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IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF LINCOLN

ROSS R. SMITH,

Plaintiff

vs.

**CITY OF LINCOLN CITY, an Oregon
municipal corporation,
CHESTER R. NOREIKIS, STEPHEN
WESLEY RYAN, ROGER A. SPRAGUE,
SUSAN K. WAHLKE, KIPPEN G. WARD, and
DONALD B. WILLIAMS, each such individual
in their official capacity as a member of
the City Council of the City of Lincoln City,
Defendants.**

Case No. 16CV21270

FIRST AMENDED COMPLAINT

**Declaratory Judgment: ORS 28.010, et
seq.**

**Violations of Public Meetings Law ORS
192.610, et seq., Lincoln City Charter 8.2,
Lincoln City Municipal Code 2.04.050, and
Lincoln City Municipal Code 2.08.030.B**

Not Subject To Mandatory Arbitration

Plaintiff alleges:

PRELIMINARY STATEMENT

1.

Plaintiff seeks declaratory and injunctive relief against the City of Lincoln City (the “City”) for violating Oregon Public Meetings Law ORS 192.610, *et seq.*, (the “Public Meetings Law”), Lincoln City Charter section 8.2, Lincoln City Municipal Code subsection 2.04.050, and Lincoln City Municipal Code subsection 2.08.030.B.

//

1 **PARTIES**

2 2.

3 Plaintiff, Ross Ronald Smith, is a seventh generation Oregonian (oregonoverland.com), a
4 property owner and taxpayer (Lincoln County Oregon Tax lot # 07-11-34-DC-03700-00, aka
5 940 SW 68th St, Lincoln City Oregon, etc.), a business owner licensed with both the state
6 (Oregon Business Registry #701977-94, ABN “Ross R. Smith”), and the city (Lincoln City
7 Occupation Tax Permits #1398 and #3399), and resident of Lincoln City, Oregon, and has been,
8 or may be, adversely affected by the City Council’s actions per the applicable statutory
9 provisions.

10 3.

11 Defendant, the City of Lincoln City, Lincoln County, Oregon ("City") was and is an
12 existing, duly incorporated and organized municipal corporation under the laws of the State of
13 Oregon. Defendant City was and is vested with the authority to carry out public purposes as
14 authorized by statute.

15 4.

16 Defendant, Chester R. Noreikis, is sued in his official capacity as a member of the City
17 Council of the City of Lincoln City, Oregon.

18 5.

19 Defendant, Stephen Wesley Ryan, aka Wes Ryan, is sued in his official capacity as a
20 member of the City Council of the City of Lincoln City, Oregon.

21 6.

22 Defendant, Roger A. Sprague, is sued in his official capacity as a former member of
23 the City Council of the City of Lincoln City, Oregon.

1 7.

2 Defendant, Susan K. Wahlke, is sued in her official capacity as a member of the City
3 Council of the City of Lincoln City, Oregon.

4 8.

5 Defendant, Kippen G. Ward, aka Kip Ward, is sued in his official capacity as a member
6 of the City Council of the City of Lincoln City, Oregon.

7 9.

8 Defendant, Donald B. Williams, aka Don Williams, is sued in his official capacity as a
9 member of the City Council of the City of Lincoln City, Oregon.

10 **JURISDICTION AND VENUE**

11 10.

12 This action is brought pursuant to ORS 192.680(2), *et seq.*, entitled, “Public Meetings
13 Law.” Jurisdiction is proper pursuant to ORS 192.680(2), *et seq.*

14 11.

15 Venue is proper pursuant to ORS 192.680(2), *et seq.* in the Circuit Court for Lincoln
16 County, Oregon.

17 **ALLEGATION OF FACTS**

18 12.

19 Plaintiff alleges that on October 12, 2015, the City Council of the City of Lincoln City
20 (the “City Council”) held a secret vote by ballot, to appoint a City Councilor. Ex. 1, p. 5. As the
21 vote of each member by name was not made public, this action violated ORS 192.650(1)(c).

22 13.

23 On March 14, 2016, the City Council held several secret votes by ballot, to appoint

1 Budget Committee members, as well as Planning Commission members. As the vote of each
2 member by name was not made public, these actions also violated ORS 192.650(1)(c).

3 14.

4 The minutes of the March 14, 2016 council meeting have not yet been provided to the
5 public, and will be submitted into evidence once they become public record.

6 15.

7 The Plaintiff may be directly affected by these decisions to hold secret votes, as both the
8 Planning Commission, and the City Council, are currently deliberating on Ordinances 2016-EE
9 and 2016-FF, to regulate short-term rentals. The Plaintiff owns several active rental properties in
10 Lincoln City, and holds a valid license to operate a short-term rental in Lincoln City.

11 16.

12 ORS 192.650 sets forth the procedures by which city councils are required to vote. ORS
13 192.650(1)(c) specifically provides, in relevant part, that:

14 All minutes or recordings shall be available to the public within a
15 reasonable time after the meeting, and shall include at least the
16 following information:

17 ...

18 (c) The results of all votes and, except for public bodies consisting
19 of more than 25 members unless requested by a member of that
20 body, the vote of each member by name;

21
22 17.

23 Our Attorney General makes clear the prohibition on secret ballots:

24 All official actions by governing bodies must be taken by public vote.
25 The vote of each member must be recorded unless the body has 26 or
26 more members. Even then, any member of the governing body may
27 require that the votes of each member be recorded. ORS 192.650(1)(c).
28 Written ballots are not prohibited, but each ballot must identify the
29 member voting and the vote must be announced. *Secret ballots are*
30 *prohibited.*
31

1 Attorney General’s Public Records and Meetings Manual (2014), p. 153.

2
3 18.

4 A secret ballot is a vote of the members in private after which only
5 the result is announced to the public. Absent specific statutory
6 authorization, such a procedure would violate the Oregon Public
7 Meetings Law.

8
9 If improper procedures in voting such as the use of a proxy, an
10 absentee ballot, a vote by mail or a secret ballot are used, *it will*
11 *cast grave doubts on the validity of any decision arrived at as a*
12 *result of using these procedures.* (emphasis added).

13
14 Attorney General’s Public Records and Meetings Manual (2014), p. L-6.

15
16 **FIRST CLAIM FOR RELIEF**

17 **DECLARATORY JUDGMENT**

18
19 **(Violation of ORS 192.650(1)(c): All votes must be public)**

20
21 19.

22 Plaintiff realleges paragraphs 1 through 18.

23 20.

24 The purpose of the Public Meetings Law is to keep the “public aware of the
25 deliberations and decisions of governing bodies and the information upon which such decisions
26 were made.” ORS 192.620.

27 21.

28 Therefore, the actions of the City Council, in holding votes by secret ballot on October
29 12, 2015, and March 14, 2016, were in contravention of the Public Meetings Law, ORS
30 192.610, *et seq.*

31 22.

32 The actions of the City Council, in holding votes by secret ballot on October 12, 2015,

1 and March 14, 2016, were in willful violation of the Public Meetings Law, ORS 192.610, *et*
2 *seq.*

3 **SECOND CLAIM FOR RELIEF**

4 **DECLARATORY JUDGMENT**

5 **(Violation of Lincoln City Charter 8.2 - Filling Vacancies)**

6 23.

7 Plaintiff realleges paragraphs 1 through 22.

8 24.

9 Section 8.2 of the Lincoln City Charter states “A vacancy in the council shall be filled by
10 appointment by majority of the council.” As the council has seven members, a majority of the
11 council is four members.

12 25.

13 The secret vote only elicited three votes for any one candidate. Ex. 1, p. 5. Therefore, this
14 vote did not reach the majority required by section 8.2 of the Lincoln City Charter. Therefore, the
15 vote failed to appoint a candidate to the Council.

16 26.

17 Therefore, the actions of the City Council, in holding a vote by secret ballot on
18 October 12, 2015, was in contravention of section 8.2 of the Lincoln City Charter.

19 27.

20 The actions of the City Council, in holding a vote by secret ballot on October 12, 2015,
21 was in willful violation of section 8.2 of the Lincoln City Charter.

22 //

23 //

1 **THIRD CLAIM FOR RELIEF**

2 **DECLARATORY JUDGMENT**

3 **(Violation of Lincoln City Municipal Code 2.04.050 - Manner of voting)**

4 28.

5 Plaintiff realleges paragraphs 1 through 27.

6 29.

7 Subsection 2.04.050 of the Lincoln City Municipal Code states:

8 *All questions shall be voted on by affirmation* except those involving
9 ordinances and any matter that will increase a department's or fund's
10 budget, in which case a roll call shall be had (in alphabetical order for the
11 first motion of each meeting and rotating in alphabetical order with each
12 successive motion of the meeting). If the presiding officer doubts, or if a
13 division of the council is called for, a roll call shall be had. Every member
14 who shall be present when a question is put shall vote for or against the
15 same, unless the council shall excuse him. (emphasis added)

16 30.

17
18 The votes on October 12, 2015, and March 14, 2016 were done by secret ballot, and not
19 by affirmation, as is required by Lincoln City Municipal Code subsection 2.04.050. Ex. 1, p. 5.

20 31.

21 Therefore, the actions of the City Council, in holding votes by secret ballot on October
22 12, 2015, and March 14, 2016 were in contravention of the Lincoln City Municipal Code
23 subsection 2.04.050.

24 32.

25 The actions of the City Council, in holding votes by secret ballot on October 12, 2015,
26 and March 14, 2016 were in willful violation of the Lincoln City Municipal Code subsection
27 2.04.050.

1 **FOURTH CLAIM FOR RELIEF**

2 **DECLARATORY JUDGMENT**

3 **(Violation of Lincoln City Municipal Code 2.08.030.B - Appointment – Terms of office)**

4 33.

5 Plaintiff realleges paragraphs 1 through 32.

6 34.

7 Subsection 2.08.030.B of the Lincoln City Municipal Code states:

8 All vacancies in office will be filled following an open application
9 process. The process will include public notice by the city of the vacancy
10 and request for applications. *Following receipt of applications the city*
11 *council will invite each applicant to be interviewed at the next regular*
12 *meeting of the city council. Members shall be appointed by the city council*
13 *following the interviews.* (emphasis added)

14 35.

15
16 None of the applicants for the open Planning Commission seats were invited to be
17 interviewed at a city council meeting. According to public testimony, the applicants were are
18 interviewed privately.

19 36.

20 Therefore, the actions of the City Council, in failing to publicly interview Planning
21 Commission applicants on March 14, 2016 was in contravention of the Lincoln City
22 Municipal Code subsection 2.08.030.B.

23 37.

24 The actions of the City Council, in in failing to publicly interview Planning Commission
25 applicants on March 14, 2016 was in willful violation of the Lincoln City Municipal Code
26 subsection 2.08.030.B.

1 **FIFTH CLAIM FOR RELIEF**

2 **DECLARATORY JUDGMENT**

3 **(Violation of ORS 192.650(1): Minutes shall be available within a reasonable time)**

4 38.

5 Plaintiff realleges paragraphs 1 through 37.

6 39.

7 ORS 192.650(1) states, in relevant part:

8 The governing body of a public body shall provide for the sound, video or
9 digital recording or the taking of written minutes of all its meetings.
10 Neither a full transcript nor a full recording of the meeting is required,
11 except as otherwise provided by law, but the written minutes or recording
12 must give a true reflection of the matters discussed at the meeting and the
13 views of the participants. All minutes or recordings shall be available to the
14 public within a reasonable time after the meeting...

15
16 40.

17 Page 154 of the *Attorney General's Public Records and Meeting Manual* states:

18 If written minutes are prepared, they cannot be withheld from the public
19 merely because they will not be approved until the next meeting of the
20 governing body. If minutes have not been approved, they may be so
21 identified.

22
23 41.

24 Page 155 of the *Attorney General's Public Records and Meeting Manual* states:

25 We assume that a governing body generally should be able to make a
26 sound, video or digital recording of a meeting available to the public
27 within a few days following the meeting. However, we are told that a
28 requirement that written minutes be available within a few days following
29 a meeting is impractical even for a governing body with substantial staff,
30 because such a body may meet in longer sessions and more often than
31 other bodies, and consequently the preparation of minutes takes up to three
32 weeks in the usual course of business. This practice arguably is within the
33 "reasonable time" allowed by the statute, but a reviewing court may reach
34 a different conclusion.

1
2 42.

3 As the Attorney General states that “up to three weeks” is within a “reasonable time”,
4 it is clear that the actions of the City Council in failing to provide the Plaintiff, the City
5 Councilors, and the general public the minutes for the March 14, 2016 meeting for 19 weeks
6 (134 days), constitutes an unreasonable delay, and therefore, is in contravention of the Public
7 Meetings Law, ORS 192.610, *et seq.*

8 43.

9 The actions of the City Council in failing to provide the Plaintiff, the City Councilors, and
10 the general public the minutes for the March 14, 2016 meeting for 19 weeks (134 days), is in
11 willful violation of the Public Meetings Law, ORS 192.610, *et seq.*

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, pursuant to ORS 28.010, *et seq.* and ORS 192.680, *et seq.*, the
14 Plaintiff prays for judgment:

- 15 (1) On Plaintiff’s First Claim of Relief, declaring, pursuant to ORS 192.680(2), *et seq.*, that
16 the vote by secret ballot to appoint a City Councilor, was a violation of the Public
17 Meetings Law, ORS 192.610, *et seq.*;
- 18 (2) Declaring, pursuant to ORS 192.680(2), *et seq.*, that the vote by secret ballot to appoint
19 a City Councilor, was a willful violation of the Public Meetings Law, ORS 192.610, *et*
20 *seq.*;
- 21 (3) Voiding the vote by secret ballot the City Council held on October 12, 2015, to
22 appoint a candidate to the City Council;
- 23 (4) Voiding former Councilor Sprague’s following motion that carried on October 12,
24 2015, to appoint Richard (“Dick”) Anderson to the City Council;

- 1 (5) Declaring as vacant the City Council position that was left vacant by Councilor
2 Jim Davis' resignation (and for which they voted to appoint his replacement on
3 October 12, 2015);
- 4 (6) Directing the City Council to restart the process to fill the Council position left
5 vacant by Councilor Davis' resignation;
- 6 (7) Voiding the votes by secret ballot the City Council held on March 14, 2016, to
7 appoint candidates to the Planning Commission, where the terms of the current
8 members had expired, or had otherwise become vacant.
- 9 (8) Voiding Councilor Wahlke's motion that carried on March 14, 2016, to appoint
10 Steve Griffiths, and Gary Cunningham, to the Planning Commission;
- 11 (9) Directing the City Council to restart the process to appoint candidates to the
12 Planning Commission positions where the terms of the current members had
13 expired, or had otherwise become vacant;
- 14 (10) On Plaintiff's Second Claim of Relief, declaring that the vote by secret ballot to
15 appoint a City Councilor, was a violation of Lincoln City Charter section 8.2;
- 16 (11) Declaring that the vote by secret ballot to appoint a City Councilor, was a willful
17 violation of Lincoln City Charter section 8.2;
- 18 (12) Voiding the vote by secret ballot the City Council held on October 12, 2015, to
19 appoint a candidate to the City Council;
- 20 (13) Voiding former Councilor Sprague's following motion that carried on October 12,
21 2015, to appoint Richard ("Dick") Anderson to the City Council;
- 22 (14) Declaring vacant the City Council position that was left vacant by Councilor Jim
23 Davis' resignation (and for which they voted to appoint his replacement on

1 October 12, 2015);

2 **(15)** Directing the City Council to restart the process to fill the Council position left
3 vacant by Councilor Davis' resignation;

4 (16) On Plaintiff's Third Claim of Relief, declaring that the vote by secret ballot to appoint
5 a City Councilor, was a violation of Lincoln City Municipal Code subsection 2.04.050;

6 (17) Declaring that the vote by secret ballot to appoint a City Councilor, was a willful
7 violation of Lincoln City Municipal Code subsection 2.04.050;

8 (18) Voiding the vote by secret ballot the City Council held on October 12, 2015, to
9 appoint a candidate to the City Council;

10 (19) Voiding former Councilor Sprague's following motion that carried on October 12,
11 2015, to appoint Richard ("Dick") Anderson to the City Council;

12 (20) Declaring as vacant the City Council position that was left vacant by Councilor
13 Jim Davis' resignation (and for which they voted to appoint his replacement on
14 October 12, 2015);

15 **(21)** Directing the City Council to restart the process to fill the Council position left
16 vacant by Councilor Davis' resignation;

17 (22) Voiding Councilor Wahlke's motion that carried on March 14, 2016, to appoint
18 Steve Griffiths, and Gary Cunningham, to the Planning Commission;

19 (23) Directing the City Council to restart the process to appoint candidates to the
20 Planning Commission positions where the terms of the current members had
21 expired, or had otherwise become vacant;

22 (24) On Plaintiff's Fourth Claim of Relief, declaring that the vote to appoint Planning
23 Commissioners, was a violation of Lincoln City Municipal Code subsection

1 2.08.030.B;

2 (25) Voiding Councilor Wahlke's motion that carried on March 14, 2016, to appoint
3 (or, in this case, reappoint) Steve Griffiths, and Gary Cunningham, to the
4 Planning Commission;

5 (26) Directing the City Council to restart the process to appoint candidates to the
6 Planning Commission positions where the terms of the current members had
7 expired, or had otherwise become vacant;

8 (27) On Plaintiff's Fifth Claim of Relief, declaring, pursuant to ORS 192.680(2), *et*
9 *seq.*, that the actions of the City Council in failing to provide the minutes of the
10 March 14, 2016 meeting for 19 weeks (134 days), was a violation of the Public
11 Meetings Law, ORS 192.610, *et seq.*;

12 (28) Directing the City Council to provide draft minutes of all previously held
13 meetings, as well as all future meetings, to the Plaintiff, the City Councilors, and
14 the general public, within a reasonable amount of time;

15 (29) Imposing a civil fine against the City Council, pursuant to ORS 192.680(3);

16 (30) Awarding of attorneys' fees and costs to Plaintiff, pursuant to ORS 192.680(3); and

17 (31) Granting such other equitable relief as the Court deems appropriate, including
18 enjoining the City Council from future violations.

19 DATED this 26th day of July, 2016

20 ROSS R. SMITH,
21 Plaintiff in pro per,
22 Ross R. Smith
23 Ross R. Smith
24 PO Box 627
25 Lincoln City, OR 97367-0627
26 310.985.9642 (m)
27 541.996.6232 (h)

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877.600.9642 (f)
rasa7777@gmail.com



Lincoln City Council

Regular Meeting

~ Minutes ~

801 SW Hwy 101
Lincoln City, OR 97367
www.lincolncity.org

Cathy Steere
541-996-1203

Monday, October 12, 2015

6:00 PM

Council Chambers

The final minutes for this meeting are supplemented by an electronic recording of the meeting, which may be viewed online at www.lincolncity.org under the tab "Agendas, Packets and Videos". The staff reports, resolutions, ordinances and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>.)

APPROVED BY CITY COUNCIL

May 9, 2016

A. **CALL TO ORDER** - Mayor Williams called the meeting to order at 6:09 pm.

B. **ROLL CALL**

Attendee Name	Title	Status	Arrived
Susan Wahlke	Councilor Ward 1	Present	6:00 PM
Donald Williams	Mayor	Present	6:00 PM
Kip Ward	Councilor Ward 3	Present	6:00 PM
Chester Noreikis	Councilor Ward 2	Present	6:00 PM
Roger Sprague	Councilor Ward 3	Present	6:00 PM
Wes Ryan	Councilor Ward 1	Excused	

C. **PLEDGE OF ALLEGIANCE** - Mayor Williams led The Pledge of Allegiance.

D. **CONSENT AGENDA**

City Recorder, Cathy Steere, asked that agenda item number 2 be pulled from the Consent agenda and rescheduled for the October 26, 2015 meeting.

1. **Minutes of Meeting for June 22, 2015**

MOTION: To approve the Minutes of Meeting for June 22, 2015.
RESULT: ADOPTED [UNANIMOUS]
MOVER: Chester Noreikis, Councilor Ward 2
SECONDER: Susan Wahlke, Councilor Ward 1
AYES: Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED: Wes Ryan

2. **Oregon Liquor Control Commission (OLCC) – New Outlet Application: Hwy 101 Burger**

City Recorder, Cathy Steere requested that this item be rescheduled to the next meeting on October 26th as the process has not been completed.

E. PRESENTATIONS**3. Ceci Pratt, My Sister's Place, will speak on Domestic Violence Awareness Month**

Ceci Pratt, Outreach Coordinator for My Sister's Place spoke on Domestic Violence Awareness Month. A packet was provided to the Council explaining more about My Sister's Place as well as the campaign for Domestic Violence called "Healthy Hearts" month.

4. Certificate of Appreciation: Councilor Jim Davis (Resigned on August 16, 2015)

Mayor Williams thanked Mr. Davis for his service on the Council and the Planning Commission. The certificate was not available at the meeting and was provided later.

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

Pastor Robert Harrison, Agape Fellowship, expressed concerns with not having an invocation at the City Council meetings, and asked Council to reconsider.

Joseph West, representative for the majority of the American Federation of County and Municipal Employees (AFSCME), and accompanied by Rick Miller, City employee union representative, expressed concerns on behalf of the employees that the bargaining is taking too long and is under-productive.

Miles Schlesinger congratulated Council on the hiring of Ed Dreistadt, new Visitor and Convention Bureau Director, spoke about the hospitality industry, and encouraged Council to move forward with the sewerage of East Devil's Lake.

Cindy Thompson and Joe Hinton, co-presidents of the Roads End Improvement Association (RIA) asked Council to support their request to complete the process of integrating Roads End into the City. They asked that the City initiate the rezoning process as authorized by the Settlement Agreement. Councilor Sprague confirmed that the zone they are seeking is a blend of City R-1 and the pre-existing County R-1A zone.

John Forse spoke on the Nelscott Reef Big Wave contest and expressed concerns with the City giving the event permit to an out-of-state entity.

Jim Hoover expressed concerns with having met with an investigator conducting an investigation as to the Mayor's conduct.

G. PUBLIC HEARINGS/PUBLIC COMMENT**5. An opportunity for public comment regarding adoption of the Lincoln City Transportation System Plan.**

Stephanie Reid, City Engineer used a Power Point to present this item. The Transportation System Plan (TSP) update was completed through funding from the Oregon Department of Transportation. Ms. Reid acknowledged the team that worked on the project and announced that after three and a half years they have a final draft of the plan. The recommendation from the Planning Commission is in the packet. Planning Commissioner Riley Hoagland suggests placing "show intent" signs in Spanish as well as English including the "Way Finder" signs that are found throughout the city.

6. Adoption of the Lincoln City Transportation Plan.

MOTION:	To adopt the Lincoln City Transportation System Plan
MOVER:	Kip Ward, Councilor Ward 3
SECONDER:	Roger Sprague, Councilor Ward 3
DISCUSSION:	Councilor Noreikis states he appreciates everyone's input and assistance with creating this project. Councilor Ward mentioned Schooner Creek Road and the possibility of making it a scenic alternative route to Lincoln City. It could be an alternate route during disasters. Councilor Noreikis advised the public that the draft plan is available at lincolncitytsp.org , on the City's website, and paper copies are available at the Driftwood Public Library and City Planning and Community Development Department. Mr. Appicello advised that the Department of Land Conservation and Development (DLCD) representative asked that the plan be adopted in an "Order", and the order is not in the packet. He recommended amending the motion to direct staff to bring back a recommended order to adopt the plan as opposed to doing it by motion.
AMENDED:	Councilor Ward amended the motion to direct staff to bring back the recommendation from DLCD to adopt the Plan in an order.
SECONDER:	Roger Sprague, Councilor Ward 3 seconded the amendment
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

H. ORDINANCES

7. Ordinance 2015-12: An Ordinance of the City of Lincoln City Amending Lincoln City Municipal Code, Title 9 (Public Peace, Morals and Welfare) Chapter 9128 (Liquor and Marijuana), Section 9.28.190 (Marijuana – Use or Possession of Less Than One Ounce) to Conform the Ordinance to Current Oregon Law.

Richard Appicello, City Attorney presented this item, noting it is a change to the code to add the words, "under the age of 21." Mr. Appicello completed first reading by title only of Ordinance 2015-12.

MOTION:	To accept first reading of Ordinance 2015-12 and move to second reading.
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
MOVER:	Chester Noreikis, Councilor Ward 2
SECONDER:	Roger Sprague, Councilor Ward 2
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

Mr. Appicello completed second reading of Ordinance 2015-12 by title only.

MOTION:	To approve second reading and adoption of Ordinance 2015-12.
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
MOVER:	Roger Sprague, Councilor Ward 2
SECONDER:	Susan Wahlke, Councilor Ward 1
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

I. RESOLUTION**8. Resolution 2015-26: A Resolution Adopting the City of Lincoln City's Representation in the Lincoln County Multi-Jurisdictional Hazard Mitigation Plan**

Mark Nicholson, Emergency Preparedness Coordinator, presented this item, noting that at the last meeting it was introduced and the plan discussed in detail.

MOTION:	To approve Resolution 2015-26.
DISCUSSION:	Councilor Noreikis read aloud the resolution for the public benefit.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kip Ward, Councilor Ward 3
SECONDER:	Susan Wahlke, Councilor Ward 1
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

J. SPECIAL ORDER OF BUSINESS**9. Appointment of Home Owner's Association Board Member and Certificate of Appreciation for Mr. Quandt.**

Richard Appicello shared that Mr. Quandt has left the area and resigned from his position as President of the Villages Cascade Head Homeowners Association. The City is looking for a volunteer from the Council to fill the vacant position. Once the position has been filled, the Board will then elect a president. Mr. Appicello provided information about the board's function and duties. Mayor Williams volunteered and received unanimous Council consent to fill the vacant board position. Councilor Sprague asked that a Certificate of Appreciation be sent to Mr. Quandt. Council consented to sending the certificate.

10. Fee Waiver Request: Roads End Improvement Association (REIA), For Zoning Ordinance Amendment (Richard Townsend)

Richard Townsend, Planning Director, presented this item. The City received a request from the Roads End Improvement Association to waive the fees for rezoning, and asked Council to initiate the rezoning of Roads End. Mr. Townsend added that the total cost for rezoning is \$5,000 and that the Roads End Improvement Association is a non-profit association. Mr. Townsend reviewed the four options or Council consideration. Councilor Sprague asked for confirmation that under the City's agreement with Road's End that no zoning changes were to take place for five years. Mr. Townsend clarified that under the terms of the agreement Council has the authority to initiate the rezoning. Mr. Appicello confirmed that Council would not be approving the amendment, only initiating the process.

Ms. Thompson advised that there are about 300 members and 900 properties. The percentage of full time residence is about 15%.

Mayor Williams stated that we are asked to waive fees just to get the ball rolling. Whether Council waives those fees or not does not stop them from going forward.

Councilor Sprague said that he would rather initiate the rezoning change for the reason that if the fees were waived for one and not for another there would be a problem. Councilor Wahlke said that with the Annexation Agreement with REIA it says we can initiate a rezoning. Mr. Townsend notes it is a comprehensive plan amendment.

MOTION:	To start the process looking at the requested zone change by the Roads End Improvement Association (REIA).
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
MOVER:	Roger Sprague, Councilor Ward 3
SECONDER:	Susan Wahlke, Councilor Ward 1
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

K. CITY MANAGER/CITY ATTORNEY REPORTS

11. Council Candidate Interviews (Selection may occur at this time) (Chandler)

Ron Chandler, City Manager reminded the Council that tonight was the opportunity to interview the Candidates for City Council. Council interviewed candidates for the vacant position. Mr. Chandler explained the interview process. Candidates interviewed were Riley Hoagland, Dick Anderson and Dean Coppage. City Recorder handed out a list of questions to each Councilor. Each candidate had an opportunity to respond to all questions. Richard Appicello, City Attorney reminded the Council that if they made notes with the questions, that it is a public record and they need to give those notes to the City Recorder.

Cathy Steere, City Recorder read the votes: 3 Votes Dick Anderson, 1 Vote Riley Hoagland and 1 Vote Dean Coppage.

Council discussed holding a special meeting prior to the Work Session on October 19 for the Swearing in ceremony of Mr. Anderson.

MOTION:	To appoint Dick Anderson to fill the Council vacancy created by the resignation of Jim Davis.
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
MOVER:	Roger Sprague, Councilor Ward 2
SECONDER:	Chester Noreikis, Councilor Ward 2
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

12. City Attorney Discussion: Marijuana Tax

Richard Appicello, City Attorney, spoke to Council about placing a 3% tax on the ballot for next November. As part of that process, the City would ask for amendments, modification, clarification or possible repeal of the existing Ordinance 2014-27. In terms of recommendations, Council may wish to clarify that the ordinance is not applicable to interim sales of recreational marijuana from medical marijuana dispensaries. Mr. Appicello confirmed that Council will be able to suspend or clarify an amendment later if necessary. Mr. Appicello did not recommend repealing the ordinance at this time, just clarifying the intent.

MOTION:	To direct staff to draft an ordinance implementing the local option tax identified in House Bill 3400, Section 34(a)
RESULT:	ADOPTED BY VOICE VOTE [UNANIMOUS]
MOVER:	Chester Noreikis, Councilor Ward 2
SECONDER:	Roger Sprague, Councilor Ward 2
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

MOTION: To amend the code to modify or suspend the prior adopted marijuana tax as it relates to recreational sales from medical marijuana facilities.

RESULT: ADOPTED BY VOICE VOTE [UNANIMOUS]

MOVER: Roger Sprague, Councilor Ward 2

SECONDER: Susan Wahlke, Councilor Ward 1

AYES: Wahlke, Williams, Ward, Noreikis, Sprague

EXCUSED: Wes Ryan

13. City Attorney: Actions, if any, concerning Executive Session Items

Richard Appicello, City Attorney, advised that there were a number of items that were discussed in Executive Session, and no action can be taken in Executive Session so if Council wishes to take action, this would be the time.

One of the discussions was Workforce Housing Land Exchange.

MOTION: To advertise the land exchange and ask staff to develop recommendations for Council consideration and future decision.

RESULT: ADOPTED BY VOICE VOTE [UNANIMOUS]

MOVER: Susan Wahlke, Councilor Ward 1

SECONDER: Kip Ward, Councilor Ward 3

AYES: Wahlke, Williams, Ward, Noreikis, Sprague

EXCUSED: Wes Ryan

Richard Appicello, City Attorney, had two other items that were discussed in Executive Session and recommended that the Mayor not participate and not vote as they would involve an actual conflict of interest. Mayor Williams recused himself on the advice of City Attorney.

Richard Appicello, City Attorney said that in regards to confidential transfer of records if you wish to take action he recommends notifying the Oregon Government Ethics Commission that the City Council is willing to release the transferred record restriction in 192.502 (10) at such time as the OGEC decides to proceed with the public process."

MOTION: To notify the Oregon Government Ethics Commission that the City Council is willing to release the transferred record restriction in 192.502 (10) at such time as the OGEC decides to proceed with the public process."

RESULT: ADOPTED BY VOICE VOTE [UNANIMOUS]

MOVER: Susan Wahlke, Councilor Ward 1

SECONDER: Kip Ward, Councilor Ward 3

AYES: Wahlke, Ward, Noreikis, Sprague

RECUSED: Williams

EXCUSED: Wes Ryan

On the second matter, the City Attorney again recommended that the Mayor recuse himself due to an actual conflict of interest. The Mayor again recused himself.

MOTION: To authorize the release of (relating to a public records request) the attorney employment contract, but notify the requestor that Council is not willing to answer questions regarding records that are exempt from disclosure under Public Records law.

RESULT: ADOPTED BY VOICE VOTE [UNANIMOUS]

MOVER: Chester Noreikis, Councilor Ward 2

SECONDER: Susan Wahlke, Councilor Ward 1

AYES: Wahlke, Ward, Noreikis, Sprague

RECUSED: Williams

EXCUSED: Wes Ryan

Councilor Wahlke asked about the Chamber of Commerce Right-of-Way Vacation Hearing that was talked about in Executive Session.

City Attorney, Richard Appicello said that if Council wants to take action regarding the City initiation of Vacation of Right-of-Way on which the Chamber of Commerce property is located this would be the appropriate time to make that motion.

MOTION: To explore the right of way vacation issue.

DISCUSSION: Mr. Appicello supplied additional wording for the motion. Mayor Williams asked for a definition of the word “vacation”. The City Attorney explained that “Vacation” is a process under State Statutes where it is advertised and takes property that is burdened with a Right-of-Way Easement and remove the burden that is in the favor of the public.

AMENDMENT: To direct staff to return with review of the right-of-way in question and proposed alternatives for partial right-of-way vacation.

RESULT: ADOPTED [UNANIMOUS]

MOVER: Susan Wahlke, Councilor Ward 1

SECONDER: Roger Sprague, Councilor Ward 2

AYES: Wahlke, Ward, Noreikis, Sprague, Williams

EXCUSED: Wes Ryan

14. Other City Manager/City Attorney Reports – None

L. REPORTS FROM STANDING COMMITTEES

No committee reports were given.

M. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS

Jim Hoover expressed concerns again with his interview with the investigator, and with the City Council appointment to a Council position outside of an election.

Debbie Williams said that although this has been extremely uncomfortable to live through that she and her husband are praying for each Councilor individually and for the City as they want the best for the City.

Pastor Robert Harrison spoke in support of Mayor Williams.

N. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Council Discussion was held regarding extending an offer to the Elks Grand Lodge to purchase their building. Councilor Sprague states that the City sent a letter expressing an interest, but has failed to follow up and action needs to be taken.

MOTION:	To direct the City Manager to extend an offer to purchase the Elks property.
RESULT:	WITHDRAWN by Councilor Sprague]
MOVER:	Roger Sprague, Councilor Ward 3
SECONDER:	Susan Wahlke, Councilor Ward 1
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

Councilor Sprague discussed the need for a sign for the Community Center at the corner of Hwy 101 and SE 22nd or the Elks property. He said that purchasing the Elks would allow the Community Center to expand in the near future, and could possibly house the Senior Center. Councilor Ward said it would be nice to have the building/property, but there are too many unknowns. The City needs to proceed slowly.

Mr. Appicello reminded Council that they have talked about this property in Executive Session and so to the extent that they have had confidential appraisal information available to them, he suggested they may not want to discuss details. Councilor Wahlke shared that she is not sure that everyone is on the same page as to the offer. Mayor Williams agreed that it would be beneficial to own the property however he suggests a right of first refusal if any other offers become available. He added that he does not wish to see a property just sit there waiting for a decision to be made as to what to do with it.

Councilor Sprague said that he could amend his motion to include "first right of refusal" with any other offers. Mr. Appicello spoke again about the amount of the offer and that if it is disclosed then the other side knows the amount offered. Councilor Sprague added that the City does not need to offer the amount stated in the appraisal. Councilor Noreikis thanked Councilor Sprague for bringing this motion to Council, and suggests that they meet at their next Executive Session and get clear on the offer. Mayor Williams asked whether or not they can decide on a price in Executive Session. Mr. Appicello explained that you can come to a "consensus" on the price, but you cannot make a decision. He suggested holding a special meeting since they will be performing the swearing in of Councilor Anderson, and also hold an Executive Session on the same day as long as they are both advertised.

There was a unanimous consent to have an executive session along with the swearing in of Dick Anderson in a Special Meeting before the Work Session on October 19, 2016 at 3 pm. The special meeting would be at 2:45 pm.

MOTION:	To invite to the next Executive Session on October 19, 2015, 2:45 pm the new Council appointee.
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chester Noreikis, Councilor Ward 2
SECONDER:	Roger Sprague, Councilor Ward 3
AYES:	Wahlke, Williams, Ward, Noreikis, Sprague
EXCUSED:	Wes Ryan

O. ADJOURNMENT - Mayor Williams adjourned the meeting at 9: 23 pm.

DON WILLIAMS, MAYOR

ATTEST:

CATHY STEERE, MMC