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LEGAL MEMORANDUM

TO: West Linn City Council
FROM: Tim Ramis, City Attorney
DATE: November 6, 2019
RE: Bialostosky Negotiations

**PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

This memorandum provides the Council with a month by month timeline of the City's efforts to engage Mr. Bialostosky in settlement negotiations. Mr. Bialostosky made claims about the City's lack of effort to negotiate a settlement. We provide this history in case the Council wishes to clarify the record.

February 26, 2019: Mr. Dolan's email makes clear that the City wished to confer regarding settlement of the records request. A potential solution for an amicable resolution, reducing the scope of the request to a portion of Ms. Cummings' notebooks, was proposed. Mr. Bialostosky refused, stating he could not find value in accepting any offer unless he is able to inspect the original documents in their full, original form. This is a clear rejection of the legal process of redaction to protect legal information and proof that the City initiated settlement negotiations prior to the filing of the case.

March 19, 2019: Eight days after the case was filed Mr. Dolan reached out to Mr. Bialostosky by email again to attempt to resolve the matter. Again Mr. Bialostosky rejected the effort. Mr. Dolan made several follow up attempts to engage Mr. Bialostosky in settlement negotiations. He emailed and left Mr. Bialostosky voicemail on March 22, 2019 to see if he would agree to mediation, to which Mr. Bialostosky responded he had concerns with the concept of mediation in a public records dispute because he believed settling out of court would result in less judicial oversight of the results.

April 12, 2019 and April 22, 2019: Mr. Dolan emailed Mr. Bialostosky again stating we hoped he would reconsider mediation, and asking him to please give this additional thought. On April 22, 2019, Mr. Bialostosky replied he did not see the purpose in mediating. He stated, "I am seeking these records in their full form so that myself and others can inspect them." He further stated because he had put in a lot of work and money into the case, he would rather see it play out in open court "once the right for me and others to inspect the records as a whole is determined judicially."

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May 6, 2019: In an email to Mr. Bialostosky, Mr. Dolan asked if Mr. Bialostosky would consider limiting the scope of his request, and begin dialogue about making the notes available on a voluntary basis. Mr. Bialostosky responded on May 16, 2019 that he wanted to establish the public's right to inspect notes of an elected official in Oregon and by filing a partial summary judgment for his declaratory relief claim so his "right to inspect the notebooks will get a day in court[.]"

June 11, 2019: Mr. Bialostosky was again contacted about reducing the scope of his request and work with us and put the litigation aside. Mr. Bialostosky replied he would not engage in mediation talks or settlement discussions in private because he felt a different stance would be taken on the issue publicly in court.

July 23, 2019: Circuit Court Judge Henry Breithaupt issued a letter of decision denying Mr. Bialostosky's appeal and ordering the City to prepare an Order with specific language that Councilor Cummings is not a public body, therefore the matter is not a public record. The decision further ordered the City to indicate Mr. Bialostosky was not entitled to the relief requested. The Circuit Court's decision became final on August 14, 2019.

September 11, 2019: Mr. Bialostosky filed an appeal of the Circuit Court decision to the Court of Appeals.

October 2, 2019: Mr. Bialostosky's appeal was abated and transferred by the Court to the Appellate Court Settlement Conference Program. Through his counsel, Mr. Bialostosky's response to the Settlement Conference Program was that "[t]his was likely not a good candidate for the settlement program" and reiterated his wishes for the City and Ms. Cummings to acknowledge her notes constitute public records under the public records law. The City responded to the Court via a telephone conference that it wished to participate in mediated settlement discussions and that settlement was possible if Mr. Bialostosky would agree to limit the scope of his request. The Court's staff attorney indicated he would convey the conferral information to Mr. Bialostosky's counsel to consider.

October 28, 2019: The Court's staff attorney concluded a mediated resolution could not be reached and Mr. Bialostosky's appeal was removed from the Settlement Conference Program and returned to the Court of Appeal's active docket.