

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 15-256EDG

DATE: September 17, 2015

RESPONDENT: WILLIAMS, Donald, Mayor, City of Lincoln City

COMPLAINANT: SPRAGUE, Roger, City Councilor, City of Lincoln City

RECOMMENDED ACTION: Dismiss Complaint

1 **PRELIMINARY REVIEW:** The Oregon Government Ethics Commission (Commission)
2 received a letter of complaint from Roger Sprague, city council member for Lincoln City on
3 8/21/15 (#PR1). Mr. Sprague alleged that Donald Williams, Mayor of Lincoln City (City),
4 might have failed to comply with the use of office and conflict of interest provisions of
5 Oregon Government Ethics law concerning a business with which he and his relative are
6 associated. Receipt of the complaint was acknowledged in letters to Roger Sprague and
7 Donald Williams. Donald Williams was provided with the information received in the
8 complaint. The respondent was invited to provide any information which would assist the
9 Commission in conducting the preliminary review in this matter.

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11 Information indicates that Mayor Williams took office in January of 2015. The complaint
12 and the accompanying supporting material indicates that Debra Williams, the spouse of
13 Mayor Williams, is the manager and registered agent of Genesis Family Properties, LLC,
14 (Genesis) which is described in the complaint as a vacation rental dwelling (VRD)
15 business. A copy of the Lincoln City VRD application dated 1/7/10 and signed by Debra
16 Williams, shows that Donald Williams is one of the owners of Genesis. VRDs are subject
17 to "accessory use" limits and restrictions imposed by the City. (#PR1)

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19 The complaint, written by the City Attorney, consists of a 24 page narrative and
20 approximately 300 pages of supplemental material. The narrative states the following:

21 ///

1 "On June 22, 2015, the City Council for Lincoln City Oregon granted permission to
2 the City Attorney to disclose executive session material, confidential memoranda
3 and client confidences, as appropriate, to address ongoing efforts to block, thwart
4 and obstruct VRD accessory use enforcement...This complaint was prepared by
5 the City Attorney pursuant to authorization but was submitted to the Council for a
6 decision concerning whether the Council would file the complaint. Council
7 authorized the complaint on August 10, 2015, and authorized the Council President
8 to sign the complaint form after review by outside counsel." (#PR1)

9
10 The complainant seems to allege that Mr. Williams was met with conflicts of interest during
11 executive sessions of the Lincoln City Council (apparently held on 2/9/15, 2/18/15, 3/9/15,
12 4/27/15 and 6/22/15) and may have failed to comply with the disclosure and disposition
13 requirements of ORS 240.120 and the use of office provisions of ORS 244.040. The
14 complaint also seems to allege that Mr. Williams used or attempted to use confidential
15 information gained through his official position to obtain a financial benefit for the VRD
16 business that he and his relative are associated with, that otherwise would not have been
17 available but for his holding of his official position. Finally, the complaint appears to allege
18 violations of Lincoln City council rules, Lincoln City municipal code, and other laws not
19 within the Commission's jurisdiction. (#PR1)

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21 The complaint contains what is described as excerpted transcriptions of selected portions
22 of executive session recordings on four of the dates noted above. No agendas, meeting
23 minutes, audio or video records of the executive sessions were included. Some of these
24 transcribed excerpts involve discussions of the City staff's recommended or actual VRD
25 enforcement procedures and processes. Mayor Williams apparently participated in some
26 of these discussions, and the complaint alleges that he was met with a conflict of interest
27 and should not have participated, due to his relationship with a VRD business and that
28 some of his remarks may have also implicated a violation of the use of office provisions.
29 (#PR1)

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31 The website maintained by the City of Lincoln City contains videos of **public** City Council

1 meetings, and in many cases it contains copies of agendas and written meeting minutes of
2 the public meetings. However, the website contains little to no information on the executive
3 sessions referenced in the complaint. Information indicates that the City apparently keeps
4 audio recordings of its executive sessions, but keeps no written meeting minutes. The
5 website contains only one executive session agenda (6/22/15) out of the five sessions
6 listed above. Information available appears to indicate that some of the executive sessions
7 listed in the complaint were held on the same date as a public City Council meeting, but
8 apparently were held as separate meetings. (#PR1 and #PR3)

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10 The complaint narrative contains apparently transcribed portions from audio recordings of
11 the 2/18/15, 3/9/15, 4/27/15, and 6/22/15 executive sessions. The complaint does not
12 specify the topics that were discussed at these executive sessions or the statutory basis for
13 holding the executive sessions. Although the complaint's description of the 2/9/15
14 executive session includes a mention of ORS 192.660(2)(f) and (h) as the statutory
15 authority, no supporting documentation was provided. (#PR1)

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17 The complaint includes apparent transcriptions of portions of the audio recording for the
18 3/9/15 executive session, during which the City Attorney advised Mayor Williams that he is
19 in violation of the accessory use limitations on his VRD business. The Mayor apparently
20 denied this assessment by the City Attorney and an exchange ensues. The complaint
21 alleges that following this executive session discussion, Debra Williams contacted the City
22 staff to dispute that the VRD business was in violation, and the complaint apparently
23 contends that Mr. Williams must have shared this "confidential" information with his
24 spouse, implicating a violation of Oregon Government Ethics law. (#PR1)

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26 Many of the records submitted with the complaint have are historical background to the
27 City's VRD enforcement issues, City records pertaining to particular VRD enforcement
28 actions proposed or taken, and educational information that was apparently provided to Mr.
29 Williams upon his election to Mayor, including material from the League of Oregon Cities
30 and the Commission's Guide to Public Officials. After a review of this material, it does not
31 seem that much of it is particularly relevant to the complaint allegations. (#PR1)

1 A limited examination of public city council meeting minutes posted on the City's website
2 show that Mayor Williams apparently publicly announced a conflict of interest and refrained
3 from participation and votes at several public city council meetings, including those held on
4 2/9/15, 3/9/15, and 4/27/15. (#PR3)

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6 Mr. Williams retained attorney William Kabeiseman to represent him in this matter. Mr.
7 Kabeiseman submitted a letter on behalf of Mr. Williams, which will be provided to the
8 Commission in its entirety, and excerpts are set out below:

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10 "My client was disappointed by the filing of this complaint on multiple levels. First,
11 he was disappointed that a complaint was filed that was so lacking in
12 substance....The allegations made by Mr. Williams' fellow councilors are devoid of
13 merit. Perhaps more importantly, Mr. Williams is disappointed that his fellow
14 councilors chose to attack his reputation in response to political disagreements.
15 Whatever disagreements there may be between and among the City Council, there
16 should be room to discuss political differences rather than launch attacks on your
17 opponents. Finally, Mr. Williams is disappointed in the role of the City Attorney in
18 orchestrating this complaint, rather than focusing on bringing the Lincoln City
19 Council together to address the issues before the Council in a thoughtful
20 manner...." (#PR2)

21
22 Turning to the procedure and substance of the complaint, Mr. Kabeiseman states:

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24 "...Moreover, as discussed in the complaint, the complaint is largely based on what
25 occurred in the executive sessions of the Lincoln City Council, but the majority of
26 the executive session material remains confidential and was not disclosed to either
27 the OGEC or provided to Mr. Williams to prepare his defense. The OGEC should
28 be wary of relying on only partial excerpts and on information that is only partially
29 disclosed. Notwithstanding this issue, even if everything in the complaint is
30 accepted as true, the complaint does not demonstrate any violations of the Oregon
31 Government Ethics Law." (#PR2)

1 The remainder of Mr. Kabeiseman's letter deals with the following points:

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3 1) The allegations concern conflict of interest violations that took place in executive
4 sessions and because no final decisions may be made in executive session and the
5 public is excluded from executive sessions, no disclosures are required.

6
7 2) Even if participation in an executive session discussion could result in a conflict of
8 interest, Mr. Williams is part of a class of VRD owners, as there are approximately
9 300 VRDs in Lincoln City.

10
11 3) Allegedly, Mr. Williams disclosed "confidential information" that was revealed to
12 him in an executive session on 3/9/15, but the only information Mr. Williams
13 disclosed was a matter of public record concerning information listed on a VRD
14 application made to the City in 2010. And, the allegation that he disclosed
15 "proposed procedures and strategy for enforcement of the VRD accessory use
16 limitation" is not credible, as a City's proposed strategy to enforce its laws is not
17 confidential. (#PR2)

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19 **RECOMMENDATIONS:** Donald Williams is the Mayor of Lincoln City and a member of the
20 city council, and held that position during the period relevant to this preliminary review. He
21 is a public official as defined in ORS 244.020(14).

22
23 ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(12) defines a
24 potential conflict of interest. A public official is met with either an actual or potential conflict
25 of interest when participating in an official capacity, in any action, decision or
26 recommendation if the effect would (actual conflict) or could (potential conflict) be to the
27 private pecuniary benefit or detriment of the public official, the public official's relative, or
28 any business with which either are associated.

29
30 ORS 244.120(2) requires an elected public official, such as Mr. Williams, on each occasion
31 when met with a conflict of interest, to publicly announce the nature of the conflict.

1 Following the public disclosure, if the conflict is an actual one, the public official must then
2 refrain from participating in any discussion, debate, or vote on the issue giving rise to the
3 conflict. Or, if the conflict is a potential conflict, the public official may participate in any
4 official action on the issue after a public disclosure is made.

5
6 There are occasions when a member of a governing body may be met with a conflict of
7 interest concerning a topic discussed during an executive session. In those instances, the
8 person would need to have publicly announced the nature of their conflict prior to the
9 executive session, and if the conflict were an actual one, the governing body member
10 would also have to refrain from official participation on that issue. For executive sessions
11 that are not held during a public meeting, in order for a member of the governing body to
12 make a public announcement of a conflict, the governing body members must: 1) be
13 aware in some specificity, the topics to be discussed in executive session, and 2) be in
14 receipt of that topical information enough in advance to have an opportunity to make a
15 public disclosure of the nature of their conflict at a public meeting held prior to the
16 executive session and 3) only discuss the specific topics noticed in advance.

17
18 ORS 244.040(1) prohibits a public official from using or attempting to use their official
19 position to obtain a financial gain or avoid a financial detriment for themselves, a relative or
20 household member, or a business with which they, their relative, or household member,
21 are associated, if the financial benefit would not otherwise have been available but for the
22 holding of their official position. ORS 244.040(4) states that a public official may not
23 attempt to further or further their personal gain through the use of confidential information
24 gained in the course of or by reason of holding position as a public official.

25
26 The complaint alleges that Mr. Williams disclosed confidential information from an
27 executive session discussion on 3/9/15 to his spouse, in an attempt to further his personal
28 gain or that of his relative or a business with which he and his relative are associated. The
29 transcribed exchange provided in the complaint seems to show the City Attorney informing
30 Mr. Williams that his VRD business was in violation of the accessory use provisions of the
31 Lincoln City municipal code, which could result in an enforcement action and monetary

1 penalties. Mr. Williams apparently denied any noncompliance. From the limited
2 information available during preliminary review, it appears that this very specific and
3 personal notification was delivered to Mr. Williams due to his ownership of a VRD
4 business, and it does not appear that the method of notice delivery, during an executive
5 session of the governing body, would prohibit Mr. Williams or co-owners of the VRD from
6 disputing the City's notice of violation.

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8 In conclusion, most of the allegations in this complaint are supported by very limited and
9 selected portions of records or summaries of executive session discussions. The
10 complaint was prepared by the City Attorney, who also appears to be a very prominent
11 participant in, and in some cases, the instigator of, the executive session discussions
12 described or quoted in the complaint.

13
14 The information available appears to be insufficient to constitute a substantial, objective
15 basis to believe that Mr. Williams committed a violation of the conflict of interest and use of
16 office provisions of Oregon Government Ethics.

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18 The Oregon Government Ethics Commission should move to dismiss the complaint.
19 (Motion 2).

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21 **ASSOCIATED DOCUMENTS:**

- 22 #PR1 Complaint signed by Roger Sprague and other information, received 8/21/15.
23 #PR2 Email and letter from attorney William Kabeiseman, on behalf of Donald
24 Williams, received 9/17/15.
25 #PR3 Copy of information downloaded 9/14/15 from website maintained by City of
26 Lincoln City at <http://lincolncityor.igam2.com/citizens/default.aspx>

PREPARED BY Diane Gould, Investigator *DB 9/17/15*

APPROVED BY Ronald A. Bersin, Executive Director *RB 9/17/15*

TO BE REVIEWED BY Lynn Rosik, Assistant Attorney General *reviewed via email 9/24/15*