9. Attached to this Affidavit as "Exhibit A," please find a true and correct (certified) copy of emails between Cathy Steere, City Recorder and Mr. Justin Werner. For convenience, a true and correct excerpt of the May 10, 2018 email to Mr. Werner reads as follows:

----- Forwarded message -----

From: "**Cathy Steere**" <[csteere@lincolncity.org](mailto:csteere@lincolncity.org)>

Date: Thu, May 10, 2018 at 8:02 PM -0400

Subject: RE: Attendance - City Executive Session Meetings

To: "Justin Werner" <[staff@lincolncityhomepage.com](mailto:staff@lincolncityhomepage.com)>

*Justin, with regard to attending an Executive Session Meeting, as stated below an application is required in advance for Council's consideration. Council then reviews the application at a regularly scheduled City Council meeting.*

*Attached is Resolution 2010-09 (Executive Session News Media Attendance Policy), as a guide for making application. Also attached is the 2016 Attorney General opinion on what constitutes news media that would control over anything inconsistent in the Resolution.*



*If you wish to be considered, you must apply in advance. The next available City Council meeting date for consideration is June 11th. The agenda deadline to receive your completed application (addressing the required criteria to be met as stated in Resolution 2010-09), is noon Monday, June 4, 2018 for the June 11, 2018 City Council meeting.*

*If you have any questions, please let me know.*

*Cathy Steere, MMC  
City Recorder  
City of Lincoln City  
541-996-1203*

10. For convenience, a true and correct excerpt of a May 5, 2018 email is as follows:

...

*With regard to your request to attend an Executive Session Meeting, Council cannot make a decision in executive session so if you believe that you qualify as a representative of the news media under Oregon law, you must make application to City Council to be admitted to executive session meetings. The Council's decision will be based on the April 2016 Oregon Attorney General Opinion on the subject.*

*Cathy Steere, MMC  
City Recorder  
City of Lincoln City  
541-996-1203*

11. On May 1, 2018, I sent the full 2016 AG opinion on media to the City Manager and City Recorder together with a Court filing from the *Smith v. Lincoln City* case where Attorney Jens Schmidt argued on behalf of the City that Ross Smith was not "media" under the standard in the 2016 AG opinion. I sent the same document to the City Council on May 10, 2018 with the following email text, typos included:

The attached is something Jens Schmidt filed in the Smith case. It is a Supplemental Memorandum discussing the 2016 Oregon Attorney General's opinion regarding the meaning of "members of the media" for purposes of the Public Meetings Law.

There is nothing on this Agenda regarding this as we anticipated but did not receive any application (or evidence) from an individual who indicated he wished to be recognized as "media" and attend executive sessions. Cathy had informed him Council could take no action in executive session so he would need to bring up the issue so Council could act - prior to showing up. I am sending you the full AG opinion (attached to the motion) in case you wish to read it all. We have a policy as well, but to the extent they are inconsistent this AG opinion will control. I will summarize the pertinent points in the opinion for Council prior to the meeting.

A true and correct (certified) copy of this email (without the attached AG opinion) is attached hereto as Exhibit B.

12. On June 4, 2018 prior to the start of the executive session, the City Recorder and the City Manager, consistent with the email communications to Mr. Werner, both advised Mr. Werner that he had to leave as he had failed to submit any evidence for City Council to make a decision on whether he constituted a representative of the news media. In response to the Recorder and Manager, Mr. Werner began soliciting the Council members directly to recognize him as media – claiming, among other things that he was "obviously media" and that he was an "up and coming media outlet".
13. Councilors were not engaging with Mr. Werner. Staff engaged him. Council had not yet started its executive session meeting. Council had adjourned its work session and had not yet opened executive session. Frankly, Council was caught off-guard; most of them did not know who this person was or why he was here in their meeting room blustering at staff; Councilors had not been given any evidence (because none had been submitted) although Council had received the AG opinion on media from me on May 10, 2018.
14. I specifically advised Council on June 4, 2018 that they could not act on the request being made by Mr. Werner to be recognized as media at this time. Council cannot legally act in the moments between public meetings or in an executive session.
15. Contrary to Mr. Werner's statement in his complaint that I said nothing, I stated *at least three times* that no decision could be made by Council and that such decision needed to be made in open session "down the hall". I saw Mr. Werner's solicitation of Council to make a decision outside a regular properly noticed public meeting as asking Council to violate public meetings law.

16. I have previously provided training to the City Councilors and reviewed the crimes of Official Misconduct I (ORS 192.415), Official Misconduct II (ORS 192.405), and Criminal Solicitation (ORS 161.435). During training, I handed out copies of the LOC Manual describing such public officer crimes and handed out a copy of the solicitation statute.
17. Mr. Werner solicited Councilors to act at time they legally could not. He asked them to knowingly engage in an unauthorized exercise in official duties (to take action on his request in violation of public meetings law) for his personal benefit. ORS 162.415. He did this despite the fact he was advised repeatedly by the Recorder to submit some evidence (he submitted none) to support his request and that Council would act on his request at a regular meeting. He was told he could not just show up to executive session and Council could not make a decision in executive session.
18. The City Recorder and City Manager asked Werner to leave because he had not followed the process to be recognized by Council at a regular meeting. I repeated the fact that the process to be recognized had not been followed, but I specifically stated that "the one thing we know for sure" is that the decision on whether or not Mr. Werner is or is not media, cannot be made now and needed to be made "down the hall" at a regular meeting. The Manager and Recorder made the decision to exclude Werner, not the Council. Council knew they could make no decision, Mr. Werner groused and complained. At no time was he threatened by the Manager and Recorder.
19. Contrary to my statements and the actions of the Recorder and Manager telling Werner to leave because Council could not act on his request, Mayor Don Williams suddenly and unilaterally declared that Werner could stay if he was not disruptive. This elicited a response of "WHAT!" and "NO!" from some Councilors present. The exclamations of "WHAT!" and "NO!" by Councilors were not votes on a motion of whether to admit Werner, but rather exclamations of frustration with the Mayor appearing to attempt to take action (possibly proposing unanimous consent) when the City Attorney was repeatedly advising that the Council could not act.
20. The exclamations were not votes as Werner has characterized them. It is unclear whether the Mayor's unilateral declaration that Werner could stay was an attempt at unanimous consent to admit Werner or simply a request to get

on with the City's business. (Werner was delaying the conduct of the City's business). What is clear is that the other Councilors refused to make a decision outside a regular advertised meeting without any evidence.

In sum, as a factual matter, Mr. Werner was asked to provide evidence to address how he met the standard expressed in the 2016 AG opinion, using the City's 2010 policy as a guide so that Council could take action at a public meeting on his request. He refused to do so. He appeared and solicited Council to make a decision at a time they could not act under public meetings law, and without submission of any evidence. I advised the Council members that they could not act on Werner's solicitation to them to be recognized as media in the moments between noticed public meetings or in executive session and they followed my legal advice. Werner's actions can be viewed as Solicitation of Official Misconduct I. Councilors refused to commit a crime and violate public meetings law for Werner's benefit. The Council did not make a decision to exclude Werner, the Manager and Recorder excluded him.

I declare under penalty of perjury and false swearing under the laws of the United States and the State of Oregon that the foregoing statements are true and correct.

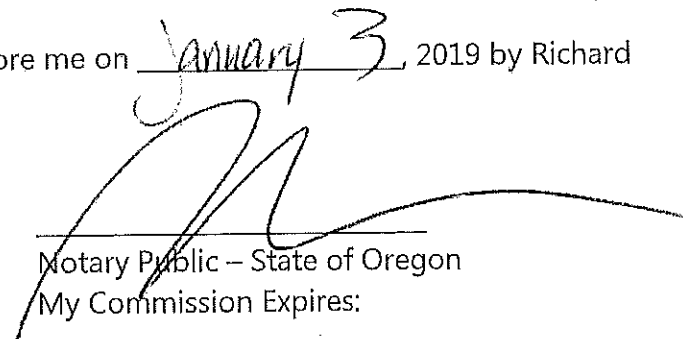
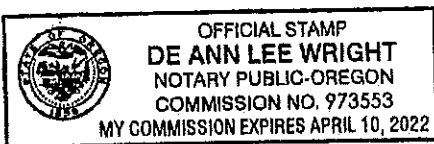
DATED this 3<sup>rd</sup> day of January, 2019.



Richard Appicello  
City Attorney  
City of Lincoln City

STATE OF OREGON            )  
  ) ss.  
County of Lincoln         )

Signed and sworn to (or affirmed) before me on January 3, 2019 by Richard Appicello.



Notary Public – State of Oregon  
My Commission Expires:



June 18, 2018

VIA EMAIL ([michael.thornicroft@oregon.gov](mailto:michael.thornicroft@oregon.gov))

Government Ethics Commission  
Attention: Michael Thornicroft  
3218 Pringle Road, SE., Suite 220  
Salem, OR 97302-1544

Re: Lincoln City Councilor Dick Anderson, Case No. 18-146XMT

Dear Mr. Thornicroft:

I represent Lincoln City Councilor Dick Anderson in connection with the above-referenced claim. As requested in your letter of June 6, 2018, Councilor Anderson submits the following information and enclosed documents in support of his position that the Commission should not find cause to investigate Justin Werner's complaint against him. As we believe the Commission will find after reviewing Councilor Anderson's submission, Councilor Anderson and his fellow Councilors had no choice but to proceed as they did in the situation under review. Had they chosen a different course of action, either allowing Mr. Werner to attend an executive session prior to his application for media recognition being heard, or making a decision on that request in executive session, the Councilors would have violated their obligations under ORS 192.610 and 660.

#### I. Background

Mr. Werner is a resident of Lincoln City. He became involved in local politics a little over two years ago when he supported unsuccessful bidders for the City Council seats currently held by three of the Councilors named in his current complaint. Mr. Werner took to the internet at that time to propagate his support for his chosen candidates, starting a webpage he titled "Lincoln City Home Page." Despite the implication of its title, Mr. Werner's website has no formal affiliation with Lincoln City.

In early 2018, Mr. Werner contacted Cathy Steere, Lincoln City Recorder, regarding his desire to attend City Council executive session meetings as a member of the media. In response to Mr. Werner's inquiry, Ms. Steere wrote to Mr. Werner on February 5, 2018, explaining the process for an entity to obtain approval to attend executive session as a representative of the media. Ms. Steere explained:

"With regard to your request to attend an Executive Session Meeting, Council cannot make a decision in executive session so if you believe that you qualify as a representative of the news media under Oregon law, you must make application to City Council to be admitted to executive session meetings. The Council's decision will be based on the April 2016 Oregon Attorney General Opinion on the subject."

Mr. Werner did not submit an application or any other form of request to the City Council regarding his effort to be recognized as a representative of the media. Instead, on May 3, 2018, Mr. Werner wrote to Ms. Steele, stating:

"I will be attending the next executive session meeting. Thank you for pointing me in the right direction."

Concerned that Mr. Werner had misunderstood her prior instruction regarding the process for media recognition, Ms. Steele responded to Mr. Werner on May 10, 2018, with a more detailed explanation of the process to follow if he wanted to obtain approval and recognition as a member of the media for purposes of attending Lincoln City Council executive session meetings. Ms. Steele wrote:

"Justin, with regard to attending an Executive Session Meeting, as stated below an application is required in advance for Council's consideration. Council then reviews the application at a regularly scheduled City Council meeting.

Attached is Resolution 2010-09 (Executive Session News Media Attendance Policy), as a guide for making application. Also attached is the 2016 Attorney General opinion on what constitutes news media that would control over anything inconsistent in the Resolution.

If you wish to be considered, you must apply in advance. The next available City Council meeting date for consideration is June 11th. The agenda deadline to receive your completed application (addressing the required criteria to be met as stated in Resolution 2010-09), is noon Monday, June 4, 2018 for the June 11, 2018 City Council meeting.

If you have any questions, please let me know."

A certified true copy of the emails quoted above, along with their attachments, is enclosed with this letter.

Lincoln City Resolution 2010-09 expressly states at page 1 that only The News Guard and News Times are currently recognized as news media organizations eligible to attend executive session meetings. It goes on to declare that:

"No other entity shall be permitted to attend executive session unless it is recognized through the process described in Section 2, below."

Resolution at page 1.

Section 2 sets forth the process for an entity to obtain recognition as a representative of the media for purposes of attending executive session. It specifically states:

"It shall be the entity's burden to persuade the City Council by substantial evidence that it should be recognized as a news media organization

meeting the criteria in Section 2(a) of this policy. Such evidence must be submitted at least thirty (30) days in advance of the first executive session that the entity desires to attend. The City Council shall make a determination within twenty-one (21) days of receiving the evidence submitted by the entity."

Id. at page 2.

Also enclosed with the email to Mr. Werner was the April 18, 2016 Oregon Attorney General Opinion (the Opinion) that sets forth the Attorney General's guidance regarding the proper interpretation of ORS 192.660. As Ms. Steele expressly conveyed to Mr. Werner, any of the guidance provided in the Opinion that was in conflict with the previously adopted Resolution would control. For example, if any of the requirements for media recognition contained in Section 2 of the Resolution conflicted with or were more restrictive than the guidance given in the Opinion, the particular Resolution requirement would be discarded in favor of the Opinion's guidance. Also important to note, though, is that the Opinion specifically notes that ORS 192.660(1) leaves to the public entity the responsibility to evaluate the issue of whether an entity qualifies as institutional media. "But the legislature simultaneously amended ORS 192.660 to exclude from the commission's rulemaking authority the ability to determine by rule who qualifies as a representative of the news media." Opinion at page 19.

For purposes of the present complaint, the Opinion contains the following guidance:

"[G]overning bodies may adopt screening criteria for 'representatives of the news media' that are consistent with the meaning intended by the legislature as described in this opinion."

Opinion at page 20.

In other words, Lincoln City is permitted to create and enforce a screening process for the purpose of determining whether a specific entity qualified as institutional media entity. Per ORS 192.660(10), Lincoln City is also permitted, within the bounds of the Opinion's guidance, to establish the criteria for evaluating what entities qualify as media for purposes of attending executive session.

The Opinion goes on to explain that:

"[G]overning bodies are not required to accept a person's mere assertion that they qualify as a representative of the news media. Consequently, a policy requiring proof of media status can be consistent with the Oregon Public Meetings Law."

Id.

Thus, the Resolution's requirement that an applicant submit evidence of his or her status as a representative of the news media prior to being approved to attend executive session is permissible.

Mr. Werner was informed on May 10, 2018, that he needed to submit his application for review by the City Council at a regularly scheduled meeting before he could attend executive session. He was informed that the next regularly scheduled City Council meeting would occur on June 11, 2018, and he should have his application submitted by June 4, 2018.

Mr. Werner did not submit an application to be recognized as a representative of institutional media. Rather, he ignored the legally permissible procedure and simply showed up just prior to the commencement of executive session on June 4, 2018, and demanded that he be allowed to stay.

To comply with both ORS 192.610 and Lincoln City's Resolution, the City Council was required to consider Mr. Werner's application for media recognition at a properly noticed public meeting. The City Council had convened a work session prior to going into executive session on June 4. It had not been in a public session.

Mr. Werner's application could not be considered in executive session, as it is not one of the permissible topics allowed for consideration in executive session (see ORS 192.660). Nor could a decision be made at the executive session to either recognize him as institutional media or to waive the application process. Mr. Werner was not a recognized representative of institutional media on June 4, 2018. Pursuant to ORS 192.660, he could not legally attend the Lincoln City Council executive session.

## II. Mr. Werner's Complaint

In response to the specific allegations in Mr. Werner's complaint, Councilor Anderson states the following:

**Allegation 1.** I attended the 6/4/18 executive session in Lincoln City.

**Response:** This statement is false. Mr. Werner was asked to leave by the City Recorder prior to executive session being convened on June 4, 2018.

**Allegation 2.** Ms. Steere informed Mr. Werner he could not sit in on the session because he had not applied beforehand.

**Response:** This statement is true. The City Manager also informed Mr. Werner that he had to leave.

**Allegation 3.** Steere said "you do not meet the criteria for institutional media."

**Response:** This statement was not made. Mr. Werner had not submitted his application at the time of the meeting, so no evaluation whether he met the criteria had been completed. Further, it is the City Council, not Ms. Steere, who



conducts that evaluation. And, as explained above, the Council was not legally permitted to conduct such an evaluation and decide if the criteria were met during executive session (or prior to, as no public session had been noticed.)

**NOTE:** Material at this juncture is the conduct of Lincoln City Attorney, Richard Appicello. After Ms. Steere and the City Manager told Mr. Werner he had to leave, Mr. Werner began addressing Council members directly, stating he was obviously media and asking that they recognize him as media. The council members, including Councilor Anderson, did not engage with Mr. Werner. Rather, Mr. Appicello advised the Council that it could not act on Mr. Werner's request. Mr. Appicello told Mr. Werner three times that the Council could not act on his request and that such a decision needed to be made in open session.

**Allegation 4.** Mayor Williams suggested allowing Mr. Werner to sit in on the meeting.

**Response.** This allegation is true. After Mr. Appicello repeatedly advised the Council that Mr. Werner was not approved media and that such approval could not be given anywhere other than in open session, the Mayor suggested that Mr. Werner could stay if he was quiet.

**Allegation 5.** In response to the Mayor's suggestion, the Council members, with the exception of Councilor Hoagland, stated "No" and Councilor Anderson said they would not convene executive session if Mr. Werner stayed.

**Response:** This allegation is true. The Council was aware that it could neither take action on Mr. Werner's request, nor allow him to stay before he had submitted his application and been approved to attend as a representative of institutional media. The Council members did not vote on expelling Mr. Werner. Their statements of "no" were in response to the Mayor's suggestion. The Council members did not "discuss the issue" in "this meeting" either. No discussion other than what is recounted above occurred, and the discussion was between Mr. Werner, Ms. Steere, the City Manager, and Mr. Appicello. Further, the executive session had not yet convened. Mr. Werner had left the room before executive session convened and he was not discussed at that session.

**Allegation 6.** "Saying I am not news/media is also a violation."

**Response:** This statement was not made. Mr. Werner was informed that he had to follow the prescribed process to obtain approval to be recognized as a representative of institutional media. No decision had been made by any person or public body that he was not "news/media."

In conclusion, Mr. Werner's complaint is without merit. The City of Lincoln City is permitted by statute, and through guidance from the Attorney General, to set forth a reasonable process for determining if interested entities should be recognized as representatives of institutional media. Mr. Werner was advised of that process and failed to follow it. The City Council could not *sua sponte* deem him to be recognized

Michael Thornicroft  
June 18, 2018  
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media as he demanded it do on June 4, 2018. Such a decision must be made in a properly noticed public meeting. Any other course of action would be a violation of Oregon's Public Meetings Laws.

On behalf of Councilor Anderson, I respectfully ask that you determine no cause exists to investigate Mr. Werner's complaint.

Very truly yours,

HUTCHINSON COX



Andrea D. Coit

ADC/jt  
Enclosure

**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-147XMT

**DATE:** January 16, 2019

**RESPONDENT:** WILLIAMS, Don, Mayor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Don Williams was the Mayor and member of the City Council for the City of  
2 Lincoln City and participated in an executive session relevant to this investigation. The  
3 focus of this investigation was to determine if there was a preponderance of evidence to  
4 indicate that a representative of the news media was impermissibly excluded from  
5 attendance at the executive session, in violation of ORS 192.660(4).

6  
7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 but was known in advance to several City staff members who corresponded regularly with  
13 him as a representative of the publication. It appears that he and his publication were  
14 also known to several members of the governing body.

15  
16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

1 in answer to questions from the Commission concerning its enforcement responsibilities  
2 under the statute. The Commission must follow the AG's Opinion in enforcing ORS  
3 192.660(4). According to the AG Opinion, a public body is allowed to have a media policy,  
4 but if enforcement of that policy's definitions or requirement of advance notice of  
5 attendance would result in the exclusion of a representative of the news media from an  
6 executive session, then the exclusion is a violation of ORS 192.660.

7  
8 There is sufficient evidence to indicate that Don Williams participated as a member of the  
9 City Council when a representative of the news media was excluded from attendance at  
10 an executive session in violation of ORS 192.660(4).

11  
12 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
13 issues addressed herein:

14  
15 **192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to 192.690:

16 (1) "Decision" means any determination, action, vote or final disposition upon a motion,  
17 proposal, resolution, order, ordinance or measure on which a vote of a governing body is  
18 required, at any meeting at which a quorum is present.

19 (2) "Executive session" means any meeting or part of a meeting of a governing body  
20 which is closed to certain persons for deliberation on certain matters. \*\*\*

21 (5) "Meeting" means the convening of a governing body of a public body for which a  
22 quorum is required in order to make a decision or deliberate toward a decision on any  
23 matter.\*\*\*

24 **192.660 Executive sessions permitted on certain matters; procedures; news media**  
25 **representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not prevent the  
26 governing body of a public body from holding executive session during a regular, special  
27 or emergency meeting, after the presiding officer has identified the authorization under  
28 ORS 192.610 to 192.690 for holding the executive session. \*\*\*

29 (2) The governing body of a public body may hold an executive session: \*\*\*

30 (d) To conduct deliberations with persons designated by the governing body to

1 carry on labor negotiations.

2 (e) To conduct deliberations with persons designated by the governing body to  
3 negotiate real property transactions. \*\*\*

4 (h) To consult with counsel concerning the legal rights and duties of a public body  
5 with regard to current litigation or litigation likely to be filed. \*\*\*

6 (4) Representatives of the news media shall be allowed to attend executive sessions  
7 other than those held under subsection (2)(d) of this section relating to labor negotiations  
8 or executive session held pursuant to ORS 332.061(2) but the governing body may  
9 require that specified information be undisclosed.

10 (5) When a governing body convenes an executive session under subsection (2)(h) of  
11 this section relating to conferring with legal counsel on current litigation or litigation likely  
12 to be filed, the governing body shall bar any member of the news media from attending  
13 the executive session if the member of the news media is a party to the litigation or is an  
14 employee, agent or contractor of a news media organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or making  
16 any final decision. \*\*\*

17 (10) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not  
18 adopt rules that establish what entities are considered representatives of the news media  
19 that are entitled to attend executive sessions under subsection (4) of this section.

20  
21 **192.685 Additional enforcement of alleged violations of ORS 192.660.** (1)  
22 Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have  
23 been committed by public officials may be made to the Oregon Government Ethics  
24 Commission for review and investigation as provided by ORS 244.260 and for possible  
25 imposition of civil penalties as provided by ORS 244.350.

26  
27 **244.350 Civil penalties; letter of reprimand or explanation.** (1) The Oregon  
28 Government Ethics Commission may impose civil penalties not to exceed: \*\*\*

29  
30 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may

1 impose civil penalties not to exceed \$1,000 for violation of any provision of ORS  
2 192.660.

3 (2)(b) A civil penalty may not be imposed under this subsection if the violation  
4 occurred as a result of the governing body of the public body acting upon the  
5 advice of the public body's counsel.  
6

7 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
8 a preliminary review based on information in a signed written complaint from Justin  
9 Werner on 6/6/18 (#PR1). The complainant alleged that Don Williams, a member of the  
10 Lincoln City Council (Council), along with other Council members, may have violated  
11 executive session provisions of Oregon Public Meetings law when participating in an  
12 executive session on 6/4/18. The Commission found cause to investigate on 8/10/18  
13 after considering the information developed in the preliminary review. The focus of the  
14 investigation was to determine if there is sufficient evidence to indicate that Don Williams  
15 participated in the 6/4/18 executive session from which a representative of the news  
16 media was excluded in violation of ORS 192.660(4). Respondent and complainant have  
17 been notified of the Commission actions in this matter. Both have been invited to provide  
18 any information that would assist the Commission in conducting this investigation.  
19

#### 20 **COMPLAINANT ALLEGATIONS**

21 The complainant attended the Council's 6/4/18 public work session, which was followed  
22 by an executive session. The complainant alleges that the City Recorder, Cathy Steere,  
23 informed him that he could not sit in on the subsequent executive session because he did  
24 not apply beforehand. According to the complainant, he asked Ms. Steere if the Newport  
25 News Times or The News Guard had applied and was told by Ms. Steere that "they were  
26 considered institutional news media before the statute went into effect." The complainant  
27 alleges that Ms. Steere told him that he did not meet the criteria for institutional  
28 news/media. The complainant states,  
29

30 "Don Williams, Mayor of Lincoln City,\*\*\* said we can just let Justin sit in as long as  
31 he's not disruptive. Then four council members, Dick Anderson, Susan Wahlke,

1 Judy Casper and Diana Hinton \*\*\*voiced loudly 'No!' That's when Dick Anderson  
2 said 'Or we don't have a meeting.' Then the city manager, Ron Chandler, said 'We  
3 have informed Mr. Werner that he does not meet the criteria to be considered news  
4 media \*\*\* Mr. Werner you have to leave.' \*\*\*[Councilor] Riley Hoagland\*\*\*was also  
5 in attendance but he didn't say anything. The city attorney, Richard Appicello, was  
6 there and should have advised his clients that they can't vote or discuss the issue  
7 in this meeting.\*\*\*" (#PR1)

8  
9 The complainant states that he showed everyone who was present the Oregon Attorney  
10 General opinion (AG Opinion), #8291. The AG Opinion, published on 4/18/16, specifically  
11 answers the questions asked by the Commission concerning the Public Meetings Law  
12 requirement that representatives of the news media be allowed to attend executive  
13 session meetings. (#PR2)

14  
15 After the initial complaint, during the preliminary review period, Mr. Werner supplied the  
16 following information via email on 6/20/18: (#PR3)

17  
18 "\*\*\*\*[T]his incident occurred after the regular meeting. I walked with the Mayor, Don  
19 Williams, down the hall and entered the conference room that holds the executive  
20 session. Williams told me, 'media sits in those chairs.' I sat down next to Jeremy  
21 Ruark, the News Guard Editor. The City Recorder, Cathy Steere said, "You can't  
22 sit in on this session because you didn't apply first.' I showed her the 2016 Attorney  
23 Genreal's opinion and said I should be allowed to sit in. She said 'You do not meet  
24 the criteria for news media.' Again I showed her the AG's opinion and tried to  
25 explain why I qualified. I told her I had staff\*\*\*and gather news and give it to the  
26 public via website, print and Facebook.

27  
28 She sat down and Williams said, 'I don't have a problem with Justin being here as  
29 long as he's not disruptive, we can get this meeting started.' That's when the  
30 council said 'No!' in unison. Dick Anderson said, 'Or...we don't have a meeting.'  
31 Then City Manager Ron Chandler said, "\*\*\*\*[W]e have informed Mr. Werner he does

1 not meet the criteria for news media. Mr. Werner you have to leave.' I asked what  
2 would happen if I stayed anyway. Chandler said, 'Then we will have the police  
3 remove you from the building.'

4  
5 So I left. On my way out I left the conclusion from the AG on the table and told  
6 them I thought it was wrong and illegal and why punish us for doing a good job?"

7  
8 COMPLAINANT INFORMATION

9 The complainant is with LincolncityHomepage.com, a web based publication, which has  
10 advertisers, and covers local news in the Lincoln City area including sports, public interest  
11 stories, local government, and Letters to the Editor. The complainant states,

12  
13 "I clearly do meet the criteria as I have staff, publish regularly, cover the city council  
14 meetings, high school events/sports, city events. ... I told them they all know that  
15 I am news/media and provide better coverage than any other news source in  
16 Lincoln City and couldn't understand why they didn't want me to attend given the  
17 depth of coverage our news organization provided." (#PR1)

18  
19 In a 6/20/18 email to Commission staff, the complainant states the following:

20 "lincolncityhomepage.com has been around since 2015. We cover Taft High 7-12  
21 sports, student council, feature articles on the students and everything else. We  
22 cover the city council in depth with highlights and links to the YouTube page that  
23 we created. \*\*\*We cover the Visitors Convention Bureau and all that entails. \*\*\*We  
24 cover Lincoln City, Depoe Bay and Otis.

25  
26 We hired Jim Fossum as a Senior Reporter and Sports Editor. He covers the  
27 NFL's Raiders and all Taft High Sports. Steve Walker from the Oregon School  
28 Activities Association issued me a press pass for 2017-18 and added our feed to  
29 their "Media" section on OSAA.ORG.

30  
31 Advertisers come and go but most stay. During the election we had Thomas



1 Branford for Judge, Russel[I] Baldwin for Judge, Kaety Jacobson for County  
2 Commission and Lincoln County Sheriff's Office. Robben Heating has been with  
3 us for close to a year. Lil Sambos has been with us since the first day we went  
4 live. Gerber Tire has been with us for a couple months. I just landed a year-long  
5 contract with Samaritan Health Services from Corvallis to advertise the Samaritan  
6 North Lincoln Hospital. Game Over Arcade has been with us since we started  
7 also. We have been running a free ad for a local charity shop \*\*\*because they  
8 have a great cause. Subway just signed up with us \*\*\*."(#PR3)

9  
10 Records obtained from the Oregon Secretary of State's Business Registry shows that  
11 Lincoln City Homepage is currently registered as an assumed business name in the state  
12 of Oregon. The filing occurred on 6/20/18, the business activity shows as "reports local  
13 Lincoln City news," and the owner and agent is Justin Werner. (#INV4)

14  
15 During the investigation, Commission staff requested that Mr. Werner provide evidence  
16 of articles published through lincolncityhomepage concerning the Lincoln City Council  
17 prior to filing this complaint. He provided links to 29 articles published between 2015 and  
18 June of 2018, revealing that his coverage of the Lincoln City Council rose over that period:  
19 In 2015 – 1 article, 2016 – 2 articles, 2017- 8 articles, and during the first 6 months of  
20 2018 – 18 articles. (#INV5)

21  
22 The first article published in 2015 concerned allegations of criminal official misconduct  
23 lodged by Richard Appicello, the city attorney, against Mayor Don Williams and the article  
24 linked to the Department of Justice records that had been released concerning those  
25 allegations. A 5/18/18 article published by Mr. Werner was entitled "Dick Anderson  
26 Running for Mayor of Lincoln City". This article describes Mr. Anderson's prior positions  
27 with the City, his other interests such as golfing, and his future plans if he gets elected.  
28 (#INV5)

29  
30 On 12/11/17 the City Council held a public meeting. Video of the public meeting shows  
31 that, during the public comment period, Justin Werner addressed the City Councilors,

1 after identifying himself as "Justin Werner with lincolncityhomepage.com, a local news  
2 outlet", and spoke of safety concerns at a recent event on City property, noting that they  
3 did not have a permit. The City Manager stated that he had spoken with Mr. Werner and  
4 asked him "to send me an email with his questions because I was not sure if he was  
5 making a statement or asking as a reporter for his blog, and I haven't heard from him, so  
6 I am just waiting." The written meeting minutes identify him as "Justin Werner, Lincoln  
7 City Homepage". (#INV3)

8

9 On 1/22/18 the City Council held an executive session at 3pm and a public meeting at  
10 6pm. Video of the public meeting shows that, during the public comment period, Justin  
11 Werner addressed the City Councilors and read a list of questions concerning a recently  
12 lodged complaint against the City Attorney, filed by a City employee. He identified himself  
13 as "Justin Werner, senior reporter with the local news outlet, LincolnCityHomepage.com".  
14 The written minutes for that 1/22/18 meeting also identify Justin Werner as "Senior  
15 Reporter for Lincoln City Homepage.com". Aside from Councilor Riley Hoagland, all of  
16 the current City Councilors were in attendance at these two meetings. (#INV3)

17

#### 18 LINCOLN CITY'S EXECUTIVE SESSION NEWS MEDIA ATTENDANCE POLICY

19 On 3/8/10, the Council adopted Resolution 2010-09 entitled: A Resolution of the City of  
20 Lincoln City Adopting Executive Session News Media Attendance Policy, which is  
21 excerpted below:

22

23 Whereas, because at the time state law relating to media attendance at executive  
24 session was adopted "news media" consisted of entities that were institutionalized  
25 and structured to support compliance with the requirements of ORS 192.660(4),  
26 and the law includes no express mechanism for enforcing those requirements; and

27

28 Whereas technological advances since the time the public meetings law was  
29 initially adopted have resulted in development of communication mechanisms  
30 allowing virtually any individual or entity to disseminate information widely; and

31

1 Whereas the City of Lincoln City finds that in that absence of a statutory definition  
2 of "news media" as that term is used in ORS 192.660(4) it is necessary to adopt a  
3 policy that implements the intent of the public meetings law relating to executive  
4 session attendance without precluding attendance by Internet-based or other "non-  
5 traditional" information disseminators that are institutionalized and committed to  
6 compliance with ORS 192.660(4); \*\*\*\*\*  
7

8 1. Currently Recognized News Media Organizations.

9 The following entities are hereby recognized as news media organizations  
10 eligible to attend executive sessions because they have an established  
11 history of meeting the requirements of this policy: [The News Guard, News  
12 Times] No other entity shall be permitted to attend an executive session  
13 unless it is recognized through the process described in Section 2 below.  
14

15 2. Recognition of Other News Media Organizations.

16 a. The following entities are recognized as news media eligible to attend  
17 executive sessions:

- 18 (1) A general or associate member newspaper of the Oregon Newspaper  
19 Publishers Association, a broadcast member of the Oregon Association of  
20 Broadcasters or a member of the Associated Press; or  
21 (2) A newspaper that the City of Lincoln City uses for publication of public  
22 notices and that meets the requirements of ORS 193.020; or  
23 (3) An entity recognized by the City Council as being a news source that:  
24 A. is organized and operated to regularly and continuously publish,  
25 broadcast, transmit via the Internet or otherwise disseminate news  
26 to the public, and that regularly reports on activities of the City of  
27 Lincoln City or matters of the nature under consideration by the City  
28 of Lincoln City; and  
29 B. is determined by the City Council to be a business entity that is  
30 institutionalized [defined in footnote as "long-established or well-  
31 established"] and that is committed to, and is structured to support,

1 the terms of ORS 192.660(4). In making this determination, the City  
2 Council may consider and weigh any factors that it deems to be  
3 relevant, including, without limitation, the existence of any of the  
4 following factors:

- 5 i. the entity has multiple personnel with defined roles within its  
6 organizational structure;
- 7 ii. the names of news-reporting personnel, and responsible  
8 entity management personnel, together with addresses and  
9 contact telephone numbers, are readily available;
- 10 iii. the entity has an available process for correcting errors,  
11 including violations of executive session statutes, by a person  
12 with authority to take corrective measures.

13  
14 b. It shall be the entity's burden to persuade the City Council by substantial  
15 evidence that it should be recognized as a news media organization  
16 meeting the criteria in Section (2)(a) of this policy. Such evidence must be  
17 submitted at least thirty (30) days in advance of the first executive session  
18 that the entity desires to attend. The City Council shall make a  
19 determination within twenty-one (21) days of receiving the evidence  
20 submitted by the entity. The City Council may elect to forgo this procedure  
21 in cases where the City Council, in its sole discretion, determines that it can  
22 immediately recognize that an entity qualifies under this policy, or in cases  
23 where the City Council, in its sole discretion, determines that other good  
24 cause exists for making an expedited determination. A determination that  
25 the entity is not recognized shall be based upon written findings addressing  
26 the criteria in Section 2(a).

27  
28 Section 3 of the policy states that if a news media organization is "recognized pursuant  
29 to Sections 1 and 2", a representative of such a recognized entity, in order to attend an  
30 executive session, must meet further requirements to prove that they are a bona fide  
31 representative of that news media organization, such as a press badge, or a recently

1 published news article with the person's byline, or a letter on letterhead from an editor of  
2 a recognized news media organization confirming that the reporter is representing that  
3 organization, plus personal identification. Finally, the City may require that a  
4

5 "request to attend an executive session be made in writing on a form provided by  
6 the City. The form shall require disclosure of the person's name and the entity for  
7 which he or she is a news reporter, and shall require submission of  
8 evidence\*\*\*described [above]. The form shall also include a signature line  
9 whereby the person certifies that he or she is gathering news for a recognized  
10 news media organization, that the information given is true, and that he or she  
11 agrees to comply with ORS 192.660(4)." (#PR4)  
12

13 ATTORNEY GENERAL OPINION 8291, issued April 18, 2016

14 The Oregon Government Ethics Commission requested and received an opinion from the  
15 Oregon Attorney General as to the provisions in ORS 192.660 regarding the attendance  
16 of representatives of the news media at a governing body's executive session meetings.  
17 Below are excerpts relevant to the issues in this matter:  
18

19 This opinion addresses several issues pertaining to the commission's duty to  
20 investigate and enforce the requirement that representatives of the news media be  
21 allowed to attend executive sessions. \*\*\*\*\*[p. 1]  
22

23 \*\*\*[A] governing body may not lawfully enforce a policy that permits it to exclude  
24 from executive session a representative of the news media who would be  
25 permitted to attend under ORS 192.660(4) and (5).\*\*\*\*\* [p. 2]  
26

27 "Institutionalized news media" means an entity that is formally organized for the  
28 purpose of gathering and disseminating news.\*\*\*\*\* [p. 3]  
29

30 QUESTION 4

31 When evaluating alleged violations of ORS 192.660(4), what is the significance of

1 policies adopted by governing bodies to implement the statutes? Specifically, what  
2 would be the legal significance of a policy to exclude a person who:

- 3
- 4 1. Does not meet adopted screening criteria to determine who qualifies as
- 5 a "representative of the news media";
- 6 2. Does not gain preapproval of media credentials in advance of executive
- 7 sessions;
- 8 3. Fails to give advance notice of attendance; or,
- 9 4. Is believed to have unlawfully reported on a prior executive session or to
- 10 represent a news media organization that did? [p. 3-4]

#### 11 SHORT ANSWER

12 Public bodies are required to comply with the statute. They cannot modify the  
13 statutory requirement by adopting a policy. In evaluating allegations that an  
14 individual was wrongly excluded from executive session, the commission must  
15 assess compliance with that statute regardless of a governing body's policies.  
16

17  
18 With respect to the specific types of policies the commission asks about (numbered  
19 1 through 4 above) we answer as follows:

- 20 1. If enforcement of the policy definition results in the exclusion of a representative  
21 of the news media, that exclusion would violate ORS 192.660(4).
- 22 2. To the extent that a credentialing requirement simply requires an individual to  
23 demonstrate that he or she is a representative of the news media, its enforcement  
24 would be consistent with the law. But if a policy requires specific credentials, and  
25 an individual offering different credentials that are sufficient to demonstrate that he  
26 or she is a representative of the news media is excluded based on that policy, that  
27 exclusion would not be consistent with ORS 192.660(4).
- 28 3. Advance notice of attendance is not required by Oregon Public Meetings Law.  
29 Excluding a representative of the news media for failure to comply with a policy  
30 requiring advance notice of attendance would violate ORS 192.660(4).
- 31 H4. The Oregon Public Meetings Law does not authorize any mechanism for

1 enforcing the requirement that representatives of the news media refrain from  
2 reporting designated information discussed in executive session. Enforcement of  
3 a policy excluding representatives of the news media on this basis would violate  
4 ORS 192.660(4). [p. 4]

5  
6 LINCOLN CITY RECORDS IN RESPONSE TO SUBPOENA

7 The records provided by Lincoln City in response to the subpoena include  
8 correspondence between Justin Werner of Lincolncityhomepage and employees of  
9 Lincoln City during the period between 1/1/18 and 6/6/18.

10  
11 City employees corresponded with Justin Werner frequently during the first 5 months of  
12 2018. Justin Werner's publication received numerous press releases of City events and  
13 other information from individuals with City email addresses. These correspondents  
14 included the City Manager's office, the Public Library staff, the City Community Center  
15 staff, the HR Department, the Planning Department, the IT Department, and the City  
16 Visitor and Convention Bureau. (#INV1)

17  
18 During 2018, Mr. Werner also received several emails from administrators about  
19 upcoming meetings of the City Council and the Planning Commission. Mr. Werner was  
20 also noticed by City staff when a meeting was cancelled due to lack of a quorum, or when  
21 late additions were made to the agenda. It appears that the meeting notices were sent  
22 and agendas were usually available about 4 days prior to the meeting. (#INV1)

23  
24 Set out below are some exchanges pertinent to this case. (Sender/recipient Justin  
25 Werner or Lincolncityhomepage are referred to as JW below.)

26  
27 1/5/18 from JW to City Attorney asking for comment on an article which was to be  
28 be published concerning a complaint against the City Attorney.

29  
30 1/5/18 and forwarded on 1/12/18 from JW to City Recorder asking to be added to the City  
31 lists to receive all meeting notices, press releases, and announcements.

1 1/24/18 from JW to City Recorder and cc'd to Mayor and City Manager.

2 "On January 5, 2018, I sent you a request to add me to your list of media  
3 representatives. Unfortunately, my records indicate I didn't receive a reply.\*\*\*  
4 Perhaps the problem is on my end, so let me supersede my Jan. 5<sup>th</sup> request with  
5 the following request: I am a media representative, and an "interested person" and  
6 respectfully request the City of Lincoln City, its employees,\*\*\*send me all  
7 communications regarding meetings, and all other communications provided to  
8 other media representatives and/or "interested persons\*\*\*" Included in this email  
9 was the desired email address for these notifications and his telephone number.

10

11 1/30/18 - Email above was forwarded by the City Recorder to the City Attorney.

12

13 1/31/18 –from City Recorder to JW (cc'd Mayor, City Attorney, City Manager):

14 "[P]lease be advised that we included you in the media group at your first request  
15 as an 'interested person'.\*\*\*You might want to check your trash or junk mail to see  
16 if it was sent there. As you have indicated in the second request, we have again  
17 changed the contact information to the gmail address provided as you requested.  
18 Please note, however, that most of the City's notices and information for the public  
19 is posted on our website\*\*\*[w]e don't send out notices as to when the information  
20 is uploaded to the website."

21

22 4/26/18 –from JW to City Recorder and others:

23 "Is it possible to add Lincoln City Homepage to the list here  
24 [<http://www.lincolncity.org/community links>] ?"

25

26 4/26/18 –from City Recorder to JW:

27 "Thank you for your email. During the past few weeks the City staff has embarked  
28 on a review of our media, social media and web page policy.\*\*\*After receiving your  
29 email, our City Manager looked at the links page and found that some "for profit"  
30 links were incorrectly added. He therefore removed this page from our webpage  
31 while we complete the policy review and correct any links that were incorrectly



1 added.\*\*\*"

2  
3 4/27/18 –From JW to City Recorder:

4 "I would like to attend Executive sessions. How would I go about doing that  
5 exactly? I understand I can't write about what I hear in the sessions."  
6

7 4/30/18 – email above forwarded by City Recorder to City Attorney.  
8

9 4/30/18 –From JW to City Recorder:

10 "I'm curious as to when the Community Links page will be back live on the city  
11 website and if your [sic] going to add lincolncityhomepage.com to it.\*\*\*The only  
12 reason I asked to be put on the list is because I saw The News Guard, Newport  
13 News Times, and newslincolncounty.com on that page." (NOTE: As of 1/11/19 the  
14 Community Links tab on the City webpage is still down due to policy review.)  
15

16 (Subsequent pertinent emails are described below under the TIMELINE heading.)  
17

18 In response to the Commission's request for a copy of the statutory authority for "work  
19 sessions" as distinguished from "public meetings," the City responded that they do not  
20 have any "any documents (i.e. statutes) responsive to your request."  
21

22 A 10/17/18 letter from the City Attorney, Richard Appicello, which was delivered along  
23 with the City Recorder's response to the subpoena, is excerpted below:  
24

25 "Work Session designation is part of the subject of the noticed public meeting. A  
26 meeting designated as a work session on a specific subject indicates that the City  
27 Council will not take any action at this noticed public meeting but instead will  
28 discuss the matter informally.\*\*\*The work session on June 4, 2018 was to  
29 discuss/ask questions about items on the City Attorney's project list. The fact that  
30 no action can be taken at such noticed public work session meetings is reflected  
31 in the Order of Business in the Lincoln City Municipal Code\*\*\*" (#INV1)

1 2.04.020 Order of Business.

2 "In the conduct of the business of the council, the order of business shall be substantially  
3 as follows, except as otherwise provided in LCMC 2.04.027 for time certain agenda items:

4 A. Roll Call;

5 B. Pledge of Allegiance;\*\*\*

6 L. Actions, if any, based on work session, executive session or citizen comment;\*\*\*

7

8 NOTE: On 2/12/18, LCMC 2.04.020 was amended by Ordinance No. 2018-04 to add the  
9 portion underlined above. (#INV6)

10

11 SUBMISSIONS ON BEHALF OF FIVE COUNCILORS

12 Five members of the governing body are represented by attorney Andrea D. Coit of the  
13 law firm, Hutchinson Cox. The sixth member of the governing body, Mayor Don Williams,  
14 is represented by a different attorney.

15

16 On 6/15/2018 the Commission received a written response from Ms. Coit, the entirety of  
17 which was provided to the Commission with the preliminary review report, and will be  
18 provided again with this investigation report.

19

20 Ms. Coit concedes that any of the guidance provided by the AG opinion that was in conflict  
21 with the previously adopted Lincoln City Resolution would control. Based on the  
22 information contained in the complaint, along with the AG opinion, Ms. Coit states,

23

24 "Lincoln City is permitted to create and enforce a screening process for the  
25 purpose of determining whether a specific entity qualified as institutional media  
26 entity. Per ORS 192.660(10), Lincoln City is also permitted, within the bounds of  
27 the Opinion's guidance, to establish the criteria for evaluating what entities qualify  
28 as media for purposes of attending executive session." (#PR4)

29

30 Ms. Coit asserts that the Resolution's requirement that an applicant submit evidence  
31 relating to his or her status as a member of the news media prior to being approved to

1 attend an executive session is permissible under the circumstances. Ms. Coit states that  
2 the complainant was notified on 5/10/2018 that he would need to submit an application  
3 for review by the City Council at its next regularly scheduled City Council meeting on  
4 6/11/2018, and this application would need to be submitted by 6/4/2018.

5  
6 Ms. Coit's letter continues:

7  
8 "To comply with both ORS 192.610 and Lincoln City's Resolution, the City Council  
9 was required to consider Mr. Werner's application for media recognition at a  
10 properly noticed public meeting. The City Council had convened a work session  
11 prior to going into executive session on June 4. It had not been in a public session."  
12 (#PR4)

13  
14 During the investigation phase, Ms. Coit supplied a letter dated 1/3/19 in response to  
15 questions asked by Commission staff, which will be provided to the Commissioners in its  
16 entirety, and is excerpted below:

17  
18 I would just like to clarify that at no time during the interlude between the end of  
19 the public meeting work session and the commencement of the executive session  
20 did any of my clients participate in a "conversation as to whether Mr. Werner would  
21 be able to attend the executive session as a representative of the media."\*\*\*

22 On June 4, 2018, the Councilors participated in the work session City Council  
23 Meeting. As a public meeting, it was attended by various members of the public.  
24 None of my clients took any particular note of Mr. Werner's presence. He did not  
25 speak at the meeting or otherwise do anything to indicate that he was at the  
26 meeting as a member of the media.

27  
28 When the work session concluded, the Councilors walked to the executive session  
29 room. Some of my clients noticed Mayor Williams walking with a young man.  
30 None of them recognized Werner by sight. None of them spoke with Werner,  
31 walked with him, or asked any other person who he was.

1 In response to the Commission staff's question: *You said a few times [in oral presentation*  
2 *to the Commission] that three of your clients did not know who Mr. Werner was and that*  
3 *two of your clients did know him. Could you identify the 2 who did know Mr. Werner and*  
4 *the 3 who did not? Does this mean that the three who did not know Mr. Werner were*  
5 *unfamiliar with him personally (i.e. his name and face meant nothing to them) or were*  
6 *unfamiliar with his publication, so that identifying himself as the editor/writer of*  
7 *LincolnCityHomePage would have had no meaning whatsoever to the 3?, Ms. Coit*  
8 replied:

9  
10 Councilor Anderson knew Mr. Werner as the writer of the blog called  
11 LincolnCityHomePage. Councilor Hinton had heard of Mr. Werner's blog, but had  
12 never met him and did not recognize him on June 4, 2018. \*\*\*

13  
14 On this particular issue, though, I would like to submit my opinion that any  
15 individual Councilor's knowledge that Mr. Werner wrote a blog should be of no  
16 relevance to the complaint raised here. On June 4, 2018, Mr. Werner had never  
17 previously been recognized by the Lincoln City Council as a member of institutional  
18 media such that he could legally be permitted to attend an executive session  
19 meeting. Regardless of the process required to obtain that recognition, giving the  
20 recognition itself would require a decision by the Council. For example, if the  
21 request was made in accordance with the City's written policy requiring the  
22 submission of an application or other evidence, a decision on that application  
23 would need to be made. Alternatively, if it is argued that perhaps some of the  
24 Councilors knew that Mr. Werner wrote a blog and, therefore, the Council should  
25 have just accepted his oral statement that he was media, a decision to ignore or  
26 override the City's policy on recognizing media and instead just allow him to attend  
27 would have been required. Those are final decisions that cannot be made in  
28 executive session. That is why the City Attorney advised my clients that they could  
29 not act one way or the other on his request. They followed his advice.\*\*\*

30  
31 Attorney Coit also provided other material, including an affidavit from Lincoln City's legal

1 counsel, Richard Appicello, a City employee. Appicello's 1/3/19 affidavit is excerpted  
2 below. (#INV2 and #INV2a)

3  
4 A work session meeting is a public meeting\*\*\*. Work session meetings are  
5 informal and no action can be taken – they are intended for discussion only.\*\*\*

6  
7 On June 4, 2018, the work session was adjourned and Council members headed  
8 down the hall to the executive session meeting room for an advertised stand-alone  
9 executive session meeting\*\*\*.

10  
11 The City Council did not recess a Regular Council meeting to go into executive  
12 session. The work session, which is not a regular meeting, was adjourned. Unlike  
13 a recess where the Council could return to the Regular Meeting for action, there  
14 was no ability to return to a public meeting for action.

15  
16 Contrary to Mr. Werner's complaint, Mr. Werner did not attend the executive  
17 session; after the work session, he walked down the hall with the Mayor and  
18 entered the executive session meeting room and took a seat. He was asked  
19 numerous times to leave the meeting room by the City Recorder and City Manager  
20 prior to the start of the executive session.

21  
22 Although Mr. Werner entered the meeting room, Councilors did not engage him.\*\*\*

23  
24 Weeks earlier, the City Recorder had sent Mr. Werner the 2016 Attorney General  
25 Opinion on media, together with the City's 2010 Media policy\*\*\*identical to the  
26 Model Policy developed in 2009 by a Task Force consisting of representatives of  
27 Open Oregon, Lake Oswego City Attorney, League of Oregon Cities, Lake  
28 Oswego Mayor, Clackamas County Counsel, the Oregonian, the Oregon  
29 Newspaper Publishers Association and the Oregon Association of Broadcasters.

30 \*\*\*\*\*

31 In response to the Recorder and Manager, Mr. Werner began soliciting the Council

1 members directly to recognize him as media\*\*\*.

2  
3 Councilors were not engaging with Mr. Werner. Staff engaged him.\*\*\*Council had  
4 adjourned its work session and had not yet opened executive session. Frankly,  
5 Council was caught off-guard, most of them did not know who this person was or  
6 why he was here in their meeting room blustering at staff; Councilors had not been  
7 given any evidence (because none had been submitted) although Council had  
8 received the AG opinion on media from me on May 10, 2018.

9  
10 I specifically advised Council on June 4, 2018 that they could not act on the request  
11 being made by Mr. Werner to be recognized at this time. Council cannot legally  
12 act in the moments between public meetings or in an executive session.

13  
14 Contrary to Mr. Werner's statement in his complaint that I said nothing, I stated *at*  
15 *least three times* that no decision could be made by Council and that such decision  
16 needed to be made in open session "down the hall".\*\*\*\*\*

17  
18 I specifically stated that "the one thing we know for sure" is that the decision on  
19 whether or not Mr. Werner is or is not media, cannot be made now and needed to  
20 be made "down the hall" at a regular meeting. The Manager and Recorder made  
21 the decision to exclude Werner, not the Council.\*\*\*

22  
23 Contrary to my statements and the actions of the Recorder and Manager telling  
24 Werner to leave because Council could not act on his request, Mayor Don Williams  
25 suddenly and unilaterally declared that Werner could stay if he was not disruptive.  
26 This elicited a response of "WHAT!" and "NO!" from some Councilors present. The  
27 exclamations\*\*\*by Councilors were not votes on a motion of whether to admit  
28 Werner, but rather exclamations of frustration with the Mayor appearing to attempt  
29 to take action\*\*\*.

30  
31 In sum, as a factual matter, Mr. Werner was asked to provide evidence to address

1 how he met the standard expressed in the 2016 AG opinion, using the City's 2010  
2 policy as a guide so that Council could take action at a public meeting on his  
3 request. He refused to do so. He appeared and solicited Council to make a  
4 decision at a time they could not act under public meetings law, and without  
5 submission of any evidence. I advised the Council members that they could not  
6 act on Werner's solicitation to them to be recognized\*\*\*and they followed my legal  
7 advice. Werner's actions can be viewed as Solicitation of Official Misconduct I.  
8 Councilors refused to commit a crime and violate public meetings law for Werner's  
9 benefit. The Council did not make a decision to exclude Werner, the Manager and  
10 Recorder excluded him. (#INV2a)

11  
12 NOTE: In 2016, the City was being sued by Mr. Smith, in a lawsuit unrelated to Public  
13 Meetings Law. A court filing was made on behalf of the City in that case which argued  
14 that the AG's opinion on media supported a finding that plaintiff Smith did not have  
15 standing to sue because he was not a member of the news media. "[Smith] is not  
16 connected with any institutional news media. He is simply an individual who maintains a  
17 personal website where he posts his opinions about local politics and posts articles written  
18 by others about local politics." On 5/10/18, Mr. Appicello provided the City Councilors  
19 with the AG's Opinion on media, as well as this court filing. (#INV2a)

20  
21 Mayor Williams is represented by attorney Micah Fargey. Mr. Fargey did not submit a  
22 response to the complaint. Mr. Williams was interviewed in the company of his attorney  
23 during this investigation and Mr. Williams did not recall much about the Council meetings  
24 on 6/4/18. He remembers the City Recorder telling Justin Werner that he was not allowed  
25 to be there. He also said that although he did say that Justin should be allowed to stay,  
26 it was ultimately up to the City Manager, who was in charge of who could remain in the  
27 City buildings. He said that the City Manager asked Mr. Werner to leave and he did so.  
28 Mr. Williams stated that it was an awkward time because they were not yet in executive  
29 session and they were not in open session, either. (#INV7)

30 ///

31 ///

1 TIMELINE OF EXECUTIVE SESSION COMMUNICATIONS:

2 4/27/18 (Friday) 8:13pm Email from Justin Werner to City Recorder, with the subject  
3 line "Re: meetings Scheduled for Monday, April 30, 2018" stating, "*I*  
4 *would like to attend Executive sessions. How would I go about doing*  
5 *that exactly?\*\*\*"* (#INV1)

6  
7 4/30/18 (Monday) 11:39am 4/27/18 email above from Justin Werner was forwarded by  
8 City Recorder to City Attorney.

9  
10 5/1/18 (Tuesday) City Attorney sent the full 2016 AG opinion on media attendance at  
11 executive sessions to the City Manager and the City Recorder,  
12 together with a court filing from the Smith v. Lincoln City case in  
13 which the attorney representing Lincoln City argued that the plaintiff  
14 was not "media" under the standard in the 2016 AG opinion, but  
15 rather an individual blogger. (#INV1 and #INV2a)

16  
17 5/2/18 (Wednesday) 3:46pm Email from City Recorder to Justin Werner, with the  
18 subject line: "Re: attending Executive Sessions and City Web Page"  
19 stating, "*\*\*\*With regard to your request to attend an Executive*  
20 *Session Meeting, Council cannot make a decision in executive*  
21 *session so if you believe that you qualify as a representative of the*  
22 *news media under Oregon law, you must make application to City*  
23 *Council to be admitted to executive session meetings. The Council's*  
24 *decision will be based on the April 2016 Oregon Attorney General*  
25 *Opinion on the subject."* (#INV1)

26  
27 5/3/18 (Thursday) 8:35pm Email from Justin Werner to City Recorder, with the subject  
28 line: "Re: attending Executive Sessions and City Web Page", stating,  
29 "*I'll be attending the next Executive Session Meeting. Thank you for*  
30 *pointing me in the right direction."* (#INV1)

31 *///*



1 5/7/18 (Monday) 6:00pm Special Meeting of the City Council held. (#INV3)

2  
3 5/10/18 (Thursday) 3:36pm Email from City Attorney Appicello to the City  
4 Councilors (and City Manager) with the subject line "Media AG  
5 opinion from 2016 court filing", stating "*The attached is something  
6 Jens Schmidt filed in the Smith case. It is a Supplemental  
7 Memorandum discussing the 2016 Oregon Attorney General's  
8 opinion regarding the meaning of "members of the media" for  
9 purposes of the Public Meetings Law. There is nothing on this  
10 Agenda regarding this as we anticipated but did not receive any  
11 application (or evidence) from an individual who indicated he wished  
12 to be recognized as "media" and attend executive sessions. Cathy  
13 had informed him Council could take no action in executive session  
14 so he would need to bring up the issue so Council could act – prior  
15 to showing up. I am sending you the full AG opinion (attached to the  
16 motion) in case you wish to read it all. We have a policy as well, but  
17 to the extendt [sic] they are inconsistent this AG opinion will control.  
18 I will summarize the pertinent points in the opinion for Council prior  
19 to the meeting.*" (#INV1 and #INV2a)

20  
21 5/10/18 (Thursday) 5:03pm Email from City Recorder to Justin Werner, with the  
22 subject line: "Re: Attendance – City Executive Session Meetings",  
23 stating, "*Justin, with regard to attending an Executive Session  
24 meeting, as stated below an application is required in advance for  
25 Council's consideration. Council then reviews the application at a  
26 regularly scheduled City Council meeting. Attached is Resolution  
27 2010-09 (Executive Session News Media Attendance Policy), as a  
28 guide for making application. Also attached is the 2016 Attorney  
29 General opinion on what constitutes news media that would control  
30 over anything inconsistent in the Resolution. If you wish to be  
31 considered, you must apply in advance. The next available City*

1 Council meeting date for consideration is June 11<sup>th</sup>. The agenda  
2 deadline to receive your completed application (addressing the  
3 required criteria to be met as stated in Resolution 2010-09), is noon  
4 Monday, June 4, 2018 for the June 11, 2018 City Council  
5 meeting.\*\*\*" (#INV1)  
6

7 5/14/18 (Monday) 6:00pm City Council Regular Meeting (#INV3)

8 8:24pm-9:00pm Executive Session  
9

10 5/28/18 (Monday) 6:00pm City Council Regular Meeting cancelled (#INV3)  
11

12 6/4/18 (Monday) 6:00pm City Council Work Session

13 6:45pm Executive Session (#INV3)  
14

15 A review of the 2018 City Council meetings posted on Lincoln City's website shows that  
16 the Council routinely held executive session meetings as "stand alone" meetings prior to  
17 their regular council meetings. Also, it appears that the Council held five distinct types of  
18 meetings during this period: Regular Meetings, Executive Sessions, Work Sessions,  
19 Special Sessions and Training Sessions. The executive session meetings were  
20 scheduled at 3pm, 4pm, 4:30pm, or 5pm, preceding the 6pm regular meetings. Only the  
21 May 14, 2018 6pm regular meeting was recessed into executive session a few hours after  
22 it commenced. The City Council held 8 executive session meetings in the first six months  
23 of 2018. The Council has not held an executive session since the 6/4/18 executive  
24 session at issue in this case. (#INV6)  
25

26 **CONCLUSIONS:** Don Williams was Mayor and a member of the Lincoln City Council  
27 during the period relevant to this investigation and was a public official. The City of Lincoln  
28 City is a public body and the City Council is its governing body [ORS 192.610(3) and (4)].  
29 As a member of the governing body of a public body, Don Williams is required to comply  
30 with the executive session provisions of Oregon Public Meetings law found in ORS  
31 192.660. Under ORS 192.685(1), complaints concerning violations of ORS 192.660

1 alleged to have been committed by public officials may be made to the Oregon  
2 Government Ethics Commission for review and investigation as provided by ORS  
3 244.260.

4  
5 An executive session is a meeting or part of a meeting held by a governing body which is  
6 closed to certain persons for deliberation on certain matters. [ORS 192.610(2)]

7  
8 ORS 192.660 states that members of the media shall be allowed to attend executive  
9 sessions except under three circumstances: when labor negotiations are the topic; when  
10 matters concerning expulsion or medical records of a student are the topic under ORS  
11 332.061(2); and when the topic is current or pending litigation and a member of the news  
12 media is a party to the litigation or is an employee, agent or contractor of a news media  
13 organization that is a party to the litigation. [ORS 192.660(4) and (5)]

14  
15 Based on the evidence, there is no indication that the Council was relying upon any of  
16 the three permitted exceptions to exclude the complainant from the executive session.

17  
18 The Commission is prohibited by law from making a rule defining "representative of the  
19 news media," but it is imperative in order to enforce ORS 192.660(4), that the Commission  
20 make judgments on a case by case basis, guided by the application of the statute and  
21 AG's Opinion to the relevant factual circumstances.

22  
23 Mr. Appicello, the City's in-house legal counsel, advised the members of the City Council  
24 that when the City's policy on media conflicts with the AG's opinion, the AG's opinion  
25 controls. Also, Ms. Coit, the attorney representing five of the City Councilors in this matter  
26 has also stated the same. There seems to have been some hedging on this point by both  
27 the City's attorney and Ms. Coit since their initial positions, with the argument that  
28 because Lincoln City is a home rule jurisdiction, they need not defer to the AG's opinion.

29  
30 One difference between Resolution 2010-09 (City Policy) and the AG's opinion is the  
31 definition of "institutionalized" media. The City Policy defines "institutionalized" as "long-

1 established or well-established”, whereas the AG’s Opinion states that “[i]nstitutionalized  
2 news media’ means an entity that is formally organized for the purpose of gathering and  
3 disseminating news.”

4  
5 Addressing the changes in delivery of the news between 1973 when ORS 192.660(4)  
6 was first adopted and today, the AG’s Opinion’s notes the following:

7 [W]hether an online publication or broadcast qualifies [as news media] depends  
8 on the same criterion for existing mediums: the entity must be institutional.  
9 “Blogs,” for example, come in two general varieties. The first is “an online personal  
10 journal with reflections, comments and often hyperlinks, videos, and photos  
11 provided by the writer.”\*\*\*The second is a “regular feature appearing as a part of  
12 an online publication that typically relates to a particular topic and consists of  
13 articles and personal commentary by one or more authors[.]” The first type of  
14 “blogger” is an individual rather than a representative of a news media  
15 organization. But the second type of blogger might qualify as a representative of  
16 the news media depending on whether the particular facts demonstrated that the  
17 blogger represented an institutional news medium. Indications that an entity is  
18 institutional might include its business structure, the nature of its overall operations,  
19 regular public dissemination of news, and similar factors that demonstrate that it is  
20 formally organized for the purpose of gathering and disseminating  
21 news.\*\*\*[I]ndications that a blogger represents institutionalized media might  
22 include the existence of staff (rather than a single individual), a formal business  
23 structure within which the blog operates and regular publication. [AG Opinion p.  
24 15-16]

25  
26 Based on the evidence available, it appears that Lincolncityhomepage falls into the  
27 second category of “blog” and qualifies as “news media”. It is formally organized for the  
28 purpose of gathering and disseminating news. The business was registered with the  
29 Secretary of State as an assumed business name by Justin Werner on 6/20/18, but it was  
30 formally organized and operational during the period relevant to this case, and for at least  
31 a few years prior. The publication regularly covers local government, entertainment,

1 events, sports, and includes letters to the editors. The site has several advertisers, and  
2 at least two staff members. Anyone may access the site on the internet to see the 18  
3 articles published during the first 5 months of 2018 concerning local government. The  
4 Oregon School Activities Association has recognized the entity as news media, has  
5 issued it a press pass and hosts the entity's news feed.

6  
7 On 4/18/16, the Oregon Department of Justice published an Oregon Attorney General  
8 opinion (AG Opinion), #8291, specifically answering questions presented by the  
9 Commission concerning the Public Meetings Law requirement that representatives of the  
10 news media be allowed to attend executive sessions. The AG Opinion expressly states  
11 that there are no permissible grounds other than those identified in ORS 192.660(4) and  
12 (5) for excluding representatives of the news media from attending executive sessions.  
13 [AG Opinion, p. 3]

14  
15 As pertinent to ORS 192.660(4) and a governing body enacting a policy that can exclude  
16 a representative of the news media, the AG Opinion states:

17  
18 "Public bodies are required to comply with the statute. They cannot modify the  
19 statutory requirement by adopting a policy. In evaluating allegations that an  
20 individual was wrongly excluded from executive session, the commission must  
21 assess compliance with that statute regardless of a governing body's policies."

22  
23 "If enforcement of the policy definition results in the exclusion of a representative  
24 of the news media, that exclusion would violate ORS 192.660(4).

25  
26 To the extent that a credentialing requirement simply requires an individual to  
27 demonstrate that he or she is a representative of the news media, its enforcement  
28 would be consistent with the law. But if a policy requires specific credentials, and  
29 an individual offering different credentials that are sufficient to demonstrate that he  
30 or she is a representative of the news media is excluded based on that policy, that  
31 exclusion would not be consistent with ORS 192.660(4).

1 Advance notice of attendance is not required by the Oregon Public Meetings Law.  
2 Excluding a representative of the news media for failure to comply with a policy  
3 requiring advance notice of attendance would violate ORS 192.660(4).” [AG  
4 Opinion, p. 4]

5  
6 There seem to be several arguments made by the respondent's attorney as to why Mr.  
7 Werner's exclusion from attending the 6/4/18 executive session does not constitute a  
8 violation of ORS 192.660(4) by her clients.

9  
10 First, the respondents argue that Mr. Werner did not comply with the requirements of  
11 Resolution 2010-09 (City Policy). He did not supply “substantial evidence” of why he  
12 should be recognized as a representative of the news media to the Councilors at least 30  
13 days in advance of the first executive session he wished to attend. The City Policy states  
14 that upon such application, the City Council will make a determination within 21 days of  
15 receipt of this evidence. However, the City Council may

16  
17 “forgo this procedure in cases where the City Council, in its sole discretion,  
18 determines that it can immediately recognize that an entity qualifies under this  
19 policy, or in cases where the City Council, in its sole discretion, determines that  
20 other good cause exists for making an expedited determination. A determination  
21 that the entity is not recognized shall be based upon written finding addressing the  
22 criteria in Section (2)(a).”

23  
24 From the perspective of the Lincoln City Council, Mr. Werner did not make application to  
25 the City Council to be recognized as media prior to the 5/14/18 or 6/4/18 executive  
26 session. However, Mr. Werner's email to the City Recorder on 5/3/18 that he was going  
27 to attend the “next executive session” can easily be considered an “application” to be  
28 recognized as news media. Upon receipt of that email from Mr. Werner, which was  
29 forwarded to the City Attorney, no reply is sent to Mr. Werner until 5/10/18 and at that  
30 time, Mr. Werner was given a copy of the City Policy and the AG Opinion. However, he  
31 was still not given any specific form to submit or told how he would provide substantial

1 evidence that his internet based publication should be recognized as media. It is obvious  
2 that his site was well known to City staff at that point, and any information needed to  
3 evaluate his publication was readily available by visiting his internet site. In fact, it is not  
4 clear exactly what would constitute an "application" other than informing the City staff that  
5 you wished to attend the next executive session. He was not given any help to aid him  
6 in how "exactly" he could go about being recognized as a representative of the news  
7 media, as he had initially asked in his 4/27/18 email to the City.

8  
9 However, even if there had been a formal application process or form, which there does  
10 not appear to have been, when he first informed the City staff on 5/3/18, that he would be  
11 attending the next executive session, he would not have had time to be recognized by the  
12 City Council before the 5/14/18 executive session. A week after his email stating that he  
13 would be at the "next executive session", Mr. Werner was first provided with the City  
14 Policy and the AG's Opinion by the City staff and informed that "an application is required  
15 in advance for Council's consideration" which will be reviewed "at a regularly scheduled  
16 City Council meeting." He was also informed that any "completed application" he submits  
17 would not be considered until 6/11/18, which would be too late for him to attend the  
18 executive session on 6/4/18, which turned out to be the last executive session held by the  
19 City Council that year.

- 20
- 21 • On 4/27/18, Werner asked the City Recorder how "exactly" he would go about  
22 attending executive sessions.
  - 23 • On 4/30/18 City Recorder forwards Werner's email to City Attorney.
  - 24 • On 5/1/18 City Attorney sends City Recorder the AG's Opinion.
  - 25 • On 5/2/18, the City Recorder tells Werner he must apply to the City Council, but  
26 does not supply him with the City Policy which outlines the criteria and timeline,  
27 rather she instructed him that "the Council's decision will based on the April 2016  
28 Oregon Attorney General Opinion on the subject".
  - 29 • On 5/3/18, Werner responds that he will be attending the next executive session.  
30 [The "next" executive session occurred on 5/14/18, but it doesn't appear that the  
31 agenda showing an executive session was available at that time.]

- 1 • On 5/7/18 Special Meeting of the City Council held.
- 2 • On 5/10/18, the City Recorder responds that he must apply in advance by 6/4/18
- 3 to get on the agenda for the next regular meeting of the Council on 6/11/18. She
- 4 also supplies Mr. Werner, for the first time, with the City Policy and the AG's
- 5 Opinion.
- 6 • 5/14/18, the Council holds a regular meeting and an executive session. Werner
- 7 apparently does not attempt to attend the executive session.
- 8 • 5/28/18, regular meeting cancelled.
- 9 • 6/4/18, Werner attends the Council's Work Session and attempts to attend the
- 10 following executive session, but is told to leave.

11  
12 It is clear from the record that Mr. Werner was well known to numerous members of the  
13 City staff as a representative of his publication, including the City Manager, the City  
14 Recorder, and the City Attorney. The City staff supplied him with regular notices of  
15 events, council meetings, and press releases, which seems to undermine the statements  
16 alleged by complainant that the City Manager and City Recorder told him on 6/4/18 that  
17 he did not meet the criteria to be considered a representative of the news media. It also  
18 appears that he and his publication were known to some of the City Councilors. On  
19 5/10/18, the City's attorney sent all of the current City Councilors copies of the AG's  
20 opinion as well as an analysis (in another matter) arguing that an individual was a blogger,  
21 and did not qualify as news media. Mr. Werner appeared in person and gave public  
22 testimony during at least two City Council meetings, identifying himself as a  
23 representative of his publication. Also, he had published numerous articles about the City  
24 Council, individual City Councilors, staff members, and local government in general.

25  
26 The requirement that a representative of the news media submit "substantial evidence"  
27 to the City Council "30 days in advance of the first executive session that the entity desires  
28 to attend" is impractical, as one does not know until an agenda is published, usually a few  
29 days prior to a meeting, when an executive session is planned and for what purpose. The  
30 Lincoln City agendas are available approximately four days in advance of a meeting. This  
31 requirement would also result in the exclusion of persons who "applied" and were "news



1 media" from executive sessions that took place before the next scheduled public meeting.  
2 And, because the City routinely held "stand alone" executive sessions prior to the public  
3 meetings held later on the same date, this policy would foreclose any newly recognized  
4 member of the news media from attending that executive session.

5  
6 The only two entities recognized as "news media" by Lincoln City are the News Guard  
7 and News Times. As applied to the facts in this case, although he had emailed the City  
8 Recorder on 5/3/18 that he would be attending the next executive session, Mr. Werner  
9 was told on 5/10/18 that it was already too late for him to be recognized by the City Council  
10 in time to attend the 5/14/18 executive session or the 6/4/18 executive session. There is  
11 nothing in the City Policy that states the actual steps to be followed when one wishes to  
12 "apply" to the City Council, there is no specific form that was provided to Mr. Werner.  
13 There is nothing in the City Policy that states that the City Council's determination must  
14 be made in a "regular" meeting of the City Council, as opposed to a "work session" or a  
15 "special session" meeting. Reporters are not privy to when an executive session will be  
16 scheduled and the topic for the executive session until a few days prior when an agenda  
17 is made public, so it is important that any determination that needs to be made under the  
18 City Policy is done swiftly to ensure compliance with ORS 192.660(4). There is no  
19 requirement in the City Policy that the City Council must take a formal vote in a regular  
20 meeting to make the determination that an entity should or should not be recognized as  
21 news media. Thus, it appears that the City's Policy in this instance acted to frustrate the  
22 spirit and letter of ORS 192.660(4).

23  
24 According to the AG Opinion, excluding a representative of the news media from  
25 attending an executive session for failure to comply with a policy requiring advance notice  
26 of attendance would violate ORS 192.660(4). Also, the AG Opinion states that if an entity  
27 "does not meet adopted screening criteria", and "enforcement of the policy definition  
28 results in the exclusion of a representative of the news media, that exclusion would violate  
29 ORS 192.660(4)".

30 ///

1 Second, the respondents argue that the City Councilors did not exclude Mr. Werner, the  
2 City staff did.

3  
4 Information indicates that the City staff did exclude Mr. Werner prior to the executive  
5 session. According to the City Policy, however, it is within the sole discretion of the City  
6 Council as to whether or not to allow person who claims to be the media to attend an  
7 executive session. The respondents seem to be arguing that the Council did not exercise  
8 their sole discretion in this instance, but sat by and allowed the staff to exclude Mr. Werner  
9 on 6/4/18 from attending the executive session.

10  
11 The Mayor, at one point, did suggest that Mr. Werner be allowed to attend and four others  
12 responded "No" to that suggestion. It is argued by respondents that this did not constitute  
13 official action on their part. It appears that Mr. Anderson went even further, stating that  
14 they should not hold the executive session at all if Mr. Werner was allowed to attend.  
15 Members of the governing body voiced opposition to the suggestion by one member that  
16 Werner be allowed to attend the executive session, they abdicated their sole discretion in  
17 allowing the City staff to exclude Mr. Werner, they declined to exercise their option to  
18 override the City Policy to immediately recognize Mr. Werner as a representative of the  
19 news media, and they all participated in the executive session once Mr. Werner had been  
20 excluded. Thus, it appears that the members of the governing body, either through their  
21 action or inaction, did exclude Mr. Werner from the executive session on 6/4/18.

22  
23 Third, the respondents argue that the City Councilors could not and did not make a  
24 decision to exclude Mr. Werner from the executive session on 6/4/18 because they were  
25 advised by their attorney that they could not legally make a decision that day in either the  
26 public work session or in the executive session, or in the interim between the two  
27 sessions. The fact that they were advised by their attorney not to make a decision on Mr.  
28 Werner's attendance at the executive session on 6/4/18 prevents the assessment of a  
29 monetary penalty under ORS 244.350(2), which states that the commission may impose  
30 civil penalties up to \$1,000 for any violation of ORS 192.660, unless the violation occurred  
31 as a result of the governing body of the public body acting upon the advice of the public

1 body's counsel. However, acting under the advice of counsel does not prohibit a finding  
2 of violation of ORS 192.660(4) and the imposition of a non-monetary sanction.

3  
4 ORS 192.660(4) states that representatives of the news media shall be allowed to attend  
5 executive sessions held by the governing body of a public body, except in a few specific  
6 circumstances, none of which apply in this case. A public body is allowed to have a media  
7 policy, but if enforcement of that policy's definitions or requirement of advance notice of  
8 attendance would result in the exclusion of a representative of the news media from an  
9 executive session, then the exclusion is a violation of ORS 192.660. The City Policy  
10 permits the City Council, in their sole discretion, to override their policy and immediately  
11 recognize a person as a representative of the news media. They chose not to do so,  
12 even though Mr. Werner had been corresponding with staff and the attorney about his  
13 media status for months and information about his media status was readily available.

14  
15 The City Council had options to ensure that they did not violate ORS 192.660(4). For  
16 example, it could have deferred the executive session until they could determine whether  
17 or not Mr. Werner's publication qualified as a news media. It appears that deferring the  
18 executive session was an option, as Councilor Anderson suggested not holding the  
19 executive session at all if Mr. Werner was allowed to attend. The Council could have  
20 considered Mr. Werner's email on 5/3/18 that he would attend the "next executive  
21 session" as an application and followed up immediately with the form with which to do  
22 that. As stated above, it is unclear exactly what an "application" would entail for an  
23 internet based operation, and considering that the City staff had access to  
24 lincolncityhomepage.com site, it does not seem that any more of an "application" was  
25 necessary.

26  
27 In conclusion, there is a preponderance of evidence that a representative of the news  
28 media was excluded from attending an executive session held by the Lincoln City Council,  
29 in violation of ORS 192.660(4), and that Don Williams was participating as a member of  
30 the governing body when the violation occurred.

31 ///

1 **RECOMMENDATIONS:** The Commission should make a preliminary finding of 1  
2 violation of ORS 192.660(4) by Don Williams. [Motion 10]

3

4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint submitted by Justin Werner, received on 6/6/2018.
- 6 #PR2 Oregon Attorney General opinion #8291, published on 4/18/2016,  
7 concerning media and executive sessions.
- 8 #PR3 Additional information via email from Justin Werner received on 6/20/2018.
- 9 #PR4 Response from attorney Andrea D. Coit, received on 6/15/2018.
- 10 #INV1 Records received 10/22/18 from Lincoln City's custodian of records in  
11 response to Commission subpoena.
- 12 #INV1a Letter from Lincoln City attorney, Richard Appicello, in response to  
13 Commission's subpoena.
- 14 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with  
15 attachments.
- 16 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with  
17 attachments, via email attachment from attorney Coit.
- 18 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by  
19 the City of Lincoln City, obtained 1/9/19.
- 20 #INV4 Records from <https://sos.oregon.gov/business/Pages/default.aspx>,  
21 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 22 #INV5 Correspondence and records from Justin Werner.
- 23 ///
- 24 ///
- 25 ///
- 26 ///
- 27 ///
- 28 ///
- 29 ///
- 30 ///
- 31 ///

- 1 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and
- 2 meeting records obtained from website maintained by City of Lincoln City.
- 3 #INV7 Investigator notes of phone interview 1/7/19 with Don Williams.

PREPARED BY *Diane Gould* *1/16/19*  
Diane Gould Date  
Investigator

APPROVED BY *[Signature]* *1/16/19*  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY *Amy E. Alpaugh* *1/16/19*  
Amy E. Alpaugh Date  
Assistant Attorney General



**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-148XMT

**DATE:** January 16, 2019

**RESPONDENT:** WAHLKE, Susan, Councilor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Susan Wahlke was a City Councilor for the City of Lincoln City and  
2 participated in an executive session relevant to this investigation. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to indicate that  
4 a representative of the news media was impermissibly excluded from attendance at the  
5 executive session, in violation of ORS 192.660(4).  
6

7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 although he was known in advance to several City staff members who corresponded  
13 regularly with him as a representative of the publication. It appears that he and his  
14 publication were also known to several members of the governing body.  
15

16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

- 1 #INV1 Records received 10/22/18 from Lincoln City's custodian of records in  
 2 response to Commission subpoena.
- 3 #INV1a Letter from Lincoln City attorney, Richard Appicello, in response to  
 4 Commission's subpoena.
- 5 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with  
 6 attachments.
- 7 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with  
 8 attachments, via email attachment from attorney Coit.
- 9 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by  
 10 the City of Lincoln City, obtained 1/9/19.
- 11 #INV4 Records from <https://sos.oregon.gov/business/Pages/default.aspx>,  
 12 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 13 #INV5 Correspondence and records from Justin Werner.
- 14 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and  
 15 meeting records obtained from website maintained by City of Lincoln City.  
 16

PREPARED BY *Diane Gould* 1/16/19  
 Diane Gould Date  
 Investigator

APPROVED BY *[Signature]* 1/16/19  
 Ronald A. Bersin Date  
 Executive Director

REVIEWED BY *Amy E. Alpaugh* 1/16/19  
 Amy E. Alpaugh Date  
 Assistant Attorney General



**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-149XMT

**DATE:** January 16, 2019

**RESPONDENT:** CASPER, Judy, Councilor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Judy Casper was a City Councilor for the City of Lincoln City and  
2 participated in an executive session relevant to this investigation. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to indicate that  
4 a representative of the news media was impermissibly excluded from attendance at the  
5 executive session, in violation of ORS 192.660(4).

6  
7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 although he was known in advance to several City staff members who corresponded  
13 regularly with him as a representative of the publication. It appears that he and his  
14 publication were also known to several members of the governing body.

15  
16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

- 1 #INV1 Records received 10/22/18 from Lincoln City's custodian of records in  
2 response to Commission subpoena.
- 3 #INV1a Letter from Lincoln City attorney, Richard Appicello, in response to  
4 Commission's subpoena.
- 5 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with  
6 attachments.
- 7 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with  
8 attachments, via email attachment from attorney Coit.
- 9 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by  
10 the City of Lincoln City, obtained 1/9/19.
- 11 #INV4 Records from <https://sos.oregon.gov/business/Pages/default.aspx>,  
12 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 13 #INV5 Correspondence and records from Justin Werner.
- 14 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and  
15 meeting records obtained from website maintained by City of Lincoln City.  
16

PREPARED BY *Diane Gould* 1/16/19  
Diane Gould Date  
Investigator

APPROVED BY *[Signature]* 1/16/19  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY *Amy E. Alpaugh* 1/16/19  
Amy E. Alpaugh Date  
Assistant Attorney General

# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 18-150XMT

**DATE:** January 16, 2019

**RESPONDENT:** HINTON, Diana, Councilor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Diana Hinton was a City Councilor for the City of Lincoln City and  
2 participated in an executive session relevant to this investigation. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to indicate that  
4 a representative of the news media was impermissibly excluded from attendance at the  
5 executive session, in violation of ORS 192.660(4).

6  
7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 although he was known in advance to several City staff members who corresponded  
13 regularly with him as a representative of the publication. It appears that he and his  
14 publication were also known to several members of the governing body.

15  
16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

- 1 #INV1 Records received 10/22/18 from Lincoln City's custodian of records in  
2 response to Commission subpoena.
- 3 #INV1a Letter from Lincoln City attorney, Richard Appicello, in response to  
4 Commission's subpoena.
- 5 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with  
6 attachments.
- 7 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with  
8 attachments, via email attachment from attorney Coit.
- 9 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by  
10 the City of Lincoln City, obtained 1/9/19.
- 11 #INV4 Records from <https://sos.oregon.gov/business/Pages/default.aspx>,  
12 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 13 #INV5 Correspondence and records from Justin Werner.
- 14 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and  
15 meeting records obtained from website maintained by City of Lincoln City.

PREPARED BY *Diane Gould* 1/16/19  
Diane Gould Date  
Investigator

APPROVED BY *[Signature]* 1/16/19  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY *Amy E. Alpaugh* 1/16/19  
Amy E. Alpaugh Date  
Assistant Attorney General

**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-151XMT

**DATE:** January 16, 2019

**RESPONDENT:** HOAGLAND, Riley, Councilor, Lincoln City

**COMPLAINANT:** WERNER, Justin

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 192.660

1 **SYNOPSIS:** Riley Hoagland was a City Councilor for the City of Lincoln City and  
2 participated in an executive session relevant to this investigation. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to indicate that  
4 a representative of the news media was impermissibly excluded from attendance at the  
5 executive session, in violation of ORS 192.660(4).

6  
7 A review of information indicates that on 6/4/18, a representative of an online publication,  
8 lincolncityhomepage.com, was excluded from attending the City Council's executive  
9 session. The City has a policy containing criteria and timelines for an entity to be  
10 recognized as "media" by the members of the City Council. The City determined that the  
11 individual in this case did not formally apply in advance to attend the executive session,  
12 although he was known in advance to several City staff members who corresponded  
13 regularly with him as a representative of the publication. It appears that he and his  
14 publication were also known to several members of the governing body.

15  
16 ORS 192.660 does not define "news media", but the Attorney General issued an opinion

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2 response to Commission subpoena.
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4 Commission's subpoena.
- 5 #INV2 Letter from attorney Andrea D. Coit, received via email on 1/3/19, with  
6 attachments.
- 7 #INV2a Affidavit from Lincoln City Attorney Richard Appicello, received 1/3/19 with  
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- 9 #INV3 Records printed from <https://www.lincolncity.org/>, a website maintained by  
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12 a website maintained by the Oregon Secretary of State, obtained 1/10/19.
- 13 #INV5 Correspondence and records from Justin Werner.
- 14 #INV6 Lincoln City Ordinance No. 2018-04, Lincoln City Council Rules, and  
15 meeting records obtained from website maintained by City of Lincoln City.

PREPARED BY *Diane Gould* *1/16/19*  
Diane Gould Date  
Investigator

APPROVED BY *RA Bersin* *1/14/19*  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY *Amy E. Alpaugh* *1/16/19*  
Amy E. Alpaugh Date  
Assistant Attorney General

**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-155EHW

**DATE:** 1/16/2019

**RESPONDENT:** LINDSEY, John, County Commissioner, Linn County

**COMPLAINANT:** TEMPLETON, William

**RECOMMENDED ACTION:** Make a Preliminary Finding of one (1) Violation of ORS 244.040(1) & three (3) Violations of ORS 244.120(2)

1 **SYNOPSIS:** John Lindsey was a County Commissioner for Linn County when the events  
2 relevant to this investigation occurred. The focus of this investigation was to determine if  
3 there is a preponderance of evidence to indicate that John Lindsey committed violations  
4 of the conflict of interest and use of office provisions of ORS Chapter 244.  
5  
6 John Lindsey, while acting in his capacity as Linn County Commissioner, became actively  
7 involved in a complaint that was made to the County regarding a possible, illegal  
8 marijuana grow operation in his neighborhood. These individuals were building a  
9 greenhouse in which to grow what they claim to be medical marijuana. The neighbor who  
10 filed the complaint with the County initially made a call to Mr. Lindsey's home, on which  
11 basis he immediately went to the property to investigate. Then, via his County email  
12 account, he reported his findings and concerns to County staff requesting they follow up,  
13 and he continued to remain directly involved in County staff's email correspondence from  
14 that point on. Mr. Lindsey also met with the property owner and his son-in-law (the  
15 complainant) at the County office building at some point during the period relevant to this  
16 investigation. After the County's complaint was closed, and the property owners received

1 the permits needed to build the greenhouse, Mr. Lindsey and nine (9) other individuals  
2 who are also neighbors subsequently filed for civil damages in a federal lawsuit alleging  
3 RICO and nuisance claims. Note that a number of conflicting statements and other  
4 discrepancies are present in this report.

5  
6 There appears to be a preponderance of evidence to indicate that Mr. Lindsey attempted  
7 to use his position as County commissioner to avoid financial detriment related to his  
8 property and the neighboring marijuana grow, and that Mr. Lindsey failed to publicly  
9 announce three (3) conflicts of interest prior to taking official action.

10  
11 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
12 issues addressed herein:

13  
14 **244.020 Definitions.** As used in this chapter, unless the context requires  
15 otherwise:

16  
17 (1) "Actual conflict of interest" means any action or any decision or  
18 recommendation by a person acting in a capacity as a public official, the effect of  
19 which would be to the private pecuniary benefit or detriment of the person or the  
20 person's relative or any business with which the person or a relative of the person  
21 is associated unless the pecuniary benefit or detriment arises out of circumstances  
22 described in subsection (13) of this section.

23  
24 (13) "Potential conflict of interest" means any action or any decision or  
25 recommendation by a person acting in a capacity as a public official, the effect of  
26 which could be to the private pecuniary benefit or detriment of the person or the  
27 person's relative, or a business with which the person or the person's relative is  
28 associated \* \* \*.

29  
30 (15) "Public official" means the First Partner and any person who, when an alleged  
31 violation of this chapter occurs, is serving the State of Oregon or any of its political



1 subdivisions or any other public body as defined in ORS 174.109 as an elected  
2 official, appointed official, employee or agent, irrespective of whether the person is  
3 compensated for the services.  
4

5 **244.040 Prohibited use of official position or office; exceptions; other**  
6 **prohibited actions.** (1) Except as provided in subsection (2) of this section, a  
7 public official may not use or attempt to use official position or office to obtain  
8 financial gain or avoidance of financial detriment for the public official, a relative or  
9 member of the household of the public official, or any business with which the  
10 public official or a relative or member of the household of the public official is  
11 associated, if the financial gain or avoidance of financial detriment would not  
12 otherwise be available but for the public official's holding of the official position or  
13 office.  
14

15 (4) A public official may not attempt to further or further the personal gain of the  
16 public official through the use of confidential information gained in the course of or  
17 by reason of holding position as a public official or activities of the public official.  
18

19 (7) The provisions of this section apply regardless of whether actual conflicts of  
20 interest or potential conflicts of interest are announced or disclosed under ORS  
21 244.120.  
22

23 **244.120 Methods of handling conflicts; Legislative Assembly; judges;**  
24 **appointed officials; other elected officials or members of boards.** (2) An  
25 elected public official, other than a member of the Legislative Assembly, or an  
26 appointed public official serving on a board or commission, shall: (a) When met  
27 with a potential conflict of interest, announce publicly the nature of the potential  
28 conflict prior to taking any action thereon in the capacity of a public official; or (b)  
29 When met with an actual conflict of interest, announce publicly the nature of the  
30 actual conflict and:  
31

//

1 (A) Except as provided in subparagraph (B) of this paragraph, refrain from  
2 participating as a public official in any discussion or debate on the issue out  
3 of which the actual conflict arises or from voting on the issue.

4 (B) If any public official's vote is necessary to meet a requirement of a  
5 minimum number of votes to take official action, be eligible to vote, but not  
6 to participate as a public official in any discussion or debate on the issue  
7 out of which the actual conflict arises.

8  
9 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
10 a preliminary review based on information in a signed complaint from William Templeton  
11 on June 19, 2018 (#PR1). A copy of the complaint was provided to the respondent. In the  
12 complaint, Mr. Templeton alleged that John Lindsey, a Linn County Commissioner, may  
13 have violated Oregon Government Ethics law. The Commission found cause to  
14 investigate on August 10, 2018, after considering the information developed in preliminary  
15 review. The focus of the investigation was to determine if there is sufficient evidence to  
16 indicate that John Lindsey failed to comply with Oregon Government Ethics law by: (1)  
17 using or attempting to use his official position to obtain a prohibited financial benefit, (2)  
18 using confidential information obtained in connection with his official position to obtain a  
19 personal gain, and (3) failing to comply with the conflict of interest provisions. John  
20 Lindsey and William Templeton have been notified of the Commission action in this  
21 matter. Both have been invited to provide any information that would assist the  
22 Commission in conducting this investigation.

23  
24 **BACKGROUND**

25 Based on the information provided, it appears that the circumstances surrounding this  
26 complaint stem from plans to build a greenhouse to grow marijuana at 36340 Hillside Ln,  
27 Lebanon, Oregon ("Hillside property"). The Hillside property is a residence located in a  
28 neighborhood zoned for residential rural use in Linn County. According to information  
29 submitted, Mark Owenby (the complainant's father-in-law) and Michelle Page purchased

1 the property on December 1, 2016, and began making plans and taking actions to grow  
2 marijuana and build the greenhouse shortly thereafter. (#PR1; #INV5)

3

4 Linn County Commissioner, John Lindsey, resides in the same neighborhood. Mr.  
5 Lindsey and several other neighbors believe that the marijuana grow operation is illegal.  
6 Mr. Lindsey sent an email to fellow County commissioners and County staff on August  
7 28, 2017, indicating that he and other neighbors might become personally involved in  
8 litigation on the matter. Mr. Lindsey submitted a "Notice of Intent to Sue" letter (which is  
9 undated, but requests reply by September 11, 2017). Mr. Lindsey, his wife and eight (8)  
10 other neighbors then filed a federal RICO and nuisance lawsuit naming the complainant  
11 (William Templeton), the property owners (Mr. Owenby and Ms. Page) and several others  
12 as defendants. (#PR1; #INV1)

13

14 COMPLAINT

15 William Templeton filed the complaint with the assistance of his attorney, Jay Flint. The  
16 complaint is excerpted below:

17

18 "One day in the spring of 2017, Lindsey came up to the property with a hostile tone  
19 and began the conversation by presenting his County Commissioner business  
20 card \* \* \* and began grilling them about the nature of the operations. He said things  
21 to Mr. Templeton like 'what you're doing is illegal' and that 'you picked the wrong  
22 neighborhood.' Mr. Templeton didn't take kindly to those accusations... and asked  
23 the Commissioner to leave \* \* \* .

24

25 After that \* \* \* [h]e began to harass the Hillside property owners in a variety of ways  
26 \* \* \* . We believe in doing so, Lindsey violated the Oregon Ethics laws \* \* \* .

27

28 [H]e used his power as a county commissioner to inquire with every department  
29 within the county to see if he could find anything at fault with their operations at the  
30 Hillside property in an effort to find any reason to get the medical grow shut down.  
31 He falsely reported to the Sheriff's [Office] that there were illegal activities going  
32 on at the Property. The [S]heriff's [Office] followed up and found no violations\* \* \* .

1 Mr. Templeton and Mr. Owenby attempted to reconcile this matter by meeting with  
2 Commissioner Lindsey in his office\* \* \*. Lindsey stated that the greenhouse was  
3 'illegal' and that Mr. Templeton and Mr. Owenby were 'pieces of sh\*t' and accusing  
4 them of being 'liars' and 'tax evaders' \* \* \*.

5  
6 Lindsey then approached Robert Wheeldon, Director of the Linn County [Planning  
7 and Building] Department ("Department") and demanded copies of everything  
8 regarding the building of the greenhouse on the Property. Wheeldon and staff  
9 provided all of the public record building permits... and more [(ellipses original)].  
10 During the permitting process \* \* \* Mr. Templeton \* \* \* brought in to the Department  
11 the medical marijuana OMMP cards for four cardholders \* \* \*. Those four cards got  
12 copied into the Department records along with the building permits for the  
13 greenhouse.

14  
15 \* \* \* Lindsey went to the Department and demanded all the records \* \* \* on  
16 Owenby/Page and the greenhouse. \* \* \* In doing so, Lindsey found out that  
17 Templeton had submitted the OMMP cards to the Department. Lindsey asked for  
18 copies of those cards, too, even though they are non-public records \* \* \*. He saw  
19 the medical OMMP cards, which are not available to the general public, and made  
20 copies of them, along with the permits \* \* \*. Mr. Templeton asked Director  
21 Wheeldon why he gave Lindsey copies of those OMMP cards and Wheeldon  
22 replied that he's my boss and he couldn't refuse \* \* \*.

23  
24 Commissioner Lindsey is not in charge of the [Planning and Building] Department,  
25 that \* \* \* falls under Commission Will Tucker's oversight authority, so Lindsey had  
26 no greater privilege to the greenhouse's permit file than any ordinary citizen.

27  
28 \* \* \* Via the OMMP cards, he gained access to the four individuals who were listed  
29 on them and used that information against them by harassing them \* \* \* to force  
30 them to shut down \* \* \*.

31  
32 On March 30<sup>th</sup>, 2018, [Mr. Templeton's attorney] Mr. Flint went to the \* \* \*  
33 Department and requested all of the documents associated with the greenhouse.  
34 The staff person then gave Mr. Flint \* \* \* copies of \* \* \* the building permits, the  
35 engineering designs and the final approvals of the project. Mr. Flint then asked the  
36 staff person if there were any more documents in the file. She said "no" and then  
37 showed him her computer screen \* \* \*. Mr. Flint did not see any OMMP cards on  
38 file for the greenhouse, nor did the staff person mention them \* \* \*. Therefore,  
39 Lindsey used his power to gain access to sensitive, non-public, [HIPAA] medical

1 information which he wouldn't have had access to, but for \* \* \* his official position  
2 \* \* \*.

3  
4 (Mr. Templeton's attorney, Jay Flint, corroborated this information in a telephone  
5 conversation with the Commission investigator. (#INV10))  
6

7 The motivation behind Commissioner Lindsey's fervent pursuit to shut down this  
8 medical grow is the reason why his abuse of power actions fall within Oregon  
9 Ethics Commission's scope \* \* \*. He wants it shut down because he fears that the  
10 grow is causing house prices in the neighborhood to drop, including his own. This  
11 is not a hidden motive, as Lindsey even says as much in both his 'Notice of [Intent]  
12 to Sue' \* \* \* as well as the RICO lawsuit he filed \* \* \*." (#PR1)  
13

#### 14 LINDSEY'S NOTICE OF INTENT TO SUE & FEDERAL RICO/NUISANCE COMPLAINT

15 A copy of John Lindsey's "Notice of Intent to Sue" Mr. Owenby, Ms. Page, Mr. Templeton  
16 and their associates was submitted as an attachment to the complaint. Portions of Mr.  
17 Lindsey's "Notice of Intent to Sue" are excerpted below:  
18

19 *"Note: John Lindsey a neighborhood resident to the subject property also serves  
20 the citizens of Linn County Oregon as an elected County Commissioner. It is  
21 typical for commissioners to intervene on behalf of citizens in issues of code and  
22 land use violations. [(emphasis original)]*  
23

24 In early June 2017, a construction site was begun on the property without any  
25 apparent permits or land use. John Lindsey in his capacity as a county  
26 commissioner visited the property \* \* \* walked around the house with permission  
27 and noted the smell emanating from the shop building and the ventilation system  
28 that was cut into the building. Mr. Lindsey then informed county staff about the  
29 issue. This is a typical process for county officials regarding land use violations \* \*  
30 \*.  
31

32 Mr. Owenby and Mr. Templeton were informed that a private greenhouse is  
33 allowed \* \* \* only if it met county \* \* \* regulation \* \* \* but marijuana is not. Mr.  
34 Owenby was then handed a copy of [relevant] Linn County Code \* \* \*. \* \* \*  
35

36 The Oregon Department of Forestry fire defense reported to the property to  
37 extinguish [a 'marijuana burn pile'] fire. The property is located within a forest

1 defense zone \* \* \*. When illegal fires are responded to in this area it can affect the  
2 homeowner insurance policies of the whole area \* \* \*.

3 The continuation of the criminal enterprise and the odor it produces has greatly  
4 reduced the ability of homeowners to enjoy the use of their property.  
5 Neighborhoods that have increased long term drug use and criminal activity also  
6 see diminished values through the loss of desirability for families to live there.  
7 Residents have had to install security equipment and form ad hoc neighborhood  
8 watches." (#PR1)  
9

10 The "Introduction" of Mr. Lindsey's federal court filing, a copy of which was included with  
11 the complaint, alleges that "the plaintiffs have been damaged by a criminal enterprise"  
12 and also "seek[s] damages for private nuisance." Page 16 of the legal filing states that  
13 Mr. Owenby's marijuana greenhouse "has a material adverse impact on the market value  
14 of [neighbors'] properties...." Page 29 asserts injury to Mr. Lindsey's property as a result  
15 of "diminishing its market value and making it more difficult to sell." (#PR1)  
16

#### 17 LINDSEY'S TESTIMONY & DOCUMENTATION PROVIDED IN EXECUTIVE SESSION

18 When this Commission met in executive session on August 10, 2018, to consider the  
19 preliminary review report and vote to move this complaint to investigation, Commissioner  
20 Lindsey attended in-person to provide documents relevant to the complaint and oral  
21 testimony to the Commission. Copies of the documents Mr. Lindsey brought with him are  
22 provided to the Commission in full along with this investigative report. The August 10,  
23 2018, meeting record was reviewed by Commission staff and is excerpted in part below:  
24

25 **John Lindsey:** *[W]hen I act in the capacity as a public official with the County,*  
26 *generally what I do is I generate a piece of paper to describe what took place and*  
27 *what I did at that time \* \* \*.*  
28

29 [Mr. Lindsey then points to the email document he brought with him, which he labeled  
30 item "#1". It was sent from John Lindsey to fellow County Commissioners, County  
31 Counsel, the County CAO and County Planning and Building Department Director, Robert  
32 Wheeldon on June 5, 2017. It provides a detailed account of Mr. Lindsey's recollection of  
33 what transpired when he visited the Hillside property on June 4, 2017. The email is  
34 excerpted in part below and is provided to the Commission in full with this report:

1 "I got a complaint (my wife did) about the issue of a pot grow [at the Hillside  
2 property] yesterday. To get the straight scoop I drove to the residence. \* \* \*

3  
4 I met a guy in the driveway who told me he worked for the owner. \* \* \* I told him  
5 who I was and that there were rumors \* \* \* that someone was building a marijuana  
6 grow facility \* \* \*. I told him that I hoped that wasn't true and that zoning for the  
7 area does not allow that. \* \* \* \* \*

8  
9 We walked back around to the front and I gave him my card \* \* \*. \* \* \*

10  
11 I \* \* \* checked with you[r] staff today and no permits had been taken out for a  
12 construction project at that location. Here are my concerns[:]

- 13 (1) There appears to be no cut and fill permit \* \* \* .  
14 (2) The gentleman told me this was a large green house \* \* \* being constructed.  
15 \* \* \* The state water master has no record of a water right application.  
16 (3) There are no permits applied for on record with Linn County.  
17 (4) There is no land use application on file for a commercial greenhouse \* \* \* .

18  
19 Robert, our enforcement system is complaint driven. Please consider this letter a  
20 complaint. \* \* \*"

21  
22 (#INV1; #INV5)]

23  
24 **Lindsey:** *Note, this is June 5 [2017]. I didn't know anybody at that time.*

25  
26 [Mr. Lindsey then refers to the email chain document he brought and labeled item "#2". A  
27 copy is provided to the Commission along with this report (#INV1).]

28  
29 **Lindsey:** *[T]here's an email correspondence between myself and the Linn County  
30 Building Director [Mr. Wheeldon] in regard to what the issue is all about. The issue  
31 is about a zoning ordinance, on whether or not you can conduct the type of  
32 business that Mr. Templeton and Mr. Owenby were engaged in. That email [chain]  
33 ends June 27 [2017].\* \* \**

34  
35 [This email chain originated from Cindy Frink, the resident who had filed a complaint with  
36 the County Planning and Building Department about possible illegal marijuana growing  
37 at the Hillside property. The emails described above in which Mr. Lindsey directly  
38 participated are excerpted here below. Again, a full copy of the email chain is provided to

1 the Commission with this report.

2

3 June 26, 2017, email from Ms. Frink to Mr. Wheeldon (Mr. Lindsey's County email and  
4 several members of County staff are CCed):

5

6 "[C]an you direct me to the Building Code chapter that states that commercial  
7 greenhouses are not allowed in rural residential, regardless of what is being grown  
8 due to the water rights issue?"

9

10 Same day, Mr. Wheeldon emails Ms. Frink a response (Mr. Lindsey's County email and  
11 several members of County staff are CCed):

12

13 "I am not aware of any provision that would prohibit a commercial greenhouse that  
14 is in building code or that is related to water rights. \* \* \*"

15

16 June 27, 2017, email from Mr. Lindsey's County email address to Mr. Wheeldon (no  
17 others were included in the email):

18

19 " \* \* \* I think this lady is referring to zoning ? in a rural residential area.  
20 ?????"

21

22 Same day response from Mr. Wheeldon to Mr. Lindsey's County email (County staff and  
23 County Commissioner, Will Tucker, were included):

24

25 " \* \* \* We are trying to establish what exactly Ms. Frink's neighbors are doing \* \* \* .  
26 This is the first step in enforcing \* \* \* . As for building codes, I'm not aware of any  
27 that would prohibit any of it. There are as you know water rights requirements \* \* \*  
28 that are in state law. \* \* \*"

29

30 Same day, Mr. Lindsey sends a final email response to Mr. Wheeldon, also from his  
31 County email (no others were included in the email):

32

33 " \* \* \* \* In the [State] medical MJ growers license/registration it requires a water  
34 statement. This is OLCC's requirement, not ours. They limit sqft of grow operation  
35 by # of registered cards. I tried telling her that our issue is with zoning."

36

37 (#INV1; #INV5)]



1 **Lindsey:** *Mr. Templeton has never been in my office. \* \* \* [V]ery few people are*  
2 *even allowed into my office. It's just something I do. \* \* \* Generally what happens*  
3 *if an individual comes in to our office and complains, there is a counter space.*  
4 *Everything is done publicly and in full view \* \* \*. \* \* \**

5  
6 *I had never met Mr. Templeton in my life. I had never met Mr. Owenby \* \* \*. They*  
7 *came in to my office and yelled at my staff and were very rude \* \* \*. I told them this*  
8 *is still under review by Planning and Building or something to that effect, and he*  
9 *was very agitated and left. \* \* \**

10  
11 *As shown in the emails, Mr. Owenby and Ms. Page were never authorized to grow*  
12 *marijuana on this property. It's against zoning ordinance. \* \* \**

13  
14 [Next, Mr. Lindsey refers to the document that he labeled item #3 and brought with him  
15 to the meeting. The document appears to be a spreadsheet logging violations or  
16 complaints against residents in the County. One entry (VF17-0057) names Mr. Owenby  
17 and Ms. Page and lists the "Summary of Complaint" as "unauthorized marijuana grow."  
18 The document also highlights the next entry, (VF17-0058) which names the same kind of  
19 complaint ("unauthorized marijuana grow") against other property owners. A copy of this  
20 document is provided to the Commission with this investigative report.]

21  
22 **Lindsey:** *[T]his is a page taken out of the County code violations, and as you can*  
23 *see, Mr. Owenby and Ms. Page have been cited by Linn County for unauthorized*  
24 *growth of marijuana on this particular property. We never singled anybody out \* \**  
25 *\* another unauthorized marijuana grow is listed there \* \* \*. \* \* \**

26  
27 [In response to the complaint regarding his access to medical marijuana patient cards,  
28 Mr. Lindsey refers to the copy of ORS 475B.810 he brought and labeled as item "#4".]

29  
30 **Lindsey:** *As you can see right here, if you are running a medical marijuana*  
31 *operation \* \* \* the grower has to post his license in conspicuous view on the area*  
32 *\* \* \*. There is no expectation that those are not public, but that is besides the point,*  
33 *because on Mr. Owenby's first visit to my office, he handed me copies of the*  
34 *medical cards, so I don't know what this is all about. \* \* \**

35  
36 [This part of the dialogue refers to the copy of the August 29, 2017, email that Mr. Lindsey  
37 brought labeled as item "#5". A copy is provided to the Commission in full with this report.]

1 **Lindsey:** *It was later on \* \* \* because of an incident that had taken place at my*  
2 *residence, I had realized that this case was going to escalate. \* \* \* On August 29,*  
3 *2017, this is the email that was generated by myself to my fellow County*  
4 *Commissioners, County Administrator \* \* \* County Counsel and Robert Wheeldon.*  
5 *What I note in here is that I'd had a conversation a couple days prior with County*  
6 *Counsel about the direction I think I was going in this because of my personal*  
7 *safety and that this would probably result in some sort of legal action in the future.*  
8 *This very strictly outlines what will happen \* \* \*. [N]obody in Linn County—staff or*  
9 *anybody—is to talk to me about this building permit or any of this stuff, because*  
10 *this will become a conflict of interest at some point. This was dated on August 29,*  
11 *2017. The [RICO] case was filed on December 1 [2017], a little over 3 months later.*  
12 *As far as I'm concerned, you can't have much more than that. That was discussed*  
13 *with the lawyer to make sure. \* \* \**

14  
15 *[F]rom what [the preliminary review report is] \* \* \* saying \* \* \* I never made a*  
16 *declaration of a potential conflict of interest. Now I've provided you with the actual*  
17 *documents that went to the attorney and other fellow elected officials and*  
18 *department heads that they were never to speak to me again about this issue, at*  
19 *the end of August of last year, because I was likely going to be involved in a*  
20 *litigation suit against them as a person. \* \* \* \* \**

21  
22 [The August 29, 2017, email was sent from Mr. Lindsey to fellow County commissioners,  
23 County counsel and Mr. Wheeldon from his County email address. Again a full copy is  
24 provided to the Commission with this report, but the email reads in part as follows:

25  
26 *\* \* \* At various times this year I have had a problem with a neighbor violating land*  
27 *use, Oregon marijuana laws and county ordinance. \* \* \* \* \**

28  
29 *At the end of last week, myself and several neighbors have initiated a federal legal*  
30 *action against those individuals who are at the heart of the matter[.]*

31  
32 *\* \* \* These actions are being taken by me and my neighbors and not Linn County.*  
33 *\* \* \* I am in no way representing Linn County \* \* \*. This action does not involve*  
34 *any Linn County staff.*

35  
36 *At no time shall Linn County legal staff advise or discuss this case with me. \* \* \**  
37 *(#INV1)].*

38  
39 **Comm. Shugar:** *Is your property \* \* \* adjacent to or in the neighborhood of any of*  
40 *the property at issue \* \* \*?*

1 **Lindsey:** Yes. \* \* \* \* \* Not immediately adjacent.  
2  
3 **Comm. Kean:** But it's in the neighborhood.  
4  
5 **Lindsey:** Right.  
6  
7 **Shugar:** Is the allegation made that you have concern of the diminishment of the  
8 value of your property a fair allegation?  
9  
10 **Lindsey:** I think when you look at the federal complaint. I think mine is less about  
11 diminished value. Mine is more about intimidation and racketeering.  
12  
13 **Shugar:** \* \* \* Do you believe—it's a question about timing \* \* \*. At the time that the  
14 confrontation occurred at the counter at the County building \* \* \* did that occur  
15 before or after you were aware that the property at issue was next to yours?  
16  
17 **Lindsey:** Oh, I've always known all along that the property was there, because I  
18 got sent the address, and I go 'I know where that address is at.'  
19  
20 **Shugar:** Okay, so you were already aware of who these people were.  
21  
22 **Lindsey:** I didn't know what they were doing.  
23  
24 **Shugar:** But you were aware they had a connection to that property and that there  
25 was some effort to manufacture marijuana at that property.  
26  
27 **Lindsey:** Those were the allegations. I don't know this stuff. Generally what we do  
28 is if someone has a complaint, generally it's easier for a Commissioner from that  
29 part of the County to be the liaison to the problem. That's not abnormal at all. But  
30 when I realized this was going way beyond just the little zoning issue and this was  
31 becoming a little bit different, I started realizing that this was gonna go beyond  
32 what the County issue is, and that's when I discussed it with County Counsel. \* \* \*  
33 \* \*  
34  
35 **Comm. Sosa:** I just have two (2) questions. There is an allegation here that \* \* \*  
36 "[o]ne day in the spring of 2017 Lindsey came to property with a hostile tone and  
37 began a conversation by presenting his county commissioner business card \* \* \*."  
38 Did that actually occur?  
39  
40 **Lindsey:** Dust and fairies. I've never been there before, no. I need to correct

1           *myself though. That particular property—I'm a long-time resident of these areas—*  
2           *my best friend grew up actually on that property when I was a child. So yeah, I've*  
3           *been to that property before, so, but I've never visited that property in years.*

4  
5           **Sosa:** *So this wasn't you walking up there with your card saying I'm a county*  
6           *commissioner...*

7  
8           **Lindsey:** *No, no, no.*

9  
10          **Sosa:** *Secondly \* \* \* there is an allegation in here that you used your position to*  
11          *review the OMMP cards \* \* \* and that you obtained them but those are not available*  
12          *to the general public and that you made copies of them. You testified earlier that*  
13          *they actually presented the cards to you.*

14  
15          **Lindsey:** *Yes. What I typically do is if someone comes in and is complaining about*  
16          *a staff member, which this was, and they were complaining about Mr. Wheeldon.*  
17          *I generally take their notes \* \* \*. I copy everything that comes in front of me so I'm*  
18          *always on the same page as anybody else. He handed me the medical marijuana*  
19          *cards and said that no one is paying attention to these. That's just generally what*  
20          *I do. \* \* \* \* \**

21  
22          **Shugar:** *If we proceed with an investigation, I would encourage you to provide any*  
23          *additional documents or records that you think that Ms. Weedn or the Commission*  
24          *should consider. I appreciate that you brought these five (5) documents in, but if*  
25          *there are additional documents, email or records, I think it's really important that*  
26          *we have the full picture.*

27  
28          **Lindsey:** *Okay, I had a discussion with the attorney. What I've provided for you,*  
29          *and what will be part of the operations of the County will be available for you. The*  
30          *other parts that I cannot discuss that took place during August [are] part of that*  
31          *suit, and I don't have permission from the other nine parties to disclose. \* \* \* \* \**

32  
33          **Kean:** *Please provide Ms. Weedn with anything you are able to \* \* \* anything in*  
34          *addition." (#INV1).*

35  
36                    LINDSEY'S RESPONSE TO COMMISSION INVESTIGATOR INQUIRY

37          During the Commission investigation, Mr. Lindsey retained Kenneth Montoya, an attorney  
38          with Gerald L. Warren and Assoc., as counsel in this matter. Together, Mr. Lindsey and

1 Mr. Montoya sent a letter in response to the Commission investigator's questions that  
2 was received on January 15, 2019. A full copy is also provided with this report (#INV12)  
3 In the letter, Mr. Lindsey upheld his prior statements regarding how he obtained copies  
4 of the OMMP cards, adding that he never contacted any of the patients. (#INV12)

5  
6 As for how many times he had engaged in the matter of possible illegal marijuana growing  
7 at the Hillside property while acting in an official capacity, Mr. Lindsey responded that he  
8 had done so "approximately 18" times prior to the August 29, 2017, email he sent to fellow  
9 commissioners, County counsel and two (2) members of staff indicating his contemplation  
10 of private legal action. He added that "while I visited the property many times growing up  
11 \* \* \* the June [4], 2017, visit is the only time I have gone \* \* \* regarding the marijuana  
12 grow." His attorney added that "this is not the only complaint of illegal marijuana grows  
13 that [he] has personally received and investigated. His constituents bring these  
14 complaints to him \* \* \* with the expectation that he will respond \* \* \*." (#INV12)

15  
16 In response to questioning about conflicts of interest, Mr. Lindsey stated that he "did not  
17 become aware that [he] may have a potential conflict of interest until [he] met with legal  
18 counsel," and that he sent the August 29, 2017 email to fellow commissioners, Mr.  
19 Wheeldon, the County CAO and legal staff shortly thereafter.

20  
21 With regard to conflicts of interest, his attorney, Mr. Montoya, added reference to *Caragol*  
22 *v. OGEC*, 98 Or App 593, 598 (1989). Mr. Caragol was a Woodburn city councilor, as well  
23 as 50% owner of a company called Estates Realty. Woodburn Construction Company  
24 owned the other 50% stake in Estates Realty. Apart from its ownership interest in Estates  
25 Realty, Woodburn Construction Company contracted with a developer to build a  
26 retirement care facility in Woodburn. The financial institution backing the project withdrew,  
27 and Woodburn Construction Company sued the developer for materials and labor. The  
28 developers tried to persuade the City to establish a Hospital Bond Authority (HBA) to pay  
29 for the project, and Mr. Caragol stated creating the HBA as one of his reasons for running  
30 for city council. After he was elected, Mr. Caragol voted to expedite the city's creation of  
31 the HBA without disclosing a potential conflict of interest. The Commission made a

1 preliminary finding that Mr. Caragol violated ORS 244.120 (conflicts of interest),  
2 reasoning that Mr. Cargol "hoped and expected that, if [the project] was built, he would  
3 earn commissions on sales \* \* \* of homes [nearby and] there was the possibility that he  
4 might earn commission from the sale of [adjacent property]."

5  
6 The Oregon Court of Appeals reversed the Commission's finding, stating:

7  
8 "there may be situations where a connection can be said to exist, to a substantial  
9 probability, between an action taken by an official and a financial benefit to the  
10 official, [but to allow such a finding based on these facts] would require an official  
11 to declare a potential conflict of interest any time that the official makes a choice  
12 to support any project that conceivably could bring personal financial gain, no  
13 matter how remote \* \* \*." (#INV12; #INV13)

14  
15 Mr. Lindsey's attorney, Mr. Montoya, also pointed out the opinion's finding that to  
16 determine whether a conflict of interest exists:

17  
18 "requires an evaluation of the closeness or the remoteness of the potential benefit  
19 to the action taken. There has to be a point at which, irrespective of an official's  
20 hopes, an action cannot, as a matter of law, be said to have resulted in a benefit  
21 or even a reasonable expectation of one. \* \* \*" (#INV12; #INV13)

22  
23 On Mr. Lindsey's behalf, his attorney contends that:

24  
25 "[E]ven a "potential" pecuniary benefit or detriment to [Mr.] Lindsey \* \* \* is far more  
26 remote than the Court of Appeals found insufficient to create a potential conflict of  
27 interest in *Caragol*. [Mr.] Lindsey did not vote or deliberate on any matter involving  
28 the complainants but, went to the property after receiving a complaint \* \* \*. There  
29 simply isn't any connection, to a substantial probability or otherwise, between any  
30 action he has taken and a financial benefit/detriment to him or his family. \* \* \*  
31 [W]hile he received and acted on the initial complaint of an illegal grow site, there  
32 is nothing in the record to establish that he did anything that affected the  
33 complainant's ability to get the building permit they sought. \* \* \* [A]s in *Caragol*,  
34 additional actions by others needed to occur in order for Commissioner Lindsey to  
35 avoid financial detriment. Linn County Building and Planning officials would need  
36 to weigh complainant's application and, any appeal of a permit denial would need  
37 to be considered." (#INV12)

38 //

1        INFORMATION FROM LINN COUNTY COMMISSIONERS TUCKER & NYQUIST

2        Linn County Commissioner Will Tucker answered several questions posed by the  
3        Commission investigator in a telephone conversation on January 1, 2019 (#INV2).  
4        County Commission Chair, Roger Nyquist responded to questions separately via email  
5        (#INV11).

6  
7        As to the question of whether this matter has been raised at any Linn County Commission  
8        meetings, Mr. Tucker responded "no" and that the Linn County Commission, as a board  
9        has not heard a case or deliberated on any complaints regarding this matter or the  
10       property, because no one has requested official action. (#INV2) Mr. Nyquist after  
11       checking the County's meeting minutes, responded that based on both his "memory and  
12       a check of the meeting minutes, it has not been discussed\* \* \*." (#INV11).

13  
14       When asked whether Linn County had initiated investigation into, or found the Hillside  
15       property or its residents or its owners, in violation of any County codes, regulations, or  
16       policies, in relation to this matter, Mr. Tucker initially responded that he did not know for  
17       sure. When the Commission investigator described the entry labeled VF17-0057 in the  
18       County log that Mr. Lindsey provided (This spreadsheet is part of #INV1; a copy is  
19       provided to the Commission along with this report.), Mr. Tucker identified the document  
20       as what the County Planning and Building Department uses to track formal complaints  
21       and said it means a formal complaint was filed on the property. He also stated that  
22       complaints are confidential until closed. (#INV2)

23  
24       Based on Mr. Templeton's allegation that Will Tucker is the County Commissioner  
25       responsible for the County Planning and Building Department (as opposed to Mr.  
26       Lindsey), the Commission investigator asked whether that was true. Mr. Tucker confirmed  
27       that he is the Commissioner whose responsibility it is to serve as a liaison to Planning  
28       and Building, but that occasionally Commissioner Lindsey will "stick his nose into my  
29       responsibilities." When asked to expound, Mr. Tucker was unable to identify a particular  
30       reason why Mr. Lindsey does this, or whether it is limited to any specific types of  
31       circumstances, but that about once a year someone comes in and makes a complaint of

1 violation and Commissioner Lindsey inserts himself. Mr. Tucker gave an example of a  
2 resident who threatened to sue the County because Mr. Lindsey intervened in a property  
3 line issue by personally drawing the resident's property line by eye and insisting that it  
4 was correct despite protest. (#INV2)

5  
6 In response to the Commission investigator's inquiry into the County's complaints  
7 process, Mr. Tucker explained that complaints to the Planning and Building Department  
8 are supposed to be independently led and resolved by staff—that staff receives the  
9 complaint and investigates it. Mr. Tucker stated that staff only involves him in complaints  
10 if there is an issue where a Commissioner might be able to assist with investigation or  
11 resolution. Mr. Tucker stated that County staff has independently handled marijuana  
12 complaints well in the past. (#INV2)

13  
14 Mr. Tucker also indicated that he feels County Commissioners should not become  
15 personally engaged in County complaints in general out of concern for having ex parte  
16 contacts on issues that may come before the County Commission. Mr. Tucker feels that  
17 proper practice would have been to "direct the neighbors to fill out the complaint form and  
18 have \* \* \* staff look into it." (#INV2)

19  
20 When the Commission investigator asked Mr. Nyquist the same question (about the  
21 County's process for handling complaints of code violations), Mr. Nyquist corroborated  
22 that the Planning and Building Department is generally responsible, but also said with  
23 regard to marijuana specifically, that he is "reluctant to call any of the complaints or how  
24 they [have been] handled typical or customary" since its legalization. (#INV11)

25  
26 When asked whether Mr. Lindsey has publicly announced any conflicts of interest with  
27 regard to this matter, both Mr. Tucker and Mr. Nyquist responded that to their knowledge  
28 he has not. (#INV11)

29  
30 In closing the conversation with Mr. Tucker, he asked if the Commission is aware of a  
31 confrontation between Mr. Lindsey and the Mayor of Albany that occurred at the Council



1 of Government (COG) offices in Albany last fall. The Commission investigator confirmed  
2 that the complainant had forwarded a news article published by the Democrat Herald in  
3 October 2018. (The article indicates that the complainant, Mr. Templeton, placed  
4 approximately 120 yard signs around the City of Lebanon generally calling Mr. Lindsey  
5 "unethical" and a "liar". According to the article, Mr. Lindsey, unaware of the source of the  
6 yard signs, showed up at an Albany City Council meeting and verbally confronted  
7 Albany's Mayor, because he believed the candidate running for Linn County Commission  
8 that the Mayor supported (and who was running against him in the election) was  
9 responsible for the signs. (#INV3)) Mr. Tucker stated that Mr. Lindsey is no longer  
10 permitted inside the COG building, because some members of staff and other officials  
11 now feel uncomfortable. (#INV2)

12  
13 Mr. Tucker iterated several times that he thinks Mr. Lindsey is a "good conservative man"  
14 and that Mr. Lindsey votes and advocates for matters in the way the people of Linn County  
15 who elect him want him to. He feels that while Mr. Lindsey's intentions are good, his  
16 reactions are sometimes "angry" and that he sometimes behaves in ways that make him  
17 difficult to get along with. He gave a positive example of working in collaboration with  
18 Lindsey and closed in saying "so sometimes I just wish he'd calm down in situations like  
19 this and with the mayor of Albany." (#INV2)

20  
21 INFORMATION FROM PLANNING & BUILDING DIRECTOR WHEELDON

22 In a series of emails exchanged between Director Wheeldon and the Commission  
23 investigator, Mr. Wheeldon stated that he recalled explaining to Mr. Lindsey "the  
24 existence of the [OMMP] cards" and "that the property owners provided [them] to confirm  
25 they had authority to produce medical marijuana on the property for their own use." Mr.  
26 Wheeldon "perceived that the conversation was in Commissioner Lindsey's official  
27 capacity in that he was responding to complaints by neighbors regarding construction and  
28 marijuana production on the property." (#INV4)

29  
30 Mr. Wheeldon indicated that he does "not recall providing copies of the OMMP cards [to  
31 Mr. Lindsey]" or have any "knowledge of other staff providing copies of the OMMP cards

1 [to Mr. Lindsey].” Mr. Wheeldon also indicated that he does not recall telling Mr.  
2 Templeton that he “gave Lindsey copies of the OMMP cards.” He also did “not recall”  
3 saying he couldn’t refuse Mr. Lindsey access to the OMMP cards because he’s his boss  
4 “or anything similar,” as Mr. Templeton alleges. (#INV4)

5  
6 As to the question of whether these OMMP cards are, or have been, available via public  
7 records request, Mr. Wheeldon explained that due to “the sensitive nature of the OMMP  
8 cards, they were not included in the complaint file and to my knowledge have not been  
9 made available via a public records request.” (#INV4)

10  
11 On request by the Commission investigator, Mr. Wheeldon also submitted copies of the  
12 Department’s “unauthorized marijuana grow” complaint file on Mr. Owenby and Ms. Page,  
13 as well as its file on the permit documents for the Hillside property greenhouse. Mr.  
14 Wheeldon said the complaint was confidential while under review, but the complaint is  
15 now closed, and the file is now public record (#INV4; #INV5; #INV7)

16  
17 COUNTY’S “UNAUTHORIZED MARIJUANA GROW” COMPLAINT FILE

18 The County’s complaint investigation file (VF17-0057) is 54-pages long. The complaint  
19 names Ms. Page and Mr. Owenby and describes the nature of the complaint as an  
20 “unauthorized marijuana grow” at the Hillside property. Records included in the file  
21 indicate that the complaint was filed by Linn County resident, Cindy Frink, and that the  
22 complaint was opened by Department staff on June 16, 2017.

23  
24 The staff log in the file dated June 15, 2017 (one day before the file was opened),  
25 indicates that a member of County staff drove by the property and was unable to gain  
26 access, but spoke with Mr. Templeton who confirmed that they intended to grow  
27 marijuana on the Hillside property for four (4) OMMP card holders. (#INV5)

28 //  
29 An email from Mr. Wheeldon responding to Ms. Frink (who filed the complaint) dated June  
30 16, 2017, states:

1 "[Department staff] visited the property yesterday and spoke to [Mr. Templeton]  
2 regarding needed permits and potential land use issues regarding medical  
3 marijuana production for multiple card holders \* \* \*. He came in to the office this  
4 morning to apply for \* \* \* permits. \* \* \* I met with staff and the Deputy County  
5 Attorney this afternoon regarding state and county regulations \* \* \*. We will submit  
6 a letter next week to the property owners explaining Linn County's regulations \* \*  
7 \* and requesting information to determine whether they are in compliance \* \* \*."  
8 (#INV1; #INV5)  
9

10 The next staff log, indicates that the Department sent the letter certified regular mail to  
11 Mr. Owenby and Ms. Page on June 23, 2017, a copy of which was included in the file and  
12 is excerpted below:  
13

14 "Mr. Templeton came into the Department on June 16, 2017 and provided copies  
15 of three OMMP cards issued by the Oregon Health Authority (OHA), and stated  
16 that a fourth card to be assigned to the property was still being reviewed by the  
17 OHA. \* \* \*

18  
19 Pursuant to ORS 475B.500, Linn County may adopt ordinances that impose  
20 reasonable regulations on the operation of medical marijuana uses. This includes  
21 regulations on the time, place, and manner in which medical marijuana uses are  
22 established and operated. \* \* \* On December 14, 2016, the Linn County Board of  
23 Commissioners adopted Ordinance 2016-370 \* \* \* consistent with ORS 475B.500.  
24

25 The RR-5 zoning district [where the property is located] only allows for the growing  
26 of medical marijuana by a cardholder at the cardholder's residence. Growing  
27 medical marijuana at an address other than \* \* \* where the cardholder resides is  
28 not permitted \* \* \*. Based on information provided to the Department, it appears  
29 that medical marijuana will be grown for two additional cardholders at the \* \* \*  
30 residence.  
31

32 Establishment of a new OMMP grow site on the property for cardholders other than  
33 persons who reside on the property is a violation of Linn County Code. However,  
34 if the site was established prior to \* \* \* December 14, 2016 \* \* \* the site may be  
35 classified as a non-confirming use, pursuant to Linn County Code Chapter 936. \*  
36 \* \*  
37

1 To bring the subject property into compliance with County Code you must:

2  
3 (1) Demonstrate that the property was registered and used as a medical  
4 marijuana grow site prior to December 14, 2016 for OMMP cardholders not  
5 residing on the property; or

6  
7 (2) \* \* \* [T]he medical marijuana grow site must be removed or brought into  
8 compliance with Linn County Code Chapter 940.

9  
10 Please contact the Department within 10 days to correct the noted violation. \* \* \*  
11 (#INV5)

12  
13 The next staff note entered in the file indicates that on June 28, 2017, Mr. Owenby came  
14 to the Department office and told Director Wheeldon that he and his wife would be living  
15 on the property and growing only for themselves in order to comply with County code, to  
16 which Director Wheeldon requested that they provide the information in writing. A letter  
17 dated the following day, June 29, 2017, sent to Mr. Wheeldon from Mr. Owenby and Ms.  
18 Page documents the information in writing. (#INV5)

19  
20 The other various documents in the filed include:

- 21 • Copies of the three (3) OMMP cards that Mr. Templeton submitted to the  
22 Department (with identifying information redacted);
- 23 • An email dated July 20, 2017, from resident, Cindy Sekiguchi, complaining about  
24 the marijuana grow on the property;
- 25 • All of the emails between Cindy Frink and Wheeldon that were submitted by Mr.  
26 Lindsey (copies of which were provided to the Commission with this report), plus  
27 an additional email of the same nature from Frick to Wheeldon dated June 28,  
28 2017;
- 29 • All of the emails between Wheeldon and Lindsey that were submitted by Mr.  
30 Lindsey (copies of which were provided to the Commission with this report);
- 31 • A letter dated July 11, 2017, to OLCC Director, Steven Marks, from neighbors of  
32 the Hillside property, voicing opposition to any possible commercial marijuana  
33 grow occurring on the property (not signed by Lindsey);
- 34 • Several photos, as well as several planning or zoning maps of the property;
- 35 • Mr. Owenby and Ms. Page's Hillside property deed dated December 1, 2016;

- 1 • A property tax document naming Mr. Owenby and Ms. Page as property owners;
- 2 • Multiple duplicates, and five (5) pages of documents that appear to be related to
- 3 Department complaints about other properties (not Mr. Owenby and Ms. Page)
- 4 which appear to have been mistakenly misfiled. (#INV5)

5  
6 Records in the County complaint file do not indicate a specific resolution of the matter  
7 (other than the June 29, 2017, letter to the Department by Mr. Owenby and Ms. Page).  
8 However, during telephone calls with Mr. Tucker and Mr. Wheeldon, both indicated that  
9 the complaint was closed without any further action. (#INV2; #INV4)

10  
11 During this Commission's investigation, Mr. Templeton submitted a copy of a  
12 corroborating email dated July 10, 2017, which was sent from Mr. Wheeldon to Mr.  
13 Owenby. For an unknown reason, this email was *not* included in the records submitted  
14 by the Department. The email states:

15  
16 "Thank you for providing a written response regarding your plans for growing  
17 medical marijuana for personal use on your Hillside Road property. Your letter  
18 indicates you will comply with Linn County regulations by limiting marijuana  
19 cultivation to personal use by residents of the property. I appreciate your  
20 cooperation with Linn County regarding marijuana cultivation regulations in the  
21 Rural Residential zone. I will let you know if we need any other information."  
22 (#INV6)

#### 23 24 COUNTY'S BUILDING PERMIT FILE FOR THE GREENHOUSE

25 The County's permit file is 32-pages long. Records included indicate that Mr. Owenby  
26 filed his application to build a 30 X 196 sq ft greenhouse on June 19, 2017. The permit  
27 was approved on July 5, 2017, for "personal use and limited farm use as defined in [Linn  
28 County Code] 920.100(B)(17[7]) only." Documentation shows that the permit to build the  
29 greenhouse was then issued on July 28, 2017. (#INV7)

30  
31 The documents in the file include: Mr. Owenby's application; a Department staff checklist  
32 worksheet; proof of issuance of the permit; a property map; several pages of engineering

1 specifications; documentation of pole footing for the building's foundation; and inspection  
2 reports. (#INV7)

3  
4 ADDITIONAL INFORMATION OBTAINED FROM COMPLAINANT

5 During a telephone call on January 3, 2019, the Commission investigator informed Mr.  
6 Templeton of Mr. Wheeldon's response to the statements that he allegedly made as  
7 presented in the complaint (that he denied giving Mr. Lindsey access to the OMMP cards  
8 and saying he had to because he's his boss). Mr. Templeton restated his allegation that  
9 Mr. Wheeldon did say that he could not prevent Mr. Lindsey from accessing the OMMP  
10 cards, because he is his boss. (#INV8)

11  
12 Mr. Templeton also indicated that he actually believes Mr. Lindsey took the OMMP cards  
13 from the County offices himself. He stated that in a news article, which he previously  
14 submitted to the Commission, Mr. Lindsey admits to taking copies of the OMMP cards  
15 and claims that they are public record. (#INV8)

16  
17 On the Commission investigator's review of information submitted by Mr. Templeton, he  
18 appears to have been referring to a news article published by The New Era ("As election  
19 nears, commissioner finds himself embroiled in ongoing dispute") dated October 10,  
20 2018, which reads in part as follows:

21  
22 "The county issued a permit based on false information,' Lindsey said. 'The  
23 county's code prohibits growing marijuana except for personal use, but this one  
24 is being used to grow more.' \* \* \*

25  
26 'The medical marijuana permits are public information and are supposed to be  
27 displayed at the grow site,' he said, but he copied the four cards along with  
28 other materials in front of Templeton when he visited Lindsey at the  
29 courthouse.

30  
31 'You don't mind if I copy this,' Lindsey said he asked, and then copied the  
32 material Templeton had brought with him." (#INV9)

33 //

34 //

1 The Commissioner investigator made a verbal request and an email request for Mr.  
2 Templeton to provide the identity of the cardholders for the purpose of this investigation,  
3 but no information was provided. (#INV8)

4  
5 According to Mr. Templeton, Linn County Sheriff's Deputy Boshart was briefly involved in  
6 determining the legality of the marijuana grow operation, because Mr. Lindsey or other  
7 neighbors reported to the Sheriff's Office that the operation was illegal. Mr. Templeton  
8 says, the Sheriff's Office called OHA to verify their legality, and as a result of OHA's  
9 response, the Sheriff's Office never took any action. (#INV8)

10  
11 (Deputy Boshart did not respond to the Commission investigator's request for information.  
12 However, the New Era news article submitted by Mr. Templeton cites Linn County Sheriff  
13 Jim Yon as confirming Mr. Templeton's claim that the Sheriff's Office did respond and  
14 found no violations. (#INV9))

15  
16 To the question of whether the property has ever been found in violation of any laws,  
17 Templeton said "no" but admitted that Mr. Owenby and Ms. Page did not initially have  
18 proper permits. He also said that the County passed a new ordinance at the end of the  
19 year preceding the build (referring to County Ordinance 2016-370, passed December 14,  
20 2016, which is cited in the County's letter regarding the "unauthorized marijuana grow"  
21 complaint that is excerpted above), which they were unaware of when they began  
22 greenhouse construction. He said that once the ordinance was brought to their attention,  
23 they provided proof of compliance, and that there is no longer an issue. (#INV8)

24  
25 **CONCLUSIONS:** John Lindsey was a County Commissioner for Linn County during the  
26 period relevant to this case. As such, Mr. Lindsey was a "public official" (as defined in  
27 ORS 244.020(15)) and therefore subject to ORS Chapter 244 Oregon Government Ethics  
28 law.

29 //

30 //

31 //

1 PROHIBITED USE OF OFFICE

2 Regardless of whether a public official complies with the conflict of interest provisions,  
3 they may still violate prohibited use of office (ORS 244.040(7)).

4  
5 ORS 244.040(1)

6 ORS 244.040(1) prohibits public officials from using or attempting to use their official  
7 positions to obtain a personal financial benefit or avoid a personal financial detriment, that  
8 would not have been available but for holding a public position.

9  
10 The complaint alleges that Mr. Lindsey attempted to use his position to harass residents  
11 and owners of the Hillside property, to inquire with County staff to see if he could find  
12 anything at fault with the Hillside property, and to contact the Sheriff's Office and other  
13 State agencies, in an effort to get the medical grow shut down.

14  
15 As for Mr. Lindsey's contacts with the Sheriff's Office and State agencies, other than the  
16 allegations made in the complaint, none of the other information gathered during  
17 investigation indicated that Mr. Lindsey used his position, or that he would have obtained  
18 any financial benefit "but for" his official position.

19  
20 However, Mr. Lindsey's simultaneous personal and official involvement in the matter  
21 through his actions with the County Planning and Building Department, combined with his  
22 visit to the property, indicate that he attempted to use his position to shut down the  
23 marijuana grow operation in violation of ORS 244.040(1).

24  
25 With regard to the question of financial detriment, Mr. Lindsey stated in his testimony to  
26 the Commission during the August 10, 2018, meeting that his personal concerns are more  
27 about intimidation and racketeering than diminished value. However, Mr. Lindsey  
28 nonetheless states specific financial considerations as part of the motivation behind his  
29 ultimate pursuit of litigation, and he was aware of the possible nature of the operation at  
30 the Hillside property at all times relevant to the subject of this case. Written statements in  
31 Mr. Lindsey's "Notice of Intent to Sue" (signed by Mr. Lindsey alone), as well as his federal



1 RICO and nuisance claims (where he is one of ten (10) plaintiffs), allege that the activities  
2 at the marijuana greenhouse have a financial impact on surrounding property owners,  
3 including Mr. Lindsey, by causing diminished market value of their properties, by making  
4 their properties more difficult to sell, by causing them to incur costs related to installing  
5 security equipment, and by possibly affecting their homeowner's insurance policies.

6  
7 Whether Mr. Lindsey's conduct followed the County's usual practice in handling these  
8 sorts of situations is a matter of debate. Mr. Lindsey has made several statements saying  
9 that his actions were typical of a County commissioner, and that he has been involved in  
10 other marijuana-related complaints. According to Commissioner Tucker, however, he is  
11 the County commissioner responsible for responding to Planning and Building  
12 Department issues (not Mr. Lindsey), and the proper process for handling complaints of  
13 County code violations is to report it to Department staff, who resolves complaints  
14 independently unless a member of staff requests otherwise. Mr. Nyquist corroborated Mr.  
15 Tucker's statement that Planning and Building Department staff are supposed to handle  
16 zoning, building and land use complaints in general, but he also seemed to indicate that  
17 the County has not necessarily been following this (or any) procedure regarding  
18 complaints about marijuana since it has been legalized.

19  
20 While the question of whether Mr. Lindsey followed general protocol is a consideration in  
21 determining whether ORS 244.040(1) was violated, it is not necessarily dispositive.  
22 Regardless of whether Mr. Lindsey adhered to any County procedures, any other actions  
23 taken in an attempt to use his position as County commissioner to stop the Hillside  
24 property marijuana grow in avoidance of financial detriment would still violate ORS  
25 244.040(1).

26  
27 In this case, Mr. Lindsey took the complaint at home on June 4, 2017, and knowing the  
28 location of the property (in his neighborhood) and the nature of the allegations (a possible  
29 marijuana growing operation), he then went to the site to investigate in his official capacity.

30  
31 According to the complainant, during Mr. Lindsey's initial visit to the Hillside property on

1 June 4, 2017, he made accusatory statements (such as "what you're doing is illegal", "you  
2 picked the wrong neighborhood", "liars", "tax evaders") after identifying himself and  
3 presenting his County business card. Mr. Lindsey's retelling of the events in five (5) written  
4 statements (his June 5, 2017, email to Mr. Wheeldon, "Notice of Intent to Sue,"  
5 RICO/nuisance filings and response to the Commission's investigation) corroborate that  
6 Mr. Lindsey visited the Hillside property on June 4 and presented his County business  
7 card. But, contrary to his own written statements, in response to direct questioning, Mr.  
8 Lindsey told the Commission at its August 10, 2018 meeting, that he did not present his  
9 business card or identify himself as a County commissioner at the property, and that he  
10 has not visited the property since childhood. Moreover, Mr. Tucker's statements as to Mr.  
11 Lindsey's conduct, as well as the Democrat Herald article's depiction of the events  
12 surrounding Mr. Lindsey's confrontation of Albany's mayor, appear to lend credibility to  
13 the complainant's allegations about Mr. Lindsey's demeanor during his visit.

14  
15 According to Mr. Lindsey, he was involved in the matter approximately 18 times, including  
16 the June 4 visit to the property and the emails sent from Mr. Lindsey's official County  
17 email account on June 5 and June 27 that prompt Department staff to act and to provide  
18 information in furtherance of determining the legality of the Hillside property marijuana  
19 grow operation. Whether Mr. Lindsey's conduct actually affected Department staff's  
20 response or the ultimate outcome of the complaint is irrelevant as to whether the conduct  
21 was a prohibited use of office.

22  
23 The information appears to indicate that a preponderance of evidence exists to show that  
24 John Lindsey violated ORS 244.040(1) by using the influence of his position in an attempt  
25 to stop the marijuana grow in his neighborhood and thereby avoid diminished market  
26 value and other property-related costs.

27  
28 ORS 244.040(4)

29 ORS 244.040(4) prohibits a public official from attempting to further his own personal gain  
30 through the use of confidential information gained as a result of holding a public position.

31 //

1 The complaint alleged that Mr. Lindsey obtained copies of the OMMP medical marijuana  
2 cards belonging to the patients that the Hillside property greenhouse was intended to  
3 produce marijuana for, and that he used the information to harass the cardholders in an  
4 effort to shut the operation down. During investigation, the Commission investigator  
5 requested twice that Mr. Templeton provide contact information enabling the investigator  
6 to speak with OMMP cardholders, but no information was provided.

7  
8 The information gathered during the investigation provided many conflicting facts:

- 9 • The complainant alleges that Planning and Building Director Wheeldon said that  
10 he could not refuse Mr. Lindsey access to the files, because Mr. Lindsey is his  
11 boss; however, Mr. Wheeldon denies making any such statement.
- 12 • Regarding the manner in which Mr. Lindsey obtained copies of the OMMP cards:  
13 the complaint states that Planning and Building Department staff provided access;  
14 the complainant later said he believes Mr. Lindsey took the OMMP cards from the  
15 file personally; Director Wheeldon said he did not give Mr. Lindsey copies of the  
16 cards and doesn't know who did; and Mr. Lindsey has made statements to the  
17 Commission and a newspaper indicating that Mr. Owenby or Templeton gave them  
18 to him while acting in his official capacity and that he never used them to contact  
19 the card holders.
- 20 • Both Mr. Templeton and Mr. Lindsey both stated that there were four (4) OMMP  
21 cards, but multiple County records indicate that there were only three (3).
- 22 • Mr. Lindsey claims that the personal information on the OMMP cards is not  
23 confidential (it is unclear whether ORS 475B.810(5) applies in the manner Mr.  
24 Lindsey has interpreted); Mr. Templeton and Director Wheeldon claim that the  
25 OMMP cards are confidential. The card holder's names are also redacted on the  
26 copies of the OMMP cards that the County provided in response to this  
27 investigation, which further indicates that the County considers the information to  
28 be confidential. OAR 199-005-0035(5) defines "confidential information" to include  
29 "any information obtained in the course of or by reason of holding a position as a  
30 public official that is not publicly disclosed."

31  
32 Regardless of the conflicting facts, the OMMP cards would appear to be considered  
33 "confidential information" per the Commission's definition (in OAR 199-005-0035(5)). That  
34 Mr. Owenby may have handed Mr. Lindsey the OMMP cards at the County building while  
35 he was responding in his official capacity would not have revoked their confidentiality.

1 However, other than the allegations made in the complaint, no other information gathered  
2 during investigation corroborates that Mr. Lindsey contacted the cardholders or harassed  
3 them for a personal financial gain as a result of obtaining access to their OMMP cards.  
4 Nor does there appear to be a preponderance of the evidence that he used the cards in  
5 an attempt to influence a decision on the property. Because a preponderance of evidence  
6 does not exist to indicate that Mr. Lindsey used the information for his personal gain, there  
7 is insufficient information to indicate that ORS 244.040(4) was violated.

8  
9 CONFLICT OF INTEREST

10 ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a  
11 potential conflict of interest. A public official is met with either an actual or potential conflict  
12 of interest when participating in an official capacity, in any action, decision or  
13 recommendation, if the effect of would or could be to the private pecuniary benefit or  
14 detriment of the public official, the public official's relative, or any business with which  
15 either are associated. An actual conflict occurs when a public official participates in an  
16 official action that would have a direct and specific financial impact. A potential conflict  
17 arises when a public official takes an action that could have a financial impact.

18  
19 When met with a conflict of interest, elected officials such as John Lindsey are required  
20 to publicly announce the nature of their conflict of interest, *before taking any action*, each  
21 time the matter giving rise to the conflict is present. If the conflict is actual, the public  
22 official must also refrain from participating in any discussion, debate or vote on the issue.  
23 If the conflict is potential, the official may continue to participate after the public disclosure  
24 (ORS 244.120(2)).

25  
26 At the time the Court of Appeals decided the case cited by Mr. Lindsey's attorney,  
27 *Caragol*, Oregon Government Ethics law ORS Chapter 244 only recognized one kind of  
28 conflict of interest, a "potential conflict of interest." However, that definition is the precursor  
29 to what the law defines today as an "actual conflict of interest." The only definition of  
30 conflict of interest at the time *Caragol* was decided read as follows:

31 //

1 [A]ny transaction where a person acting in a capacity as a public official takes any  
2 action or makes any decision or recommendation, the effect of which would be to  
3 the private pecuniary benefit or detriment of the person or a member of the  
4 person's household."

5  
6 *Caragol* was decided in 1989, and in 1993, the legislature amended the conflict of interest  
7 laws to their contemporary form—changing the term for official action that would have a  
8 financial affect (as was the requirement when *Caragol* was decided) to be an "actual  
9 conflict of interest." For a public official to have a "potential conflict of interest" today, it is  
10 enough that the result of his action "could" financially affect him. Therefore, the test and  
11 standard applied by the Court of Appeals in *Caragol* appears to have been superseded  
12 by statutory amendment and no longer applies to determining whether a "potential conflict  
13 of interest" exists.

14  
15 Nonetheless, applying an objective standard and the test in *Caragol* to the definition of  
16 "potential conflict of interest" that applies today, there is a "substantial probability," or at  
17 least "a reasonable expectation that" a marijuana grow operation could have some  
18 economic effect on properties or property owners in the same neighborhood. In this case,  
19 the reasonableness of the probability of such a financial affect is specifically evidenced  
20 by Mr. Lindsey's ability to obtain an attorney to file federal legal action on such bases, as  
21 well as the fact that nine (9) other people have joined in the suit.

22  
23 As noted above in the Use of Office analysis, written statements in Mr. Lindsey's "Notice  
24 of Intent to Sue" and RICO/nuisance complaint, specifically allege that the activities at the  
25 marijuana greenhouse have had a financial impact on surrounding property owners,  
26 including Mr. Lindsey, by causing diminished market value of their properties, by making  
27 their properties more difficult to sell, by causing them to incur costs related to installing  
28 security equipment, and possibly affecting their homeowner's insurance policies. As a  
29 result, it appears that Mr. Lindsey's official actions during this period could have resulted  
30 in a direct financial impact to himself, and therefore he had a potential conflict of interest  
31 that he was required to publicly disclose prior to each official action he took.

32 //

1 Mr. Lindsey said he was involved in the matter subject to this case approximately 18 times  
2 while acting in his official capacity. Records document four (4) of those occasions:

3  
4 (1) Went to the Hillside property on June 4, 2017, presented his County Commissioner  
5 business card, observed the construction in order to determine its nature, and  
6 spoke with the person who was present about possible legal issues.

7 (2) Emailed Planning and Building Director Wheeldon on from his County email  
8 account on June 5, 2017, describing his visit to the property, stating his legal  
9 concerns, and requesting that Mr. Wheeldon open a complaint file for staff to  
10 investigate.

11 (3) Met with Mr. Templeton and Mr. Owenby in a County building sometime between  
12 mid-June and July 2017 (to hear complaints about himself or Mr. Wheeldon).

13 (4) Emailed Mr. Wheeldon twice on June 27, 2017, regarding water laws or zoning  
14 ordinances relevant to the greenhouse (Mr. Lindsey initiated the email exchange  
15 in response to an email directed at Mr. Wheeldon by Ms. Frink (who filed the  
16 complaint with the County); it was also one of the specific legal concerns stated in  
17 Mr. Lindsey's original June 5 email to Mr. Wheeldon).

18  
19 The email sent by Mr. Lindsey to his fellow County commissioners, County counsel, and  
20 Mr. Wheeldon on August 29, 2017, serves as the first and only announcement of his  
21 conflict in the matter.

22  
23 Public officials are required to disclose their conflicts of interest, *before taking action*, on  
24 each occasion that the issue giving rise to the conflict occurs (ORS 244.120(3)).

25  
26 Available information indicates that Mr. Lindsey was met with a potential conflict of  
27 interest when acting in his official capacity to respond to the possible illegal marijuana  
28 grow at Mr. Owenby's property. Records indicate that Mr. Lindsey was aware of the  
29 location of and activity occurring at Mr. Owenby's Hillside Property as early as June 4,  
30 2017, and that he took at least four (4) actions in his official capacity prior to providing  
31 notice of the conflict on August 29, 2017.

32  
33 As a result of the conflicting statements surrounding Mr. Templeton and Mr. Owenby's  
34 encounter with Mr. Lindsey at the County office building, the nature of the interaction

1 (whether Mr. Lindsey was hearing complaints about himself or Mr. Wheeldon) on that day  
2 is unclear. As a result, it is unclear whether that action constituted a conflict of interest for  
3 Mr. Lindsey. However, on the other on three (3) occasions, it is clear that he is responding  
4 directly to questions of legality regarding the marijuana grow.

5

6 Also, the notice of conflict that Mr. Lindsey provided on August 29, 2017, is likely  
7 insufficient to meet the requirements under ORS 244.120(2), because it did not indicate  
8 the specific property or individuals with which his conflict exists (does not clearly state the  
9 nature of the conflict), it does not specifically state that he has a conflict of interest, and  
10 the announcement was not made in advance of any specific action, decision or  
11 recommendation to be made by Mr. Lindsey (it was made after). Rather, it only stated  
12 that "legal staff" will not discuss or advise him on the case. Moreover, Commission staff  
13 generally encourage elected officials serving on governing bodies to "publicly announce"  
14 (per ORS 244.120(2)) their conflict in an open public meeting or other forum in which  
15 members of the public are likely to become aware. In this case, Mr. Lindsey's email was  
16 only shared with five (5) people.

17

18 It appears that a preponderance of evidence exists to show that John Lindsey violated  
19 ORS 244.120(2) three (3) times in relation to the subject of this investigation when he  
20 failed to public announce a potential conflict of interest prior to taking acting in his official  
21 capacity on June 4, 5, and 27, 2017.

22

23 **RECOMMENDATIONS:** The Commission should make preliminary finding that John  
24 Lindsey committed one (1) violation of ORS 244.040(1) and three (3) violations of ORS  
25 244.120(2) [Motion 10].

26

27 **ASSOCIATED DOCUMENTS:**


28 #PR1 Complaint and additional materials from William Templeton, received 6/19/18.

29 #INV1 Oral testimony and materials provided by John Lindsey during OGEC executive  
30 session meeting on 8/10/18.

31 //

- 1 #INV2 Memo summarizing contact with Linn County Commissioner, Will Tucker, on  
2 1/4/19.
- 3 #INV3 Editorial, "Voters need to hear answers from Lindsey," The Democrat Herald  
4 (Albany newspaper), published and received from William Templeton on 10/23/18.
- 5 #INV4 Memo summary and email chain re contacts with Linn County Planning and  
6 Building Department Director, Robert Wheeldon.
- 7 #INV5 Linn County Planning and Building Department "Unauthorized Marijuana Grow"  
8 complaint file, received from Robert Wheeldon on 1/4/19.
- 9 #INV6 Email from Robert Wheeldon to Mark Owenby dated 7/10/17, forwarded by William  
10 Templeton on 10/8/18.
- 11 #INV7 Linn County Planning and Building Department greenhouse building permit file,  
12 received from Robert Wheeldon on 1/4/19.
- 13 #INV8 Memo summary and email re contact with William Templeton on 1/3/19.
- 14 #INV9 News article, "As election nears, commissioner finds himself embroiled in ongoing  
15 dispute," The New Era (Sweet Home newspaper) published and received from  
16 William Templeton on 10/10/18.
- 17 #INV10 Memo summarizing contact with Jay Flint on 1/2/19.
- 18 #INV11 Email from Linn County Commission Chair, Roger Nyquist, received 1/15/19.
- 19 #INV12 Letter from John Lindsey and his attorney, Kenneth Montoya, in response to  
20 Commission investigator inquiry, received 1/15/19.
- 21 INV#13 *Caragol v. OGEC*, 98 Or App 593, 598 (1989).

PREPARED BY

  
Hayley Weedn  
Investigator

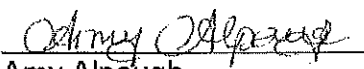
1/16/19  
Date

APPROVED BY

  
Ronald A. Bersin  
Executive Director

1/16/19  
Date

REVIEWED BY

  
Amy Alpaugh  
Assistant Attorney General

1/16/19  
Date



#1

**Lindsey, John**

**From:** Lindsey, John  
**Sent:** Monday, June 05, 2017 12:58 PM  
**To:** Wheeldon, Robert  
**Cc:** Nyquist, Roger; Tucker, Will; Karandy, Gene  
**Subject:** cut and fill and pot

Hi Robert,

I got a complaint ( my wife did) about the issue of a pot grow going in on Hillside Ln Lebanon yesterday. To get the straight scoop I drove to the residence.

36340 Hillside Ln, Lebanon

I met a guy in the driveway that told me he worked for the owner. There was cat work taking place out back of the residence. I asked him if the owner was around. He told me he "wasn't sure" but I could talk with him. I told him who I was and that there were rumors floating around the neighborhood that someone was building a marijuana grow facility on the property. I told him that I hoped that wasn't true and that the zoning for the area does not allow that. He then informed me that I might be able to talk with someone in charge.

We walked around the house where a large excavation job was taking place on the hillside and young teenage boy was standing there watching a dozer. The gentleman then turned to me and said it looks like the owners pick-up is there but the owner is not. [ the kid then ran down to the house ]. From my construction experience, I can say that 80-100 yards of dirt and rock were removed already from the cut on the hillside and a large area of at least 70 feet had been excavated already. [a cat was in operation] The gentleman then told me they were constructing a large commercial greenhouse there.

We walked back around to the front and I gave him my card and said I would like to talk with the owner if possible if he gets time.

I drove down the drive and verified the county permits on the post were actually for a neighbor and not the subject property.

A neighbor called me about 45 min later and said they had seen me drive up to the property and now the owners were erecting no trespass signs.

Robert, I then checked with you staff today and no permits had been taken out for a construction project at that location. Here are my concerns;

- 1) There appears to be no cut and fill permit on what looked like a very large excavation.
- 2) The gentleman told me this was a large green house operation being constructed. This is in a residential zoned area that has somewhat limited water. The state water master has no record of a water right application.
- 3) There are no permits applied for on record with Linn County.
- 4) There is no land use application on file for a commercial green house operation with Linn County.

Robert, our enforcement system is complaint driven. Please consider this letter a complaint. Council will discuss issues since the property was posted after I left. The neighbor property will surely give access where we have full view of what is going on 50' away. That location is about ten to fifteen feet above the construction with no obstructions.

Thanks,

John

Lindsey, John

1/2

**From:** Lindsey, John  
**Sent:** Tuesday, June 27, 2017 11:01 AM  
**To:** Wheeldon, Robert  
**Subject:** RE: Marijuana Production Regulations - Questions

Hi robert,

This is fairly complicated and I think I talked with this lady about it.

Forgive me on part of this.

OLCC on its application requires a signature of the local governing body for zoning issues. It also states that any growing that is commercial in nature requires a water right signed by the state. In the medical MJ growers licence/registration it requires a water statement. This is OLCC's requirement, not ours. They limit sqft of grow operation by # of registered cards.

I tried telling her that our issue is with zoning.

John

**From:** Wheeldon, Robert  
**Sent:** Tuesday, June 27, 2017 10:45 AM  
**To:** Lindsey, John  
**Cc:** Boles, Alyssa; Larson, Suzanne; Tucker, Will  
**Subject:** RE: Marijuana Production Regulations - Questions

John:

A person could, for example, have a tomato farm in a greenhouse in the rural residential zone. But not a marijuana farm (in Linn County). A person in a rural residential zone can also grow marijuana for personal use, or for personal medical use. But not for others. We are trying to establish what exactly Ms. Frink's neighbors are doing, and whether they qualify for some type of exemption (i.e. grandfathered). This is the first step in enforcing the prohibition of establishing a new marijuana production operation on the property. As for building codes, I'm not aware of any that would prohibit any of it. There are as you know water rights requirements for marijuana grow operations that are in state law. Unfortunately I think Michael Mattock is finally retired, so I'm not even sure who to talk to now. I'm told if you call his phone number you are referred to the Salem office.

Robert Wheeldon, Director  
Linn County Planning & Building Dept  
[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)  
541-967-3816, ext. 2075

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that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

**From:** Lindsey, John  
**Sent:** Tuesday, June 27, 2017 10:35 AM  
**To:** Wheeldon, Robert  
**Subject:** RE: Marijuana Production Regulations - Questions

Robert,

I think this lady is referring to zoning ? in a rural residential area.

?????

John

**From:** Wheeldon, Robert  
**Sent:** Monday, June 26, 2017 3:54 PM  
**To:** Cindy Frink  
**Cc:** Lindsey, John; Boles, Alyssa; Thompson, Angela; Oxford, Breeanna; Anderson, Harold; 'Elaine Griswold'; Larson, Suzanne  
**Subject:** RE: Marijuana Production Regulations - Questions

Ms. Frink:

The department has sent a letter to the property owner advising them of the limitations in county code for the production of marijuana on the property, and requesting information from them to show they are in compliance.

I am not aware of any provision that would prohibit a commercial greenhouse that is in building code or that is related to water rights. The water rights question would be a question for the State Water Resources Department (WRD).

Robert Wheeldon, Director  
Linn County Planning & Building Dept  
[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)  
541-967-3816, ext. 2075

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**From:** Cindy Frink [<mailto:cindyfrink@centurylink.net>]  
**Sent:** Monday, June 26, 2017 1:46 PM  
**To:** Wheeldon, Robert  
**Cc:** Lindsey, John; Boles, Alyssa; Thompson, Angela; Oxford, Breeanna; Anderson, Harold; 'Elaine Griswold'  
**Subject:** RE: Marijuana Production Regulations - Questions

Mr. Wheeldon,

Thank you for this update. I appreciate being kept in the loop. Are there any additional updates since June 16?

Also, can you direct me to the Building Code chapter that states that commercial greenhouses are not allowed in rural residential, regardless of what is being grown due to the water rights issue?

As always, thank you for your continued assistance with this matter.

Cindy Frink  
541-258-5858  
541-619-4572

**From:** Wheeldon, Robert [<mailto:rwheeldon@co.linn.or.us>]  
**Sent:** Friday, June 16, 2017 3:09 PM  
**To:** cindyfrink <[cindyfrink@centurylink.net](mailto:cindyfrink@centurylink.net)>  
**Cc:** Lindsey, John <[jlindsey@co.linn.or.us](mailto:jlindsey@co.linn.or.us)>; Boles, Alyssa <[aboles@co.linn.or.us](mailto:aboles@co.linn.or.us)>; Thompson, Angela <[athompson@co.linn.or.us](mailto:athompson@co.linn.or.us)>; Oxford, Breeanna <[boxford@co.linn.or.us](mailto:boxford@co.linn.or.us)>; Anderson, Harold <[handerson@co.linn.or.us](mailto:handerson@co.linn.or.us)>; 'Elaine Griswold' <[laneygriswold@gmail.com](mailto:laneygriswold@gmail.com)>  
**Subject:** RE: Marijuana Production Regulations - Questions

Ms. Frink, et al:

Harold Anderson visited the property yesterday and spoke to the son of the property owner regarding needed permits and potential land use issues regarding medical marijuana production for multiple card holders on the property. He came into the office this morning to apply for excavation and building permits. I discussed with him yesterday by phone and today in the office his belief that he is permitted by the state to grow medical marijuana on the property for his parents and other medical marijuana card holders. I met with staff and the Deputy County Attorney this afternoon regarding state and county regulations for medical marijuana production. We will submit a letter next week to the property owners explaining Linn County's regulations and authority and requesting information to determine whether they are in compliance with County Code.

I will keep you apprised of the outcome.

Robert Wheeldon, Director  
Linn County Planning & Building Dept  
[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)  
541-967-3816, ext. 2075

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---

**From:** cindyfrink [<mailto:cindyfrink@centurylink.net>]  
**Sent:** Tuesday, June 13, 2017 4:12 PM

**To:** Wheeldon, Robert  
**Cc:** Lindsey, John; Boles, Alyssa; Thompson, Angela; Oxford, Breeanna; Anderson, Harold; 'Elaine Griswold'  
**Subject:** RE: Marijuana Production Regulations - Questions

Hello,

I emailed earlier today regarding additional activity at that property. It appears that they are drilling and hooking into a water source this afternoon.

Just wanted to provide the detail, at least from what I can see.

Thank you,

Cindy Frink  
36336 Hillside Lane  
Lebanon, OR 97355  
Home: 541-258-5858  
Cell: 541-619-4572

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Wheeldon, Robert" <[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)>  
Date: 6/8/17 1:36 PM (GMT-08:00)  
To: Cindy Frink <[cindyfrink@centurylink.net](mailto:cindyfrink@centurylink.net)>  
Cc: "Lindsey, John" <[jlindsey@co.linn.or.us](mailto:jlindsey@co.linn.or.us)>, "Boles, Alyssa" <[aboles@co.linn.or.us](mailto:aboles@co.linn.or.us)>, "Thompson, Angela" <[athompson@co.linn.or.us](mailto:athompson@co.linn.or.us)>, "Oxford, Breeanna" <[boxford@co.linn.or.us](mailto:boxford@co.linn.or.us)>, "Anderson, Harold" <[handerson@co.linn.or.us](mailto:handerson@co.linn.or.us)>, 'Elaine Griswold' <[laneygriswold@gmail.com](mailto:laneygriswold@gmail.com)>  
Subject: RE: Marijuana Production Regulations - Questions

Ms. Frink:

To clarify, the Department only regulates marijuana for purposes of land use. We would regulate whether a marijuana use is allowed outright or conditionally on a property, or if the zoning prohibits the marijuana use. The County does not regulate the number of plants that are located on a property. The number of plants allowed for a recreational or medical marijuana operation is regulated by OLCC or the Oregon Health Authority Medical Marijuana Program (OMMP). Linn County does not do enforcement on the number of plants a site is allowed to have.

Linn County does not regulate personal use of recreational marijuana as allowed in ORS Chapter 475B and OAR Chapter 845, Division 25 or personal use of medical marijuana under the Oregon Medical Marijuana Program, as allowed by state law.

The Department has no knowledge of whether this site is a registered site with the OMMP program or with OLCC.

Robert Wheeldon, Director  
Linn County Planning & Building Dept

[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)<<mailto:rwheeldon@co.linn.or.us>>  
541-967-3816, ext. 2075

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From: Cindy Frink [<mailto:cindyfrink@centurylink.net>]  
Sent: Wednesday, June 07, 2017 3:54 PM  
To: Wheeldon, Robert  
Cc: Lindsey, John; Larson, Suzanne; Boles, Alyssa; Thompson, Angela; Oxford, Breeanna; Anderson, Harold; 'Elaine Griswold'  
Subject: RE: Marijuana Production Regulations - Questions

Mr. Wheeldon,

Thank you for the clarification. It is appreciated.

Construction appears to be moving forward at that property. I do not see a building permit posted at the bottom of their driveway, so I am assuming that they have not yet been approved for a building permit, or perhaps have not even filed for one??

From my interpretation of your email. If there are two adult residents in the household who are over the age of 21, and they are OMMP cardholders growing ONLY for themselves, the maximum number of plants that could be grown is 20. (4 personal and 6 medical, per person). However, because the residence in question is in rural residential zoning, the maximum number of plants would be 12. Is that a correct interpretation?

If a person is growing 12 or even 20 plants, why would a 48 x 96 structure be needed? And it still leaves the issue of water rights, regardless of what they are growing.

And, when you spoke with OMMP, did you confirm whether or not these residents are licensed to grow for themselves, or others? I can assure you, marijuana IS being grown for others. The residents at this address are TENANTS, and do not have the financial resources to pay for the type of excavation that IS taking place and the building that is proposed to take place. The male tenant is essentially unemployed, on paper. He manages three marijuana farms. The female tenant is a Certified Nursing Assistant commuting to Dallas for work, and they have 5-6 young children living in the household. Their financial resources do not add up to the investment being made at this address. The OWNER of the property owns two other grow operations outside of the county. This is a money making business for the owner, this is not the case of a person growing medical or recreational marijuana for their own personal use. Why would the property owner invest so much money (in buying the property, hiring out the excavation, and building the greenhouse) so that a tenant (whom does not pay rent) can grow a few plants for the tenant's own personal use whether medical or recreational. That would not make any sense.

I hope that the new land use laws surrounding the growth of marijuana were written without any loopholes to properly protect the property owners (like us and the Griswold's) for situations such as this. I also hope that Linn County does a careful and thorough investigation before approving ANY structure for ANY purpose to be

built at this address.

Can you please keep me updated in regards to building permits filed and approved/denied for this address in question?

Thank you,

Cindy Frink  
36336 Hillside Lane  
Lebanon, OR 97355  
(541)258-5858

From: Wheeldon, Robert [<mailto:rwheeldon@co.linn.or.us>]  
Sent: Wednesday, June 07, 2017 2:57 PM  
To: Cindy Frink <[cindyfrink@centurylink.net](mailto:cindyfrink@centurylink.net)<<mailto:cindyfrink@centurylink.net>>>  
Cc: Lindsey, John <[jlindsey@co.linn.or.us](mailto:jlindsey@co.linn.or.us)<<mailto:jlindsey@co.linn.or.us>>>; Larson, Suzanne <[sularson@co.linn.or.us](mailto:sularson@co.linn.or.us)<<mailto:sularson@co.linn.or.us>>>; Boles, Alyssa <[aboles@co.linn.or.us](mailto:aboles@co.linn.or.us)<<mailto:aboles@co.linn.or.us>>>; Thompson, Angela <[athompson@co.linn.or.us](mailto:athompson@co.linn.or.us)<<mailto:athompson@co.linn.or.us>>>; Oxford, Breeanna <[boxford@co.linn.or.us](mailto:boxford@co.linn.or.us)<<mailto:boxford@co.linn.or.us>>>; Anderson, Harold <[handerson@co.linn.or.us](mailto:handerson@co.linn.or.us)<<mailto:handerson@co.linn.or.us>>>  
Subject: RE: Marijuana Production Regulations - Questions

Ms. Frink:

Personal recreational marijuana is not regulated by OLCC. An OMMP cardholder is allowed to have up to 6 plants. As a result, the resident of a property could potentially have up to 10 plants (4 recreational and 6 medical). This was confirmed in a discussion with OLCC staff.

Another factor is that potentially, up to 4 resident cardholders could reside and produce their individual limits on the same property.

A registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess six or fewer mature marijuana plants as allowed in the Rural Residential zone as personal use.

If a person is growing for persons other than themselves, then a land use review is required under Linn County Code.

In the Rural Residential Zone, Linn County Code does not permit medical or recreational production for persons other than the resident(s) of the property.

As you can see, it is sometimes difficult to determine the actual limits on a specific property, depending on individual circumstances.

Let me know if you need any other clarification.



Robert Wheeldon, Director  
Linn County Planning & Building Dept  
[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)<<mailto:rwheeldon@co.linn.or.us>>  
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From: Cindy Frink [<mailto:cindyfrink@centurylink.net>]  
Sent: Monday, June 05, 2017 10:02 AM  
To: Wheeldon, Robert  
Cc: Lindsey, John; Larson, Suzanne; Boles, Alyssa; Thompson, Angela; Oxford, Breeanna; Anderson, Harold  
Subject: RE: Marijuana Production Regulations - Questions

Mr. Wheeldon,

Thank you for your quick reply!

Am I interpreting the Linn County regulations, quoted below, correctly? In rural residential, a grower CANNOT grow medical marijuana for anyone other than themselves? Or they CAN grow medical marijuana for others, in rural residential, as long as there are six or fewer mature plants? Can they have the four plants for their own personal recreational use IN ADDITION TO six or fewer mature plans for a total of TEN within rural residential?

I am confused about this section:

When do these standards not apply?

1. Growing up to 4 plants per residence for personal recreational use (OAR 845-025-2800).
2. Growing medical marijuana only for yourself [ORS 475B.428(1)].
3. Growing medical marijuana at your own residence where there are 6 or fewer mature plants [ORS 475B.428(1)].
4. You are not transferring marijuana to an OHA processing site or dispensary (OAR 333-008-0630).

If you could assist with interpretation, I would be very thankful!!

Cindy Frink

From: Wheeldon, Robert [<mailto:rwheeldon@co.linn.or.us>]  
Sent: Monday, June 05, 2017 9:24 AM  
To: Cindy Frink <[cindyfrink@centurylink.net](mailto:cindyfrink@centurylink.net)<<mailto:cindyfrink@centurylink.net>>>  
Cc: Lindsey, John <[jlindsey@co.linn.or.us](mailto:jlindsey@co.linn.or.us)<<mailto:jlindsey@co.linn.or.us>>>; Larson, Suzanne <[sularson@co.linn.or.us](mailto:sularson@co.linn.or.us)<<mailto:sularson@co.linn.or.us>>>; Boles, Alyssa <[aboles@co.linn.or.us](mailto:aboles@co.linn.or.us)<<mailto:aboles@co.linn.or.us>>>; Thompson, Angela <[athompson@co.linn.or.us](mailto:athompson@co.linn.or.us)<<mailto:athompson@co.linn.or.us>>>; Oxford, Breeanna

<[boxford@co.linn.or.us](mailto:boxford@co.linn.or.us)<<mailto:boxford@co.linn.or.us>>>; Anderson, Harold  
<[handerson@co.linn.or.us](mailto:handerson@co.linn.or.us)<<mailto:handerson@co.linn.or.us>>>  
Subject: RE: Marijuana Production Regulations - Questions

Ms. Frink:

Thank you for contacting the department regarding the activity on the neighboring property. We will look into the land use and building permit issues and get back to you.

In the meantime, if you believe the operation may violate any state regulations, you should share your concerns directly with the OLCC and the Oregon Medical Marijuana Program (OMMP).

Robert Wheeldon, Director  
Linn County Planning & Building Dept  
[rwheeldon@co.linn.or.us](mailto:rwheeldon@co.linn.or.us)<<mailto:rwheeldon@co.linn.or.us>>  
541-967-3816, ext. 2075

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From: Cindy Frink [<mailto:cindyfrink@centurylink.net>]  
Sent: Sunday, June 04, 2017 10:27 PM  
To: Wheeldon, Robert  
Cc: Lindsey, John  
Subject: Marijuana Production Regulations - Questions  
Importance: High

Hello Mr. Wheeldon,

My neighbors at 36340 Hillside Lane, Lebanon, OR have begun excavation for what looks to be a very large structure. I am attaching photos for your review. As you can see, their intended build site will directly block the entire view of the home at 36350 Hillside Lane that is currently under construction, likely does not meet set-back requirements, and to my knowledge, this property does not have the water rights necessary for a greenhouse regardless of what is being grown inside it. You had previous communication with myself, as well as my neighbor, Elaine Griswold, back in January regarding this residence, and their intentions to erect a 48 x 96' greenhouse for the purpose of marijuana production.

The tenants occupying 36340 Hillside Lane, who are the self-proclaimed "farm managers" for the owner of the property (as well as two additional grow operations that the property owner has in Marion County), moved in mid-January 2017. Since that time, the neighborhood has noticed a significant increase in traffic on Hillside Lane and Butte Creek Road. There is a specific vehicle that frequents the residence between 4-10 times daily, but never stays for more than 15-30 minutes. This vehicle travels at a very high rate of speed. A neighbor approached the driver, asking them to slow their speed, and were met with resistance, hostility, and foul

language. As such, I have notified Linn County Sheriff and requested that they contact me and also requested some patrols in our neighborhood. A "neighborly approach" has been made and was met with hostility, therefore it is appropriate for law

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| VF Number  | Property Owner(s)           | Map Number         | Zone       | Summary of Complaint                   | Alternate Names | VF Year |
|------------|-----------------------------|--------------------|------------|--|-----------------|---------|
| VF17-0038  | LAREAU, Cheryn & Harold     | 11S-03W-04DD-0110  | UGA-UGM-5  | Unauthorized marijuana facility in a   |                 | 2017    |
| VF17-0039  | GILLETTE, Robin & Angela    | 12S-02W-14CD-0220  | UGA-UGM-10 | Excessive junk                         |                 | 2017    |
| VF17-0040  | ALBRICH, Kathleen & Step    | 12S-02W-22BB-0170  | Lebanon    | Drainage                               |                 | 2017    |
| VF17-0041  | CATHCART, Danile & Kimb     | 09S-01E-31-00606   | EFU        | Unauthorized construction without      |                 | 2017    |
| VF17-0042  | WELCH, Luke                 | 12S-02W-24A-00731  | RR-2.5     | Unauthorized construction w/out pe     |                 | 2017    |
| VF17-0043  | BREWER, Carol               | 14S-01W-14B-01300  | RCT-2.5    | Multiple unauthorized occupied RV's    |                 | 2017    |
| VF17-0046  | BREEDLOVE, Ruth             | 10S-01W-18AD-0710  | Scio       | Possible dangerous building            |                 | 2017    |
| VF17-0047  | HEIDENRICH, Betty           | 10S-01W-18AD-0650  | Scio       | Possible dangerous building & unaut    |                 | 2017    |
| VF17-0048  | KRAHN, Benjamin             | 11S-04W-14A-02200  | RR-2.5     | Possible unauthorized concrete slab    |                 | 2017    |
| VF17-0049  | COSTELLO, Ruben & Melliss   | 09S-03E-30DC-00900 | Mill City  | Unauthorized construction w/out pe     |                 | 2017    |
| VF17-0050  | RHOADES, Jeff               | 11S-01W-33-00403   | RR-5       | Unauthorized MFG Home second d         |                 | 2017    |
| VF17-0051  | STARR, Cathi & ZYGAL, Cin   | 12S-01W-29D-01100  | RR-5       | Drainage Issue                         |                 | 2017    |
| VF17-0052  | SELLON, Duane & Ruth        | 11S-03W-29-00701   | EFU        | Unauthorized fill w/out permits        |                 | 2017    |
| VF17-0053  | ALLEN, Orville Living Trust | 14S-01W-17-01400   | RCT-2.5    | Excessive people & animals power &     |                 | 2017    |
| VF17-0054  | HUGHEY, Robert & Doroth     | 12S-05W-01A-00900  | RR-1       | Unauthorized living quarters in ace    |                 | 2017    |
| VF-17-0055 | SINGH, Jaswant & Kaur, M    | 09S-03E-29CB-02300 | CH         | Dangerous building per Mill City Mu    |                 | 2017    |
| VF17-0056  | DELAGARZA, David & Mary     | 12S-2W-23D-09001   | UGA-UGM-10 | People living in campers dumping gr    |                 | 2017    |
| VF17-0057  | PAGE, Michelle & OWENB      | 12S-2W-33-00429    | RR-5       | Unauthorized marijuana grow opera      |                 | 2017    |
| VF17-0058  | Simpson, Randy & Gayle      | 13S-2W-18-00315    | RR-5       | Unauthorized marijuana grow opera      |                 | 2017    |
| VF17-0059  | MCCLINTON, Travis           | 12S-02W-03B-01303  | UGA-UGM-10 | Unauthorized construction w/out pe     |                 | 2017    |
| VF17-0060  | ROBERTSON, William & Ja     | 14S-03W-13-00109   | EFU        | Unauthorized occupied RV               |                 | 2017    |
| VF17-0061  | PATTERSON, Doris            | 12S-02W-23D-08700  | UGA-UGM-10 | People living in motorhome hooked      |                 | 2017    |
| VF17-0062  | DIAL, Ronald & Connie       | 11S-01W-13-00208   | F/F        | Medical Hardship still in use after vo |                 | 2017    |
| VF17-0063  | RICHARDS, Wendy             | 14S-01W-17-01501   | RR-5       | Unpermitted camp trailer living, disp  |                 | 2017    |
| VF17-0064  | DENOMA, Barbara             | 10S-02W-23-01500   | EFU        | Unauthorized second dwelling. (Ter     |                 | 2017    |
| VF17-0065  | THOMPSON, David & Kath      | 11S-01W-36-00200   | EFU        | Unauthorized second dwelling. (Ter     |                 | 2017    |
| VF17-0066  | RICHARDS, Robert & Wend     | 14S-01W-17-01501   | RCT-2.5    | Multiple unauthorized occupied RV's    |                 | 2017    |
| VF17-0067  | BAUGHMAN, Scott & Shell     | 09S-03E-32-00202   | UGA-RR-2.5 | 2-Unauthorized connex boxes & exc      |                 | 2017    |
| VF17-0068  | MCDougAL, Michael & Ci      | 12S-01W-07-00402   | F/F        | Unauthorized 2nd dwelling, hazardo     |                 | 2017    |
| VF17-0069  | REYNOLDS, Ramona            | 14S-01W-15D-1404   | RCT-2.5    | Unauthorized construction w/out pe     |                 | 2017    |
| VF17-0070  | CHILDERS, Lonnie            |                    |            |  |                 |         |

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(c) The address of the marijuana grow site; and

(d) Any other information that the authority considers necessary to track the production of marijuana under ORS 475B.785 to 475B.949.

(3)(a) The authority shall conduct a criminal records check under ORS 181A.195 of any person whose name is submitted under this section as the person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not act as or be designated a person responsible for a marijuana grow site for two years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not act as or be designated a person responsible for a marijuana grow site.

(4) Subject to subsection (11) of this section, the authority shall issue a marijuana grow site registration card if the requirements of subsections (2) and (3) of this section are met.

(5) A person who holds a marijuana grow site registration card under this section must display the card at the marijuana grow site at all times.

(6) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(7)(a) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder.

(b) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to the registry identification cardholder upon the request of the registry identification cardholder.

(c) All usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to a marijuana processing site

upon the request of the registry identification cardholder. For purposes of this paragraph, a request to transfer usable marijuana constitutes an assignment of the right to possess the usable marijuana.

(d) All seeds, immature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to a medical marijuana dispensary upon request of the registry identification cardholder. For purposes of this paragraph, a request to transfer seeds, immature marijuana plants or usable marijuana constitutes an assignment of the right to possess the seeds, immature marijuana plants or usable marijuana.

(e) Information related to transfers made under this subsection must be submitted to the authority in the manner required by ORS 475B.816.

(8) A registry identification cardholder, or the designated caregiver of a registry identification cardholder, may reimburse a person responsible for a marijuana grow site for all costs associated with the production of marijuana for the registry identification cardholder.

(9) The authority may inspect:

(a) The marijuana grow site of a person designated to produce marijuana by a registry identification cardholder to ensure compliance with this section and ORS 475B.816 and 475B.831 and any rule adopted under this section and ORS 475B.816 and 475B.831; and

(b) The records of the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder to ensure compliance with this section and ORS 475B.816 and any rule adopted under this section and ORS 475B.816.

(10) The authority may refuse to register a registry identification cardholder or a designee under this section or may suspend or revoke the registration of a person responsible for a marijuana grow site if the authority determines that the applicant or the person responsible for a marijuana grow site violated a provision of ORS 475B.785 to 475B.949, a rule adopted under ORS 475B.785 to 475B.949 or an ordinance adopted pursuant to ORS 475B.928.

(11) The authority may require a person responsible for a marijuana grow site, prior to issuing a marijuana grow site registration card under subsection (4) of this section, to pay a fee reasonably calculated to pay costs incurred under this section and ORS 475B.816 and 475B.879. [Formerly 475B.420]

HS

**Lindsey, John**

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**From:** Lindsey, John  
**Sent:** Tuesday, August 29, 2017 10:22 AM  
**To:** Nyquist, Roger; Tucker, Will; Wyatt, Ralph; Karandy, Gene; Wheeldon, Robert  
**Subject:** legal case

Hi,

This is the e-mail that Gene and I discussed that I needed to do.

At various times this year I have had a problem with a neighbor violating land use, Oregon marijuana laws and county ordinance. Through a complex maze of issues it has become apparent that Linn County and Linn County Law enforcement have been hamstrung by the state when it comes to enforcement of these rules and laws.

I and my neighbors have had discussions with state enforcement officials. They said they will not enforce any of these rules and statutes, "it is not their job". The frustration has exceeded my limits and those of my neighborhood.

At the end of last week, myself and several neighbors have initiated a federal legal action against the those individuals who are at the heart of the matter;

This e-mail is to make it very clear: These actions are being taken by me and my neighbors and not Linn County. In this process I am in no way representing Linn County in any manner. This action does not involve any Linn County staff.

At no time shall Linn County legal staff advise or discuss this case with me. The only role that Mr Karandy was to discuss was that this case has nothing to do with Linn County, Linn County Board of Commissioners or Linn County staff.

Thanks,

John K Lindsey

**LAW OFFICE OF GERALD L.  
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January 14, 2019

Ms. Hayley Weedn  
Oregon Government Ethics Commission  
3218 Pringle Road SE, Ste. 220  
Salem, OR 97302-1544

Re: John Lindsey, Linn County Commissioner  
Oregon Government Ethics Commission Case No. 18-155EHW

Dear Ms. Weedn:

This is in response to the list of questions that you sent to Commissioner John Lindsey on January 4, 2019, in follow up to his testimony to the Oregon Government Ethics Commission ("Commission") in the above listed case. I am now representing Commissioner Lindsey and provide his responses to your questions in "bold" below. I have also added some additional comments to aid in your investigation after some of his responses and they are in conventional font.

1. It is my understanding that you came into possession of documents (or copies of documents) on file with the Linn County Planning & Building Department that were related to the property in question (36340 Hillside Lane, Lebanon, OR), including copies of OMMP medical marijuana patient cards for 4 individuals. Is that correct?
  - i. **Yes, as I explained to the Commissioners, Mr. Owenby provided me with the OMMP medical marijuana patient cards for the 4 individuals when he came into the County Courthouse. I did not ask him to present these cards, he presented them on his own volition.**

- a. If so, please explain how you came in to possession of these items (i.e., Did a member of County staff give them to you? Who? Did you retrieve the documents personally? How?)
  - i. **See my response to question number 1 above.**
- b. If not, please explain which part(s) of the statement are accurate and which parts are not.
  - i. **See my response to question number 1 above.**

As he explained to the Commissioners when they moved to investigate, Commissioner Lindsey received the OMMP medical marijuana cards from Mr. Owenby directly. Mr. Owenby came into the Linn County offices to appeal a land use decision and provided the cards to Commissioner Lindsey. At no time did Commissioner Lindsey ever ask any Linn County staff member to provide him with copies of the cards nor did he ever use his position to gain inappropriate access to the cards in order to copy them himself.

2. For what purpose did you obtain the documents mentioned in Question 1 above?
  - i. **Mr. Owenby brought the OMMP cards into the County's offices and submitted them after the denial of his permit.**
3. Did you contact any of the 4 patients whose OMMP cards were submitted to the Linn County Building & Planning Department as part of the permitting process for the greenhouse at the property in question?
  - i. **No, that is an outright fabrication.**
  - a. If so, please describe the nature and context of those conversations, and in what capacity you contacted them (as a private person or County Commissioner).
    - i. **See response to question number 3 above.**
4. How many times (an approximation is okay) have you engaged or intervened (i.e., visited the property, contacted County staff or other government or legal authorities, had contact with property owners, residents, operators, etc.) in the issue of possible illegal marijuana growth at Page/Owenby's (36340 Hillside Lane) property, while acting in your capacity as a County Commissioner? You may provide examples or additional information to if you wish to explain.
  - i. **As I testified at the Commission meeting I went to the property on June 5, 2017, to verify and investigate a complaint my wife received about an illegal commercial marijuana grow at 36340 Hillside Lane,**



**Lebanon, OR, in my capacity as a Linn County Commissioner. And, while I visited this property many times growing up as my best friend lived there, the June 5, 2017, visit is the only time I have gone to the subject property regarding the marijuana grow. Prior to August 29, 2017, I had approximately 18 instances where the subject of the illegal marijuana growth at the subject property was discussed. These contacts mainly consisted of responding to citizen complaints and the investigation of those complaints.**

As Commissioner Lindsey told the Commissioners, it is common practice for Linn County Commissioners to personally respond and act upon citizen complaints. And, to be clear, this is not the only complaint of illegal marijuana grows that Commissioner Lindsey has personally received and investigated. His constituents bring these complaints to him (and presumably other Linn County Commissioners) with the expectation that he will respond to their complaints. Should he fail to respond to the needs of his constituents, he will likely find himself voted out of office as Linn County citizens expect their Commissioners to “do something” when they receive a complaint.

5. How many times (an approximation is okay) have you engaged or intervened (i.e., visited the property, contacted County staff or other government or legal authorities, had contact with property owners, residents, operators, etc.) in the issue of possible illegal marijuana growth at Page/Owenby’s (36340 Hillside Lane) property, while acting in your individual or private capacity (like as a resident or neighbor)? You may provide examples or additional info if you wish to explain.
  - i. **None prior to August 29, 2017. Thereafter, I am unable to determine how many instances this property and its illegal marijuana growth has been discussed as I am involved in personal litigation regarding this matter and property.**

Commissioner Lindsey has discussed this matter with numerous County residents who have either complained or asked what the County is doing to address this illegal facility. In addition, as part of his investigation and the County’s subsequent appeal process, Commissioner Lindsey discussed this matter an indeterminate amount of times prior to August 29, 2017, with Linn County staff members in order to fulfill his official duties.

6. When you visited the property as described in your “Notice of Intent to Sue,” were you there in your capacity as a County Commissioner, or as a private citizen?



- i. **See response to question number 8 above.**
  
9. It is my understanding of Linn County operations that complaints by residents are generally supposed to be filed with the relevant department, and after such complaints are filed, departmental staff will follow up on the complaint to conduct the investigation and otherwise resolve the issue. Please explain how you became involved in this matter (possible illegal marijuana grow at the Page/Owenby property) as a County Commissioner, considering my understanding of how County operations work.
  - a. **See response to question number 2 and 4 above.**
  
10. You previously provided me with copies of several emails relevant to this matter that were written over the course of June 2017. Some of the emails are communications between yourself and Mr. Wheeldon; others are from Cindy Frink CCing you.
  - i. In these emails, are you involved as a County Commissioner or as a resident and neighboring property owner?
    - i. **At the time of these e-mails, I was involved as a County Commissioner as I was assisting a Linn County resident with a code/land use violation, which is typical for Linn County Commissioners to assist citizens of Linn County regarding issues of code and land use violations.**
  
  - b. Do you happen to know why you're the only County Commissioner included in these email exchanges? If so, please explain.
    - i. **I do not know why I am the only County Commissioner included in these e-mail exchanges.**

Commissioner Lindsey does not know why he was the only County Commissioner included in these e-mail exchanges, as he never asked either the resident or the County staff why they were only e-mailing him. However, a possible reason why he is the only County Commissioner included could be that a resident who contacted him about this property also contacted other County Commissioners individually. In other words, a resident could have contacted another County Commissioner, wanted a different response and then contacted Commissioner Lindsay. Another potential reason is that after the *Handy v. Lane County* case came out, Oregon public officials are most careful to avoid "serial meetings" which could violate Oregon public meetings law.

Based on Commissioner Lindsey's responses and the record in this case, I am hopeful that your recommendation will be to dismiss this case. Commissioner Lindsey received and promptly responded to investigate a complaint of a possible illegal commercial marijuana grow much as he has done on multiple occasions. And, this is a common practice for Linn County Commissioners. Commissioner Lindsey did not treat this matter any differently than he has treated other citizen complaints about illegal marijuana grows in Linn County and his response was consistent with other complaints he has received. Commissioner Lindsey did not recognize even the potential of a conflict of interest until he discussed legal options with counsel. And, once he realized there was the potential for a conflict of interest, he promptly sent an e-mail to his fellow County Commissioners and involved County staff members. In this e-mail, Commissioner Lindsey advised that he was to be kept out of any and all discussions of the alleged violations of Oregon land use and marijuana laws, as well as Linn County's ordinance.

But, while Commissioner Lindsey took these extraordinary steps that are not required for a potential conflict of interest under ORS 244.120, this case does not come close to presenting even a potential conflict of interest. Reason being, ORS 244.020(13) defines a potential conflict of interest by an objective test. And, to apply this test:

“requires an evaluation of the closeness or the remoteness of the potential benefit to the action taken. There has to be a point at which, irrespective of an official's hopes, an action cannot, as a matter of law, be said to have resulted in a benefit or even a reasonable expectation of one. Identification of a potential conflict of interest in a particular case requires a determination of that point, not just the announcement of a boundless generalization....”

*Caragol v. Oregon Government Ethics Com'n*, 98 Or App 593, 598 (1989). In *Caragol*, citizens of the City of Woodburn advocated for the development of a retirement care facility. Financing for the project was secured, contingent upon a 50 percent co-lender being obtained, and the Woodburn Construction Company began building the facility. The City of Woodburn also loaned the project \$245,000 and received a purchase money mortgage on the property as collateral. After approximately one year, the financial institution withdrew when it was unable to secure a co-lender and the developers of the project tried to persuade the City of Woodburn to establish a Hospital Bond Authority (“HBA”) to finance the project. Woodburn Construction Company sued the developer and the City of Woodburn for labor and materials they had already expended on the development.

Mr. Caragol was a real estate broker and 50 percent owner of Estates Realty in Woodburn. The other 50 percent owner of Estates Realty was Woodburn Construction Company. Mr. Caragol ran for the Woodburn City Council, publicly stating that one of his reasons for doing so was to create the HBA. After he was elected, Mr. Caragol voted to expedite the city's creation of the HBA without disclosing any potential conflict of interest. A complaint was filed with the Oregon Government Ethics Commission by an opponent of the retirement care facility project and, the Ethics Commission found that while Mr. Caragol did not obtain any financial gain by use of his office, he failed to disclose a potential conflict of interest. The Commission based this determination on the fact that Mr. Caragol "hoped and expected that, if [the project] was built, he would earn commissions on sales by owners of homes" nearby and, "there was the possibility that he might earn a commission from the sale of" an adjacent tract of property that was listed for sale with his company.

The Oregon Court of Appeals, reversed part of the Ethics Commission findings, and pointed out that while "there may be situations where a connection can be said to exist, to a substantial probability, between an action taken by an official and a financial benefit to the official," to allow such a finding based on these facts "would require an official to declare a potential conflict of interest any time that the official makes a choice to support any project that conceivably could bring personal financial gain, no matter how remote the possibility. We do not believe that the legislature intended that result." *Id.* at 598-99.

Here, even any "potential" pecuniary benefit or detriment to Commissioner Lindsey and/or his family is far more remote than the Court of Appeals found insufficient to create a potential conflict of interest in *Caragol*. Commissioner Lindsey took did not vote or deliberate on any matter involving the complainants but, went to the property after receiving a complaint for purposes of investigating potential illegal conduct. There simply isn't any connection, to a substantial probability or otherwise, between any action he has taken and a financial benefit/detriment to him or his family. Reason being, while he received and acted on the initial complaint of an illegal grow site, there is nothing in the record to establish that he did anything that affected the complainant's ability to get the building permit they sought. In other words, as in *Caragol*, additional actions by others needed to occur in order for Commissioner Lindsey to avoid financial detriment. Linn County Building and Planning officials would need to weigh complainant's application and, any appeal of a permit denial would need to be considered. As any actions on the part of Commissioner Lindsey are too remote

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January 14, 2019  
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and separated by the actions of others, I hope that your recommendation is to dismiss this matter. However, if you have acquired evidence that supports finding a violation of Oregon Government Ethics law, I would appreciate the opportunity to discuss this matter with you prior to any recommendation to the commissioners. Thank you for your consideration.

Sincerely,

*Original signed by*

Kenny Montoya



# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

December 10, 2018

Stephen Dow Beckham  
Pamplin Professor of History, Emeritus  
Lewis & Clark College  
Portland, Oregon 97219

RE: Advice Number 18-245I

Dear Mr. Beckham:

This letter of advice is provided in response to your request received on December 3, 2018, which presented questions regarding conflicts of interest between your service as a member of the State Advisory Committee on Historic Preservation and your former employment as a consultant under contract for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw. This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

In the information you supplied, you stated you are currently serving as a member of the State Advisory Committee on Historic Preservation (Committee) and the Committee will be considering the nomination of the "Jordan Cove Traditional Cultural Property" (Property) into the National Register of Historic Places in February, 2019. You also stated that in 2017, you were a consultant under contract for the proponent; the Confederated Tribes of Coos, Lower Umpqua and Siuslaw. Under this contract, you were assigned to review and work on a draft nomination to be brought before the State Historic Preservation Office.

ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or potential conflict of interest when participating in an official capacity, in any action, decision, or recommendation, if the effect would or could be to the private pecuniary benefit or detriment of the public official, the public official's relative, or any business with which either are associated.

The difference between an actual and potential conflict of interest is determined by the certainty of the private financial impact. An **actual conflict** of interest occurs when a public official participates in an official action that **would** have a direct financial impact on that official, the official's relative or any business with which the official or a relative is associated. A **potential conflict** of interest occurs when a public official's action, decision or recommendation **could** have a financial impact on the official, the official's relative or any business with which the official or a relative is associated.



Elected officials or those appointed to a Board or Commission, when met with a conflict of interest, must on each occasion, publicly announce the nature of their conflict, whether it is an actual or potential conflict of interest (i.e. in a public meeting). Then, if the conflict is actual, they must also refrain from any discussion, debate or vote on the issue giving rise to the conflict. If the conflict is potential, they may participate in official actions following their public disclosure. [ORS 244.120(2)]

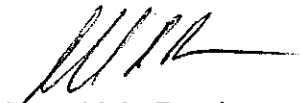
ORS 244.040(1) prohibits a public official from using or attempting to use their official position to obtain a financial benefit for themselves, a relative or household member, or a business with which they or a relative or household member are associated, if the financial benefit would not be otherwise available to them "but for" holding their official position. Even if a public official complies with the conflict of interest provision, they may still be in violation of ORS 244.040 [ORS 244.040(7)].

In your professional capacity in 2017, you performed some paid work on a project that is now coming before your Advisory Committee for some official action or recommendations. You would have to evaluate the effect of the official action you would be taking in order to determine whether you would be met with an actual or potential conflict of interest.

From the information you provided, it appears that any participation, action, decisions or recommendations on your part as a member of the Committee in regards to the nomination of the Property "could" personally financially affect you. The effect of your official action concerning the Property "could" financially impact you because the Tribe may need to contract with people with your skills in the future. Therefore, on each occasion that the matter arises, you would need to publicly disclose, at a public meeting, that you had a prior paid contract with the Tribe concerning this Property and you are disclosing this for full transparency. Then, following your disclosure, you can continue to take further official actions concerning the Property up to and including voting on recommendations of the Committee.

If you have any additional questions regarding the application of Oregon Government Ethics law please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/mjw

\*\*\*\*\*DISCLAIMER\*\*\*\*\*

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

ethicsOP5



**Subject:**

FW: Potential Conflict of Interest: Request for Opinion

**From:** Stephen Beckham [mailto:beckham@lclark.edu]  
**Sent:** Monday, December 03, 2018 4:27 PM  
**To:** OGEC Mail \* OGEC <OGEC.Mail@oregon.gov>  
**Subject:** Potential Conflict of Interest: Request for Opinion

3 December 2018, Monday, Lake Oswego, OR.

RE: Action as a Member of the State Advisory Committee on Historic Preservation

I write requesting advice regarding what may be a conflict of interest under Oregon ethics guidelines. I am serving on the State Advisory Committee on Historic Preservation. At its meeting on February 21-22, 2019, the Advisory Committee will consider the nomination of the "Jordan Cove Traditional Cultural Property" to the National Register of Historic Places. The meeting will take place in Coos Bay in order that the Advisory Committee can view some of the features identified in this nomination.

Although I have not seen nor reviewed the nomination that will be distributed early in 2019 to the Advisory Committee, I worked in 2017 under a consultant contract for the proponent, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw. My assignment was to review a draft nomination and bring it to a standard where it could be submitted to the State Historic Preservation Office. I did this and made significant changes in the draft nomination. I broadened its focus to include the ethnogeography of the TCP (place names of villages and other locations), to include specific sites (geological features) mentioned in myth tale texts dictated more than a century ago by tribal elders to linguists and ethnographers, to include inventoried archaeological sites within the TCP beyond some twenty fish weirs and traps in tidal wetlands, to expand the biographical information on the family of Jane, a Coos woman who married James Jordan and became the ancestor of perhaps 150 current tribal members, and to address some of the history (including a tribal cemetery and a solitary burial) in the immediate vicinity of Jordan Cove. I was paid for my work and reimbursed for my travel. I submitted approximately thirty photographs to be used in the nomination (if appropriate). I also drew on the manuscript field notes and photographs of Arthur Goodrich Colley (1874-1930). In 1924 Colley carried out a survey of archaeological sites on Coos Bay. The Colley field notes and photos are in my papers. Some of Colley's collections are at the Burke Museum, University of Washington, and other of his field notes are at the Bancroft Library, U.C., Berkeley.

It is my understanding that the tribal Cultural Resources staff has taken the second iteration of the nomination (my draft) and has over the past fourteen months made other revisions and additions. I am thus unable to assess the extent the nomination is any longer my work-product or that of the tribe. I suspect it is a bit of both. I think because I carried out work for payment that I have an ethics conflict in participating in the hearing and voting on his nomination.

1. I ask for confirmation on the matter of the apparent conflict.
2. If I am deemed to be in conflict, may I participate in the field trip to view features mentioned in the nomination?
3. If I go on the field trip, may I point out some of the specific sites and locations enumerated in the nomination or am I to remain silent?

4. If I am deemed to be in conflict, may I sit in the room to listen to the presentation and discussion? Or must I leave the room?

5. If I am deemed to be in conflict, may I answer any questions that are raised by the Advisory Committee? Or must I remain silent?

Thank you.

Stephen Dow Beckham  
Pamplin Professor of History, Emeritus  
Lewis & Clark College  
Portland, OR. 97219  
[beckham@lclark.edu](mailto:beckham@lclark.edu)  
503-351-9194

## WALKER Monica \* OGEC

---

**From:** Stephen Beckham <beckham@lclark.edu>  
**Sent:** Wednesday, December 12, 2018 7:48 AM  
**To:** WALKER Monica \* OGEC  
**Subject:** Re: OGEC - Letter of Advice - 18-245I

12 December 2018, Wednesday, Lake Oswego, OR.

Monica:

Thank you for the letter of advice relating to a potential ethics issue I face at the February, 2019, meeting of the State Advisory Committee on Historic Preservation. I appreciate your counsel on this matter.

Stephen Dow Beckham  
[beckham@lclark.edu](mailto:beckham@lclark.edu)

On Tue, Dec 11, 2018 at 5:56 PM WALKER Monica \* OGEC <[Monica.WALKER@oregon.gov](mailto:Monica.WALKER@oregon.gov)> wrote:

Dear Mr. Beckham~

Thank you for your inquiry and request for guidance. It is very much appreciated. Attached is a scanned signed copy of the letter of advice in response to your request as well as a scanned copy of your e-mail for reference. In addition, the advice has been added to the Oregon Government Ethics Commission's (OGEC) case management system (CMS) which can be accessed via the following link: <https://apps.oregon.gov/OGEC/CMS/Advice>

Sincerely,

*Monica J. Walker*

Monica J. Walker, Program Analyst/Trainer

Oregon Government Ethics Commission

3218 Pringle Road SE, Suite 220

Salem, OR 97302-1544

E-mail: [ogec.training@oregon.gov](mailto:ogec.training@oregon.gov)

Phone: (503) 378-2011

Fax: (503) 373-1456

**\*Disclaimer\***

\*\*\*\*\*

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: [ogec.mail@oregon.gov](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

December 27, 2018

18-2511

Tammy Dennee, CMP, CAE – Legislative Director  
Oregon Dairy Farmers Association  
1320 Capitol Street NE, Suite 160  
Salem, Oregon 97301

Dear Ms. Dennee:

This letter of advice is provided in response to your request received on December 24, 2018, which presented a question regarding the application of Oregon Government Ethics law and how the law may apply to public officials - specifically, members of the State Legislature and their key staff members, who may wish to participate in the Oregon Dairy Farmers Association educational tour which is planned for Friday, March 15, 2019. This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

From the information provided, it appears that the Oregon Dairy Farmers Association (ODFA) is hosting an educational tour in which every elected official in the Oregon Legislature along with a staff member of their choosing will be invited. The purpose of the tour is to educate and inform State Legislators on the latest technological advancements, environmental practices and commitment to protecting animal welfare. The tour plans to showcase two (2) or three (3) dairy farms.

During the tour, ODFA will provide and pay for a boxed lunch and transportation expenses to and from the selected locations. In this request, it is asked what, if any, restrictions or requirements Oregon Government Ethics law *may* impose on public officials who wish to participate in this tour.

Under most circumstances when a public official is offered food, beverage and transportation at no cost to the public official, it would be a gift as defined in ORS 244.020(7)(a). However, there are several exclusions, which are listed under ORS 244.020(7)(b), from the statutory definition of "gift", including reasonable food, beverage and transportation expenses provided to a public official when



representing government. ORS 244.020(7)(b)(F) allows acceptance of the payment of reasonable expenses for food, beverage and transportation for public officials, when the public official is representing their government agency during a fact-finding mission. The Oregon Government Ethics Commission (Commission) has adopted an administrative rule; OAR 199-005-0001(2) which provides clarification to the term "fact-finding mission or trip."

Based on the information provided it appears that ORS 244.020(7)(b)(F) would allow public officials to accept meals and transportation expenses to participate in the Oregon Dairy Farmers Association's dairy farm tour, which appears to meet the definition of a fact-finding mission, as defined in OAR 199-005-0001(2).

In addition, State Legislators who participate in the tour/event who are required to electronically file an Annual Verified Statement of Economic Interest (SEI) with the Commission, would be required to report the aggregate value of these paid expenses pursuant to ORS 244.060(5), if the value of what is received is \$50 or more. Further, it is required that ODFA, as the source of these paid expenses, provide a detailed cost analysis of the value of what was received by each individual public official.

If you have any additional questions regarding the application of Oregon Government Ethics law please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/mjw

\*\*\*\*\*DISCLAIMER\*\*\*\*\*

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

ethicsOP5

December 21, 2018



1320 Capitol Street NE  
Suite 160  
Salem, OR 97301  
(971) 599-5269  
oregondairyfarmers.org

RECEIVED  
DEC 24 2018  
OREGON GOVERNMENT ETHICS COMMISSION

Ron Bersin  
Executive Director  
Oregon Government Ethics Commission  
3218 Pringle Drive SE, Ste. 220  
Salem, OR 97302-1544

Dear Mr. Bersin:

The Oregon Dairy Farmers Association (ODFA) was formed in 1892, 125 years ago, by Oregon's Dairy Producers for the purpose of providing a place for the producers to work together on matters of importance. The same is true today. At the time of formation, Oregon was home to more than 1,000 dairies. Today, Oregon is home to approximately 200 dairy farms and 124,000 dairy cows. The ODFA is governed by eight dairy farmers and one representative from allied industry.

This letter serves as a request for a written opinion on a proposed educational tour that the Oregon Dairy Farmers Association is planning for Friday, March 15, 2019. The primary audience of the tour will be the members of the State Legislature and their key staff members.

This is the second tour with the primary objective of bringing legislators onto dairy farms to view the latest technological advancements, environmental practices and commitment to animal welfare.

The Oregon Dairy industry ranked 4<sup>th</sup> among all of Oregon's commodities in its economic contribution in 2017. While the number of dairy farms has declined in Oregon, the economic and environmental contributions have remained strong.

The tour will showcase two or three dairy farms. A boxed lunch and transportation will be provided. The costs associated with the tour will be commensurate with the number of attendees. We will invite every elected official in the Oregon Legislature and encourage them to bring a staff person with them. Therefore, the cost per person could range between \$30 - \$70 per person, depending upon the number of participants. Since this is a fact finding event, elected officials and other public officials will attend at no cost.

A written response from OGEAC clarifying this is a fact finding tour and that it meets the statutory requirements is hereby requested and sincerely appreciated.

Thank you for your assistance. Please do not hesitate to contact me at (541) 980-6887 for additional information.

Sincerely,



Tammy Dennee, CMP, CAE – Legislative Director  
OREGON DAIRY FARMERS ASSOCIATION

( )

( )

( )



## Trainers' Report January 25, 2019

This report covers the time period of December 17, 2018, through January 25, 2019.

### Completion of training:

- Department of Administrative Services – ORS 244 (Salem)
- Clackamas County – ORS 244 (Oregon City)
- Educator Advancement Council – ORS 244 (Salem)
- Oregon Health Authority – ORS 244 (Salem)
- Board of Examiners for Engineering and Land Surveying – ORS 244 & 192 (Salem)
- Lane County Commissioners – ORS 244 & 192 (Eugene)
- Oregon Youth Conservation Corps Advisory Committee– ORS 244 (Cottage Grove)
- Association of Oregon Counties County College – ORS 244 (Corvallis)
- Portland Metro – ORS 244 (Portland)
- Landscape Contractors Board – ORS 244 (Keizer)

### Upcoming Trainings:

| <u>Date</u> | <u>Time</u>     | <u>Public Body (Topic)</u>                              | <u>Address</u>  |
|-------------|-----------------|---|---|
| 1/28/2019   | 6:30 – 7:30 PM  | City of Lake Oswego<br>Planning Commission<br>(ORS 244) | Lake Oswego City Hall<br>Council Chambers<br>380 A Ave<br>Lake Oswego, OR 97034 |
| 1/30/19     | 5:30 – 7:00 PM  | City of Gladstone (ORS<br>244)                          | Gladstone City Hall<br>525 Portland Ave<br>Gladstone, OR 97027                  |
| 2/1/2019    | 10:50 – 7:00 AM | Oregon STEM<br>Investment Council<br>(ORS 244)          | Public Services Building<br>255 Capitol Street<br>Room H301<br>Salem, OR 97301  |
| 2/4/2019    | 8:30 – 10:00 AM | Oregon Department of<br>Forestry (ORS 244)              | Astoria District Office<br>92219 Hwy 202<br>Astoria, OR 97103                   |

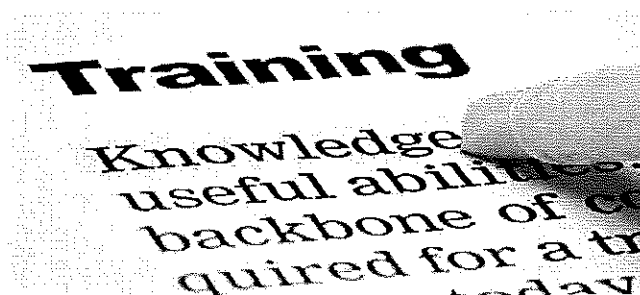
|           |                                     |   |   |
|-----------|-------------------------------------|---|---|
| 2/20/2019 | 1:30 – 7:00 PM                      | Oregon Parks and Recreation Commission (ORS 244 & 171)                    | Independence City Hall<br>555 South Main Street<br>Independence, OR 97351     |
| 2/28/2019 | 11:15 – 12:00 PM                    | Oregon Health Authority New Employee Orientation (ORS 244)                | Human Services Building<br>500 Summer St. NE<br>Room 166<br>Salem, OR 97301   |
| 3/7/2019  | TBD                                 | Oregon Department of Transportation Consulting Project Managers (ORS 244) | TBD   |
| 3/11/2019 | 1:00 – 3:00 PM                      | Portland Metro (ORS 244)  | 600 NE Grand Avenue<br>Room 501<br>Portland, Oregon                           |
| 3/13/2019 | 9:00 – 11:00 PM &<br>2:00 – 4:00 PM | Jackson County (ORS 244)  | Jackson County Courthouse<br>10 S Oakdale Ave<br>Room 10<br>Medford, OR 97501 |
| 3/20/2019 | 11:15 – 12:00 PM                    | Oregon Health Authority New Employee Orientation (ORS 244)                | Human Services Building<br>500 Summer St. NE<br>Room 166<br>Salem, OR 97301   |

Training Staff:

Tammy Hedrick  
Monica Walker

503-378-6802  
503-378-2011

[tammy.r.hedrick@oregon.gov](mailto:tammy.r.hedrick@oregon.gov)  
[monica.walker@oregon.gov](mailto:monica.walker@oregon.gov)



# February 2019

## Oregon Government Ethics Commission Training Calendar

| Monday  | Tuesday   | Wednesday  | Thursday   | Friday   |
|---|---|--|--|--|
| <p>System Generated Notices to Jurisdictional Contacts February:<br/>                     1<sup>st</sup> - 1<sup>st</sup> notice to finalize SEI List<br/>                     10<sup>th</sup> - 2<sup>nd</sup> notice to finalize SEI List<br/>                     22<sup>nd</sup> - 3<sup>rd</sup> notice to finalize SEI List<br/>                     March 1<sup>st</sup>. Last notice to finalize SEI list</p> | <p>***Disclaimer: Trainings/Trainers are subject to change***<br/>                     To register for a webinar email <a href="mailto:ogec.training@oregon.gov">ogec.training@oregon.gov</a></p> |  |  | <p>1<br/>                     New Employees: you're a public official, now what!<br/>                     10:00 - 11:00 AM</p> |
| 4   | 5   | 6<br>Gifts<br>2:00 - 3:00 PM                       | 7  | 8<br>SEI- JC Webinar<br>10:30 - 11:30 AM   |
| 11  | 12<br>SEI- JC Webinar<br>10:30 - 11:30 AM<br>2:30- 3:30 PM  | 13<br>Lobby Law<br>2:00 - 3:00 PM                  | 14<br>SEI- JC Webinar<br>10:30 - 11:30 AM<br>2:30- 3:30 PM | 15   |
| 18<br>PRESIDENTS' DAY<br>OFFICES CLOSED   | 19  | 20<br>Use of Position / Office<br>10:00 - 11:00 AM | 21<br>SEI- JC Webinar<br>10:30 - 11:30 AM<br>2:30- 3:30 PM | 22   |
| 25  | 26<br>SEI- JC Webinar<br>10:30 - 11:30 AM   | 27<br>Executive Session<br>10:00 - 11:00 AM        | 28<br>SEI- JC Webinar<br>10:30 - 11:30 AM<br>2:30- 3:30 PM |  |



# March 2019

## Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

| Monday  | Tuesday  | Wednesday   | Thursday   | Friday  |
|---|--|---|--|---|
| <div style="border: 1px solid black; padding: 5px; display: inline-block;">                     Email <a href="mailto:ogec.training@oregon.gov">ogec.training@oregon.gov</a><br/>                     to register for a webinar.                 </div> |  |   |  |   |
| 4   | 5<br>Gifts<br>10:00 – 11:00 AM                                 | 6<br>SEI FILER- Webinar<br>10:30 – 11:30 AM<br>2:00 – 3:00 PM | 7  | 8<br>SEI FILER- Webinar<br>10:30 – 11:30 AM<br>2:00 – 3:00 PM                 |
| 11  | 12<br>SEI FILER- Webinar<br>10:30 – 11:30 AM<br>2:00 – 3:00 PM | 13  | 14<br>Lobby Law<br>9:30 – 10:30 AM                             | 15  |
| 18  | 19<br>Conflicts of Interest<br>2:00 – 3:00 PM                  | 20  | 21<br>SEI FILER- Webinar<br>10:30 – 11:30 AM<br>2:00 – 3:00 PM | 22  |
| 25<br>Executive Session<br>10:00 – 11:00 AM   | 26   | 27  | 28   | 29  |
|   |  |   |  | 1<br>New Employees: you're a<br>public official, now what!<br>10:00 – 1100 AM |



## Executive Director's Report

January 25, 2019

- Budget
  - 2017-19 biennial budget
    - Currently projected with a \$188,475.73 surplus.
    - Expenditures through March, \$110,313.47 spent per month; \$118,559.72 average to spend per month.
    - General Fund Revenues have exceeded predictions, forecasted \$30,000 for biennium; moneys collected to date, \$53,105.75.
  - 2019-21 biennial budget
    - Governor's Budget released.
    - \$2,913,971 biennial budget proposed by Governor.
    - No Policy Packages: a current service level request budget.
    - Adjusted for inflation for DAS assessments and AG costs.
    - Budget Hearings will be scheduled early in session.
- 2019 Legislative Bills
  - Arranging meetings with Legislators on agency bills.
  - Working with Legislative staff on scheduling hearing on agency bills.
- SEI
  - Continue to work non-filers. 3 non-filers for 2018.
  - Continue to work previous year's non-filers to submit SEIs due.
- Other
  - Replacing two computers per IT schedule.
  - Provided 2019 legislative concepts to Capitol Club, with training.
  - Lobbyist filings due for all four quarters of 2018, 30 Clients, 23 Lobbyists.
- Next Commission Meeting
  - Will be held on Thursday, March 7, 2019.

**OREGON GOVERNMENT ETHICS COMMISSION  
Fund 0050 AGENCY REVENUE TO GENERAL FUND  
For the Month of NOVEMBER 2018**



| <b>REVENUES</b> |                    |                  |                              |                  |                   |                     |                         |
|-----------------|--------------------|------------------|------------------------------|------------------|-------------------|---------------------|-------------------------|
| Budget<br>Obj   | Budget Obj Title   | Monthly Activity | Biennium to Date<br>Activity | Financial Plan   | Unobligated Plan  | Monthly Avg to Date | Monthly Avg to<br>Spend |
| 0505            | FINES AND FORFEITS | 360.00           | 53,105.75                    | 30,000.00        | -23,105.75        | 3,123.87            | -3,300.82               |
|                 |                    | <b>360.00</b>    | <b>53,105.75</b>             | <b>30,000.00</b> | <b>-23,105.75</b> | <b>3,123.87</b>     | <b>-3,300.82</b>        |

**SUMMARY TOTALS**

0050  
AGENCY REVENUE TO GENERAL FUND

|          | Month Activity | Biennium Activity |
|----------|----------------|-------------------|
| REVENUES | 360.00         | 53,105.75         |
| Total    | 360.00         | 53,105.75         |





**OREGON GOVERNMENT ETHICS COMMISSION**  
**Fund 4150 OF LIMIT - ADMIN**  
**For the Month of NOVEMBER 2018**

**REVENUES**

| Budget<br>Obj | Budget Obj Title                    | Monthly Activity | Biennium to Date<br>Activity | Financial Plan      | Unobligated Plan | Monthly Avg to Date | Monthly Avg to<br>Spend |
|---------------|-------------------------------------|------------------|------------------------------|---------------------|------------------|---------------------|-------------------------|
| 0415          | ADMINISTRATIVE AND SERVICES CHARGES | 15,795.33        | 2,500,690.44                 | 2,524,954.00        | 24,263.56        | 147,099.44          | 3,466.22                |
| 0975          | OTHER REVENUE                       | 0.00             | 52.25                        | 2,000.00            | 1,947.75         | 3.07                | 278.25                  |
|               |                                     | <b>15,795.33</b> | <b>2,500,742.69</b>          | <b>2,526,954.00</b> | <b>26,211.31</b> | <b>147,102.51</b>   | <b>3,744.47</b>         |

**TRANSFER OUT**

| Budget<br>Obj | Budget Obj Title | Monthly Activity | Biennium to Date<br>Activity | Financial Plan | Unobligated Plan  | Monthly Avg to Date | Monthly Avg to<br>Spend |
|---------------|------------------|------------------|------------------------------|----------------|-------------------|---------------------|-------------------------|
| 9999          | DEFAULT          | 0.00             | 10,000.00                    | 0.00           | -10,000.00        | 588.24              | -1,428.57               |
|               |                  | <b>0.00</b>      | <b>10,000.00</b>             | <b>0.00</b>    | <b>-10,000.00</b> | <b>588.24</b>       | <b>-1,428.57</b>        |

**PERSONAL SERVICES**

| Budget<br>Obj | Budget Obj Title                    | Monthly Activity | Biennium to Date<br>Activity | Financial Plan      | Unobligated Plan  | Monthly Avg to Date | Monthly Avg to<br>Spend |
|---------------|-------------------------------------|------------------|------------------------------|---------------------|-------------------|---------------------|-------------------------|
| 3110          | CLASS/JUNCLASS SALARY & PER DIEM    | 46,945.05        | 743,717.10                   | 1,081,008.00        | 337,290.90        | 43,748.06           | 48,184.41               |
| 3160          | TEMPORARY APPOINTMENTS              | 0.00             | 0.00                         | 466.00              | 466.00            | 0.00                | 66.57                   |
| 3190          | ALL OTHER DIFFERENTIAL              | 0.00             | 1,514.98                     | 0.00                | -1,514.98         | 89.12               | -216.43                 |
| 3210          | ERB ASSESSMENT                      | 17.12            | 272.16                       | 456.00              | 183.84            | 16.01               | 26.26                   |
| 3220          | PUBLIC EMPLOYEES' RETIREMENT SYSTEM | 9,247.73         | 152,403.23                   | 202,950.00          | 50,546.77         | 8,964.90            | 7,220.97                |
| 3221          | PENSION BOND CONTRIBUTION           | 2,625.57         | 44,935.57                    | 61,151.00           | 16,215.33         | 2,643.27            | 2,316.48                |
| 3230          | SOCIAL SECURITY TAX                 | 3,618.20         | 57,251.14                    | 82,741.00           | 25,489.86         | 3,367.71            | 3,641.41                |
| 3250          | WORKERS' COMPENSATION ASSESSMENT    | 18.25            | 292.81                       | 621.00              | 328.19            | 17.22               | 46.88                   |
| 3260          | MASS TRANSIT                        | 281.66           | 4,471.24                     | 6,490.00            | 2,018.76          | 263.01              | 288.39                  |
| 3270          | FLEXIBLE BENEFITS                   | 10,897.85        | 150,455.49                   | 300,024.00          | 149,568.51        | 8,850.32            | 21,366.93               |
|               |                                     | <b>73,651.43</b> | <b>1,155,313.82</b>          | <b>1,735,907.00</b> | <b>580,593.18</b> | <b>67,959.64</b>    | <b>82,941.88</b>        |

**SERVICES and SUPPLIES**

| Budget<br>Obj | Budget Obj Title                 | Monthly Activity | Biennium to Date<br>Activity | Financial Plan | Unobligated Plan | Monthly Avg to Date | Monthly Avg to<br>Spend |
|---------------|----------------------------------|------------------|------------------------------|----------------|------------------|---------------------|-------------------------|
| 4100          | INSTATE TRAVEL                   | 778.49           | 10,518.75                    | 19,004.00      | 8,485.25         | 618.75              | 1,212.18                |
| 4150          | EMPLOYEE TRAINING                | 0.00             | 2,324.00                     | 7,080.00       | 4,756.00         | 136.71              | 679.43                  |
| 4175          | OFFICE EXPENSES                  | 218.05           | 7,636.45                     | 21,557.00      | 13,920.55        | 449.20              | 1,988.65                |
| 4200          | TELECOMM/Tech SVC AND SUPPLIES   | 412.80           | 10,836.17                    | 18,723.00      | 7,886.83         | 637.42              | 1,126.69                |
| 4225          | STATE GOVERNMENT SERVICE CHARGES | 14.25            | 50,253.65                    | 52,557.00      | 2,303.35         | 2,956.10            | 329.05                  |
| 4250          | DATA PROCESSING                  | 79.48            | 31,393.44                    | 98,254.00      | 66,860.56        | 1,846.67            | 9,551.51                |
| 4275          | PUBLICITY & PUBLICATIONS         | 0.00             | 455.02                       | 1,023.00       | 567.98           | 26.77               | 81.14                   |
| 4300          | PROFESSIONAL SERVICES            | 0.00             | 2,048.42                     | 9,469.00       | 7,420.58         | 120.50              | 1,050.08                |
| 4315          | IT PROFESSIONAL SERVICES         | 7,350.00         | 234,518.00                   | 310,552.00     | 76,034.00        | 13,795.18           | 10,862.00               |
| 4325          | ATTORNEY GENERAL LEGAL FEES      | 137.90           | 137,594.90                   | 161,995.00     | 24,400.10        | 8,093.82            | 3,485.73                |



OREGON GOVERNMENT ETHICS COMMISSION  
 AY19 CASH FLOW

|  | Appn 30000 - Admin - PCA 41501 |                     |                     |                   |  | Appn 70000 - GF - PCA 00501 |                     |                  |                    |  |
|--|--------------------------------|---------------------|---------------------|-------------------|--|-----------------------------|---------------------|------------------|--------------------|--|
|  | Actuals To Date                | Actuals + Projected | 2017-2019 LAB       | Variance          |  | Actuals To Date             | Actuals + Projected | 2017-2019 LAB    | Variance           |  |
| <b>REVENUE</b>                           |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| Beginning Cash Balance                   | 798,167.30                     | 798,167.30          |                     |                   |  |                             |                     |                  |                    |  |
| 0415 ADMINISTRATIVE AND SERVICES CHARGES | 2,519,661.13                   | 2,519,661.13        | 2,524,954.00        | 5,292.87          |  | 53,105.75                   | 63,605.75           | 30,000.00        | 0.00               |  |
| 0505 FINES AND FORFEITS                  | 52.25                          | 52.25               | 2,000.00            | 1,947.75          |  |                             |                     |                  | 0.00               |  |
| 0975 OTHER REVENUE                       |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| <b>Total Revenue</b>                     | <b>2,519,713.38</b>            | <b>2,519,713.38</b> | <b>2,526,954.00</b> | <b>7,240.62</b>   |  | <b>53,105.75</b>            | <b>63,605.75</b>    | <b>30,000.00</b> | <b>(33,605.75)</b> |  |
| <b>TRANSFERS</b>                         |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| 2010 TRANSFER OUT TO OTHER FUNDS         | (10,000.00)                    | (10,000.00)         |                     | 10,000.00         |  |                             |                     |                  | 0.00               |  |
| 1107 TRANSFER IN FROM DEPT OF ADMIN SVCS |                                |                     |                     | 0.00              |  |                             |                     |                  | 0.00               |  |
| <b>Total Transfers</b>                   | <b>(10,000.00)</b>             | <b>(10,000.00)</b>  |                     | <b>10,000.00</b>  |  |                             |                     |                  | <b>0.00</b>        |  |
| <b>PERSONAL SERVICES</b>                 |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| 3110 CLASS/UNCLASS SALARY & PER DIEM     | 743,717.10                     | 1,090,262.87        | 1,119,202.00        | 28,939.13         |  |                             |                     |                  | 0.00               |  |
| 3160 TEMPORARY APPOINTMENTS              |                                |                     | 466.00              | 466.00            |  |                             |                     |                  | 0.00               |  |
| 3170 OVERTIME PAYMENTS                   |                                |                     |                     | 0.00              |  |                             |                     |                  | 0.00               |  |
| 3190 ALL OTHER DIFFERENTIAL              | 1,514.98                       | 1,514.98            |                     | (1,514.98)        |  |                             |                     |                  | 0.00               |  |
| 3210 ERB ASSESSMENT                      | 272.16                         | 392.00              | 456.00              | 64.00             |  |                             |                     |                  | 0.00               |  |
| 3220 PUBLIC EMPLOYEES' RETIREMENT SYSTEM | 152,403.23                     | 212,330.50          | 206,804.00          | (5,526.50)        |  |                             |                     |                  | 0.00               |  |
| 3221 PENSION BOND CONTRIBUTION           | 44,935.67                      | 65,183.87           | 61,420.00           | (3,763.87)        |  |                             |                     |                  | 0.00               |  |
| 3230 SOCIAL SECURITY TAX                 | 57,251.14                      | 83,761.96           | 82,741.00           | (1,020.96)        |  |                             |                     |                  | 0.00               |  |
| 3250 WORKERS' COMPENSATION ASSESSMENT    | 292.81                         | 472.99              | 621.00              | 148.01            |  |                             |                     |                  | 0.00               |  |
| 3260 MASS TRANSIT                        | 4,471.24                       | 6,758.44            | 6,490.00            | (268.44)          |  |                             |                     |                  | 0.00               |  |
| 3270 FLEXIBLE BENEFITS                   | 150,455.49                     | 229,334.13          | 311,148.00          | 81,813.87         |  |                             |                     |                  | 0.00               |  |
| <b>Total Personal Services</b>           | <b>1,155,313.82</b>            | <b>1,690,014.74</b> | <b>1,789,348.00</b> | <b>99,336.26</b>  |  |                             |                     |                  | <b>0.00</b>        |  |
| <b>SERVICES AND SUPPLIES</b>             |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| 4100 INSTATE TRAVEL                      | 10,518.75                      | 14,609.38           | 19,004.00           | 4,394.63          |  |                             |                     |                  | 0.00               |  |
| 4125 OUT-OF-STATE TRAVEL                 |                                |                     |                     | 0.00              |  |                             |                     |                  | 0.00               |  |
| 4150 EMPLOYEE TRAINING                   | 2,324.00                       | 3,209.00            | 7,080.00            | 3,871.00          |  |                             |                     |                  | 0.00               |  |
| 4175 OFFICE EXPENSES                     | 7,636.45                       | 10,606.18           | 21,557.00           | 10,950.82         |  |                             |                     |                  | 0.00               |  |
| 4200 TELECOMM/TECH SVC AND SUPPLIES      | 10,836.17                      | 15,904.43           | 18,723.00           | 2,818.57          |  |                             |                     |                  | 0.00               |  |
| 4225 STATE GOVERNMENT SERVICE CHARGES    | 50,253.65                      | 50,953.65           | 52,557.00           | 1,603.35          |  |                             |                     |                  | 0.00               |  |
| 4250 DATA PROCESSING                     | 31,393.44                      | 32,153.44           | 98,254.00           | 66,100.56         |  |                             |                     |                  | 0.00               |  |
| 4275 PUBLICITY & PUBLICATIONS            | 455.02                         | 890.02              | 1,023.00            | 132.98            |  |                             |                     |                  | 0.00               |  |
| 4300 PROFESSIONAL SERVICES               | 2,048.42                       | 4,810.24            | 9,469.00            | 4,658.76          |  |                             |                     |                  | 0.00               |  |
| 4315 IT PROFESSIONAL SERVICES            | 234,518.00                     | 293,318.00          | 310,552.00          | 17,234.00         |  |                             |                     |                  | 0.00               |  |
| 4325 ATTORNEY GENERAL LEGAL FEES         | 137,594.90                     | 183,413.90          | 161,995.00          | (21,418.90)       |  |                             |                     |                  | 0.00               |  |
| 4375 EMPLOYEE RECRUITMENT & DEVELOPMENT  | 199.99                         | 1,441.99            | 2,484.00            | 1,042.01          |  |                             |                     |                  | 0.00               |  |
| 4400 DUES AND SUBSCRIPTIONS              |                                | 225.00              | 450.00              | 225.00            |  |                             |                     |                  | 0.00               |  |
| 4425 FACILITIES RENT & TAXES             | 56,812.40                      | 82,491.37           | 94,494.00           | 12,002.63         |  |                             |                     |                  | 0.00               |  |
| 4575 AGENCY PROGRAM RELATED SVCS & SUPP  | 2,051.89                       | 2,051.89            |                     | (2,051.89)        |  |                             |                     |                  | 0.00               |  |
| 4650 OTHER SERVICES AND SUPPLIES         | 162,316.54                     | 169,266.54          | 164,091.00          | (5,175.54)        |  |                             |                     |                  | 0.00               |  |
| 4700 EXPENDABLE PROPERTY \$250-\$5000    |                                | 3,800.00            | 7,607.00            | 3,807.00          |  |                             |                     |                  | 0.00               |  |
| 4715 IT EXPENDABLE PROPERTY              | 11,055.50                      | 11,055.50           |                     | (11,055.50)       |  |                             |                     |                  | 0.00               |  |
| <b>Total Services and Supplies</b>       | <b>720,015.12</b>              | <b>880,200.53</b>   | <b>969,340.00</b>   | <b>89,139.47</b>  |  |                             |                     |                  | <b>0.00</b>        |  |
| 5900 OTHER CAPITAL OUTLAY                |                                |                     |                     |                   |  |                             |                     |                  |                    |  |
| <b>TOTAL EXPENDITURES</b>                | <b>1,875,328.94</b>            | <b>2,570,212.27</b> | <b>2,758,688.00</b> | <b>188,475.73</b> |  |                             |                     |                  | <b>0.00</b>        |  |
| <b>Ending Cash Balance*</b>              | <b>1,432,551.74</b>            | <b>737,668.41</b>   |                     |                   |  | <b>53,105.75</b>            | <b>63,605.75</b>    |                  |                    |  |

\*Outstanding Revenue Invoices not taken into consideration

