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LYONS CITY COUNCIL MEETING

September 24, 2013

OPEN MEETING 6:30 P.M.

Mayor Dan Burroughs called the Lyons City Council Meeting to order at 6:30 P.M. Present were Councilors Gary Alkire, Troy Donohue, Jesse O'Dell and Mark Orr. City Manager Mary Mitchell and Assistant City Manager Audrey McNerney attended as staff.

GUESTS. Molly Freeman, George Geddes, Michelle Gates, Jim Brockamp, Ron Adams, Steve Baldwin, Jim Purvis and Brenda Harris.

Burroughs inquired as to whether there were any declarations of conflict of interest or ex-parte contact regarding the agenda items. Burroughs declared a conflict of interest due to the fact that he had submitted a bill for services rendered which was reflected on the Paid Bills Report.

Ron Adams – NSSD Property Plans. Adams reported that the Old Mehama School had been secured from the North Santiam School District for \$1 per year on a 20 year lease. They plan to turn the building into a Community Youth Center. He said that the lease was through the Mehama Church because the property was given to the community of Mehama for a school. So long as it was used for a school it would remain their property. If it is not used for a school it would revert back to the heirs. No heirs could be found and the only entity in Mehama is the Mehama Community Church and therefore the only entity that could deal with the property. They have had volunteers working on the property trying to rejuvenate the building to get it back in service, hopefully by July of next year. He said there would be Saturday work parties and requested that the information regarding the work parties be placed on the City's reader board. There will be an Advisory Board to direct activities the members of which will be named soon. At the present time the person to contact is Troy Gulstrom, the Pastor of the Mehama Community Church.

Adams went on to say that the Community Youth Center will not be church related but it will be under Christian direction. The name that has been decided upon for the old school was The Old School Community and Youth Center.

Brenda Harris & Molly Freeman – Freeman Six Month Review. Harris stated that she, Mitchell, and Library Commissioner Alkire had met with Freeman to review the progress Freeman had made in her new position over the past six months. Harris referred to the report she had submitted to Council which set forth the progress Freeman has made. A copy of this report is available upon request. Harris recommended that Freeman receive a raise more in line with her duties, responsibilities and job description.

Harris then presented a 16 day Library Flow Chart. She stated that it reflected that the e-mails and phone calls were divided by 7 days rather than 16 because all of the phone calls had not been recorded for several days while she was on vacation and the 7 day number was a more accurate representation. She discussed the holds, new patron cards and volunteer hours. She said they were already working on the performer selection for the 2014 summer reading program which is paid for by grants. Orr complimented Harris on a well prepared report.

O'Dell asked if Freeman's hours would continue to be below the PERS mandated minimum and was advised that she works 40 hours per month which is below the minimum mandate. After discussion Alkire made a motion to increase

Freeman's salary by \$1.89 per hour which will bring her hourly rate to \$11.61 per hour. Orr seconded the motion. Voice vote. Motion carries. Freeman thanked Council.

CONSENT AGENDA.

Burroughs noted that Resolution #485, a Resolution Transferring General Fund Monies to the Library Fund was being added to the Consent Agenda which previously had consisted of the August 15, 2013 Executive Session Meeting Minutes and the September, 2013 Bills Paid report. Burroughs called for a motion to approve the Consent Agenda. Orr asked where we were currently within the Library Budget. Mitchell advised him that we were within budget. Orr then asked if, at the current rate of spending, we are expected to remain on budget. Mitchell said that we would be. Orr asked if payment for the bridge rails was in the Bills Paid report. Mitchell informed him that since the payment was made by charge card it was under the West Coast Bank bill. She advised Orr that they had not yet been installed.

O'Dell said that some of the things he stated toward the end of the meeting were not included in the minutes of the August 15, 2013 meeting. McNerney said that she thought that everything had been included but that the recording of the minutes was on her computer. He can listen to the recording and amend the minutes if desired. O'Dell said he would like to listen to the recording to determine if he wanted to amend the minutes.

Orr said that he would also like to state for the record that the minutes contain some conflicts. He would like to make sure they are correct before they are accepted. The Minutes of the August 15, 2013 meeting were removed from the Consent Agenda.

Orr made a motion to accept the Consent Agenda as follows:

- Bills Paid – September 2013 as applicable
- Resolution #485 – A Resolution Transferring General Fund Monies to the Library Fund.

Donohue seconded the motion. Voice vote. Motion carries.

REPORTS AND DISCUSSION.

Bridge Rails. Burroughs said that the reason that the bridge rails had not been installed was because Orr had volunteered to install them. Orr commented that at that time he did volunteer to do the work but because his work schedule has increased dramatically and he has some health issues he now does not have the time. After discussion Donohue stated that there was sufficient money in the budget to allow the City to hire someone to install them. Burroughs said that someone would be hired to install the bridge rails.

Street Crack Sealing. Burroughs presented a bid from Canyon Contracting L.L.C. to do the crack sealing on the City Roads. Bob Adams, of Canyon Contracting, said that he would like to get started if the weather holds. If the weather doesn't hold we will have to wait until spring, but it needs to be done. After discussion Donohue made a motion to accept the bid from Canyon Contracting L.L.C in the amount of \$9,692.80 to do the City street crack sealing. Alkire seconded the motion. Voice vote. Motion carries.

Council Availability for Mediation Meetings. Burroughs asked if all Council members were available for their individual meetings scheduled for September 25, 2013 and the subsequent Council meeting scheduled for September 30, 2013 at 6:30 P.M. Mitchell said that Burroughs, Alkire and O'Dell had confirmed their availability. Donohue said that he would be available and Orr said he would be there so long as his work schedule allowed it.

Minutes Discussion & Report(s).

- **Mayor Burroughs.** Burroughs stated that the Minutes of the August 15, 2013 meeting were 31 pages long. The preparation of minutes in this detail took a lot of time. He said that we should stick with the recorded minutes and include in the written minutes what is required by law. McNerney advised Council that the meeting is

recorded on a digital recorder and the digital recording of the meeting is transferred from the recorder onto her computer and are available for Council review.

- McNerney. McNerney presented a report advising Council of the requirements for written minutes of a meeting as set forth in ORS 192.650(1). A copy of this report is attached and made a part here by reference. The report emphasized to Council the importance of staff's attendance at all council meetings and the recommendation that Council Minutes of Council Meetings be prepared in accordance with the requirements of the Public Records Law as they have been in the past.
- McNerney. McNerney also advised Councilor Donohue that, in response to his comment at a recent meeting that the last two times the computers had crashed was the day after a Council meeting, she had checked the records for computer maintenance/replacement commencing July 1, 2010 through July 17, 2013 and found that the only time there had been a computer crash was after a storm due to a power surge and no data was lost. Donohue responded that his comment was that the day after a Council Meeting Mike Lucas called everybody saying that both lap tops needed to be replaced. He also said that his request to save the (recording of) minutes was due to a complaint he had filed because the recorded minutes had proof of the accusations in his complaint.

Orr stated that he had been present at a meeting held in executive session where staff was not present. There was discussion regarding the reason that staff was not present at that meeting and Orr stated for the record that he would like to know who prepared those minutes. McNerney said that she would check the records and answer his question at a later date.

O'Dell said that whether they agree or disagree regarding having staff at a meeting there is an ordinance regarding this issue which was discussed at the last meeting. He asked if the right of a Council member to make such a request is being taken away from them. Burroughs said the decision was up to the entire Council, not just one person. After discussion Burroughs said that since we are not in executive session yet we need to move on.

- Mitchell – Current Minutes Review. Mitchell said that since there were issues discussed at the Executive Session Meeting on August 15, 2013 which were not a part of the noticed meeting she had referenced some of the more significant issues to address tonight. This is a part of the "do over" which was discussed with the League of Oregon Cities attorney to prevent there being additional filings for un-noticed discussions that took place. She said that this report did not reference every topic, only some of the more significant ones so if anyone else has something they would like to refer to that was not pertinent to the executive session they have that right. She referred to O'Dell's comments with regard to what he can and cannot do as a Council Member. Mitchell gave a quick highlight of the applicable rules and there was some discussion regarding their interpretation.

There was discussion regarding communications among Councilors regarding their need to know what other Councilors were doing. Mitchell advised them that this was the purpose of the Commissioner's reports presented at each Council meeting.

There was also considerable discussion regarding the e-mail sent to Burroughs, Alkire and O'Dell with individual questions for each of them regarding on-going projects on which Mitchell requested updates. Mitchell informed Council that Orr and Donohue were not included because Orr did not have any ongoing projects at that time and Donohue does not accept e-mails. A copy of this e-mail is attached hereto and made a part hereof by reference.

Offense was taken because of the question raised as to the status of a forum to discuss a proposed law enforcement levy which was to be handled by Burroughs and Donohue and the fact that the e-mail had not been included in the Council books. Mitchell explained that the question was raised in the e-mail because Donohue had not responded to her telephone messages and apologized for the oversight of placing the e-mail in their books.

Donohue questioned if, because the confidential minutes of the meeting of the executive section were being discussed at a general meeting, they were no longer confidential. He also questioned whether all Councilors should be held liable for a \$1,000 fine if the meeting was run incorrectly by the Mayor. He complained that Councilors had not been given sufficient information as to how meetings should be run. Donohue resigned from his position as a Councilor and stated "I can do better for the public on the other side of the table and I hope our citizens start coming to the meetings; paying attention to what's going on. I did not sign up for all bickering, the back and forth, the covering your ass, so as of immediately I resign." With that said Donohue left the meeting.

Orr commented that his minutes were marked "Confidential." Burroughs explained that the parts Mitchell is talking about were not legal to be discussed in the meeting. Mitchell advised Council that what you can discuss in an executive session meeting is specifically what is noticed which was a disciplinary action. Any discussion not directly related to the disciplinary action is illegal. Mitchell counseled with several advisors to determine what was needed to correct these violations. She was told by the League of Oregon Cities that the best defense against an ethics violation complaint is to have another executive session meeting to hear the issues that should have been addressed in the proper manner during the executive session meeting and then anything that wasn't executive session material must be addressed in open session because they are open session topics.

Mitchell returned to her report and addressed the issues raised as set forth on page 16 regarding the fact that while Mitchell was on vacation McNerney had stated that she couldn't access Mitchell's e-mails. Mitchell said that she would like to clarify this. She said that McNerney has an e-mail address and she (Mitchell) has an e-mail address which are completely separate. The City does not have a joint City e-mail address. The computers are password protected but Mitchell and McNerney have the ability to share passwords as needed. There was discussion regarding Orr's e-mails, sent while Mitchell was on vacation. All but one was addressed to Mayor Burroughs.

Also, Orr's request to have the discussion regarding a new auditor placed on the agenda had been taken care of. There was discussion regarding the fact that it was sometimes confusing as to who Orr was expecting a response from and Orr's confusion regarding who was responding to his e-mails.

Mitchell referred to page 23 of the minutes which reflected a statement made by Alkire that Councilors did not trust the City Attorney. After discussion Mitchell asked each Councilor if they had trust in the City Attorney. They each responded that they had trust in the City Attorney but Orr and O'Dell stated that they were not pleased with recent responses.

She referred to the statement made by Mayor Burroughs, as reflected on page 25 of the minutes, referencing a statement made by Councilor Orr that his "oft stated goal was to remove the current City staff." Mitchell asked Orr if one of his goals was to remove the staff. She said her question required only a yes or no answer. She asked if that had been a campaign promise or a goal. After some discussion Mitchell said that she would like to know if there is any truth to the statement. Orr said that he believed that he had not made that statement.

Mitchell advised Council that she had finished her report in connection with the executive session minutes.

Mitchell – July 23, 2013 – Minutes Clarification & Questions. Mitchell said that she had not been in attendance at the July 23, 2013 meeting and that statements had been made on the record that, for the record, she and McNerney would like to clarify, question and respond to.

- Page 1. There was a statement made that there was a requirement in the City Charter that minutes of a meeting be presented at the next meeting. Mitchell checked the City Charter, the Council Rules and the Municipal Code regarding minutes and their timing. There is nothing in any of the rules dictating timing on the preparation of the minutes other than that an accurate record is kept.

- Page 1. Orr stated that his e-mails make the agenda almost every month and in his opinion he sometimes feels that this is a way to discredit him because he asks questions. Mitchell stated that the answer to Mr. Orr's question is that he has requested that they be. Mitchell went on to say that Councilor Orr submits requests on a regular basis to have specific issues either included on the agenda and/or that Council be provided with copies of his e-mails requests. Those requests have been complied with and documented accordingly.

Mitchell stated that immediately following the July 23rd meeting a newspaper article appeared on the front page of the Stayton Mail citing multiple instances of Orr remarking that he took issue with his e-mails being placed in Council books and on the agenda and that staff is attempting to discredit him by doing so. Staff is at a loss to understand why Councilor Orr would request that an action be taken and then subsequently make statements that staff is attempting to discredit him by doing so. Mitchell asked Orr why when he had asked staff to provide Council with these documents, and why, after he asked that issues be placed on the agenda, would he say that staff is attempting to discredit him by doing what he had asked them to do.

Orr stated that this originated a few years ago and brought up issues from years past. Burroughs said that this was a recent issue, not addressing issues from years back. Burroughs told Orr that what is being asked about is what has happened since the beginning of this year.

At Orr's request Mitchell reiterated her question. Orr again referred to the e-mail addressed to O'Dell, Burroughs and Alkire that had not been included in the Council books as an example. Mitchell responded that this issue had been brought up many times.

Orr asked about the article in the Stayton Mail. Mitchell responded that immediately following the July 23rd meeting, a newspaper article appeared on the front page of the Stayton Mail citing multiple instances of Orr remarking that he took issue with his e-mails being placed in Council books and on the agenda and that staff is attempting to discredit him by doing so. Orr asked if anyone at the Council table had made a reference that he was responsible for the article. The response was negative.

- Page 2. Regarding e-mails: Staff was asked if they were saving every e-mail to and from the City of Lyons. Mitchell responded that according to the Secretary of State Archives Division, e-mails do not have, in and of themselves, a retention schedule. Their retention is based on the nature of the e-mail and the retention period associated with the subject matter. We do not save every e-mail. E-mails are copied and retained in the appropriate file.

There were other issues contained in this report, however, since it appeared that discussing these issues further would be non-productive Mitchell requested that Burroughs move on to the next agenda item. A copy of this report is available upon request.

NEW COMPLAINTS/INVESTIGATIONS/INFORMATION.

- a. **Donohue Complaint – Mayor Burroughs.** Mayor Burroughs turned the meeting over to Mayor Pro-Tem Alkire. Alkire requested that Mitchell read the letter received from Councilor Donohue. A copy of this letter is attached hereto and made a part hereof by reference. Alkire asked if Burroughs had any response to this complaint. Burroughs read his letter in response to the complaint. A copy of this letter is also attached hereto and made a part hereof by reference. Alkire asked for comments from Council.

Orr commented that this is very "farfetched" from the reality of how that meeting was run and that he may "seek this further outside of the City tomorrow morning." He went on to say that they were in executive session to discipline a Councilman and the way it was run by Mayor Burroughs set a precedent that maybe some of them were subject to the rules and others aren't.

Alkire told Orr that all this had to do with was the vulgar language that was used during that executive session. Orr said that he would likely be pursuing this further and at that point the (video) tape would be brought into evidence. Alkire told him that he had that right and encouraged him to pursue it if he so desired. Alkire informed Orr that this letter was regarding meeting conduct and language. He then asked if there was any issue with regard to the apology for the language.

Orr said that he didn't feel that the (apology) letter reflected the nature of the meeting. Alkire asked "regarding the language?" Orr then said "regarding the language."

O'Dell thanked Burroughs for the letter and commented that "vulgar" words were said by everyone; he had said one. He said that the only concern he had was with the distribution of materials at the meeting. O'Dell said that he thought that because Burroughs had said they were presented to show the history of Mr. Orr's conduct that they were presented to sway a decision. O'Dell said that they should have been instructed, at the beginning of the meeting, to put these letters aside and take them home and that he felt that it was a bad choice to put them out.

Alkire noted that Burroughs' letter of apology was an apology for the language and the manner in which the meeting had been conducted. He asked for a motion to accept Burroughs' apology letter. O'Dell made a motion to accept Mayor Burroughs' apology letter. Orr said the he wouldn't second the motion because it (the letter) is inaccurate. The motion failed due to lack of a second.

Alkire said the matter would be put on hold until Councilor Orr finalizes his investigation. Mitchell stated that Mayor Burroughs could retract his letter since it was not accepted; Burroughs retracted his letter. Alkire relinquished the chair to Mayor Burroughs.

O'Dell then said that he would like to apologize for his use of a vulgar word during the meeting.

Staff Report – Baldwin. Baldwin advised Council that the School Board wished to extend an invitation to Council to the Mari-Linn Open House which is taking place tomorrow, September 25th, from 5:30 P.M. to 7:00 P.M. for a tour of the building. The School Board wanted him to express that each Councilor was being invited to attend. O'Dell advised Baldwin that Council members had meetings scheduled for September 25th and if Councilors did not attend the Open House it was because it conflicted with their scheduled meetings. Baldwin said that Councilors were encouraged to come to the school at any time for a tour.

Geddes asked why Council was having so many special meetings. Burroughs explained that the meetings and workshops held by Council, except for two executive sessions were open to the public.

NEW COMPLAINTS/INVESTIGATIONS/INFORMATION. (Continued)

- b. **Lucas Investigation Request – Councilor Orr.** Mitchell read the letter submitted on August 15, 2013 by D. Michael Lucas. A copy of this letter is attached hereto and made a part hereof by reference. Mitchell stated that staff had been directed to contact the City Attorney to ask him to contact the newspaper to determine if they could find out the initiator of the article and also to request a retraction of the statement in the article that the City's Budget had not been adopted. The City Attorney's response was that he had requested the information but did not receive a response. They provided no information concerning the source of their information. The City Attorney advised that: "If there are no findings with regard to the genesis of the article the Lucas letter is in essence a moot point." Since nothing was learned, the letter can be set aside.

There was discussion regarding e-mails forwarded by Orr to Mayor Burroughs and copied to Mitchell regarding Orr's request for a special meeting to discuss the Lucas letter. Orr questioned the length of time it had taken the City Attorney to comply with the request for him to contact the Stayton mail and his response with regard to the request for such a special meeting. There was discussion regarding the attempts made to schedule a date for the

meeting and the fact that according to the City Attorney's response no special meeting was necessary.

Ron Adams stated that he had just sat through 2 hours of what he considered ridiculous lack of respect for fellow human beings. He said that if every single one of them were to think about what they were doing and do it in person and by voice and not by e-mails they could probably work out every single issue in about 3 minutes. He said "I'm sorry but that's not the way to run a rodeo." He counseled them to think about what they are saying and if you have a problem with somebody to talk to them. He said that he commended Council in their efforts to run the City but said that they are not doing what is good for themselves or the City. He said that he hoped that at the next meeting he comes to there would be a more cordial atmosphere and more respect for one another. Burroughs thanked him for his comments and said that it was for that reason that he had asked Adams to come and talk to him.

There was additional discussion regarding the Lucas letter. Burroughs said that if Orr wanted to proceed on his own with regard to the letter he was entitled to do so but that as a Council he felt they should be done with it.

Mitchell informed Council that there is a clarification that will be placed in the October 2nd issue of the newspaper stating that the City's budget was passed as required.

After discussion Alkire made a motion to close the Lucas investigation request as a matter satisfied. O'Dell seconded the motion. Voice vote. O'Dell voted Aye, Burroughs voted Aye, Alkire voted Aye. Orr voted Nay. Motion carries.

c. Mitchell – Orr Document Address. Burroughs turned the meeting over to Mayor pro-tem Alkire.

Alkire stated that this was in reference to Mayor Burroughs' notes that were handed out by Orr at the last City Council meeting. Burroughs stated that these notes were his personal notes, not for public viewing. He said that (at that time) he had not had a chance to investigate whether he was right or wrong about a few things that he felt were questionable. He went on to say that after these issues were investigated and paperwork reviewed, it was proven to him that these issues did not present a problem, then Orr handed out his (Burroughs) handwritten notes out at the conclusion of the last City Council meeting. These notes were taken without Burroughs' knowledge or permission. Burroughs said that this was evidently Orr completing his threat to Councilors during a telephone conversation that he and Orr had recently had.

Alkire asked Mitchell to read the report she had prepared, a copy of which is attached hereto and made a part hereof by reference.

There was discussion regarding who had undertaken the investigation (Alkire) and how much of 13th Street had been paved (13th Street in its entirety). Orr said that when he read these notes he couldn't rest without getting clarification. Burroughs told Orr that the work was paid for by a grant. Burroughs went on to say that these notes were personal; they were his notes to himself, not anybody else.

Orr told Alkire that he had sent him 4 or 5 e-mails on this issue and that he had not received a response. Alkire responded that he did not send e-mails but that he accepts phone calls or visits to his home. Orr said that he was looking out for the best interests of the City.

O'Dell said that he had reviewed the notes and his concern was potential abuse of power and/or misappropriation of funds. After discussion O'Dell asked if Council could get the City Attorney's opinion on the issue. Mitchell said that she had complete documentation on the issue. Alkire said that prior to the next Council meeting the documentation would be forwarded to the City Attorney for his response.

O'Dell made a motion that this matter be reviewed at the next Council meeting taking into consideration the findings of legal counsel. Orr seconded the motion. No final vote was taken on this matter.

Burroughs requested that McNerney read a letter he had prepared in connection with this issue. McNerney read the letter a copy of which is attached hereto and made a part hereof by reference.

Orr asked Burroughs if he had any evidence of what was said during their phone conversation. He said that he had told Burroughs that when he was looking up past issues with Lon Conner to use to show as a pattern he found some letters. He said he told Burroughs that he was going to bring one of the letters to Council because he didn't feel comfortable with them. Burroughs responded that Orr had said that he had plenty on all of the Councilors and that if they threw him under the bus he was going to throw them under the bus. Orr asked Burroughs if he really thought that he (Orr) was really concerned about being reprimanded. Burroughs responded that he did.

There being no further discussion Alkire said that at this time he would like to return the Chair to Mayor Burroughs so that he can answer questions in connection with this letter. Orr asked for a copy of the letter which McNerney provided.

Mitchell Staff Reports.

- **Executive Session – Findings of Fact re: Meeting Laws and Rules.** Mitchell presented a report entitled Findings of Fact Regarding the August 15th Meetings: Executive Session Meeting at 6:30pm, Subsequent Open Meetings and Donohue Complaint, a copy of which is attached hereto and made a part hereof by reference.

There was discussion regarding the fact that there was 40 minutes of discussion at the Executive Session Meeting regarding whether or not staff was to be allowed to attend the meeting. Orr said that, for the record, he had the right per the City Attorney to ask that staff not be present.

O'Dell said that he had drafted something that he would like to read. He read "when I joined City Council I received a Council Book for that night. Recently I received a City Municipal Code Book. I feel the City has placed me in a very precarious situation. I was told that if I had any questions I could talk to the City Manager and as events went on I found out that there was a Public Records Meeting Manual, the Council Rules, City Codes of Ethics are in the City Council Rules and the information I received from the City differs from what I received from the League of Oregon Cities. So on that part who is correct? I am trying to search and find out what information I can to make sure I follow the rules and how I can do everything to do my job correctly. As for asking the City Manager questions, that is great. The problem is first I have to know what questions to ask. If you don't know the questions to ask you can't ask the questions to get all the information that you need. If the City does not have a packet of information to give out to each new councilmember and/or mayor with all the information that they need or where to find it to comply with the rules and laws, then as a City we have failed miserably. We have left every councilmember and mayor in legal jeopardy. I am very angered over this and at this point I will have to give very serious consideration if I wish to continue to be on the City Council due to the serious situation the City has placed me in. I do not have faith in the City Council or the Mayor to be able to conduct meetings properly because of lack of knowledge and before we partake in any future meetings of any type we need all the information to perform the duties as councilmen and mayors and those rules that are set in place by the City, the state or any other governing bodies that these rules and information regarding the laws and how they must be followed."

Mitchell responded that while she wasn't sure she could provide materials that would cover every possible situation that might occur but that she would do everything she could to provide O'Dell with information. There was further discussion regarding O'Dell's concerns. O'Dell said that he really has to make a decision as to whether or not he will continue in this position.

Mitchell said that there had been a training session after the first of January when everyone took their positions which was conducted by Jenny Mesmer of the League of Oregon Cities who went over the rules and provided documentation. However, because O'Dell had not been a council member at that time he did not have the

benefit of that information it might be a good idea to have another training session which she would be happy to coordinate.

There was discussion regarding Council's need for access to and an understanding of applicable rules for governing bodies. There was also discussion regarding the statement read at the beginning of the executive session meeting which set forth the purpose of the meeting; what could be discussed at the meeting and the fact that no decision could be made. Mitchell commented that she didn't know what further information could have been given. She said that you can only discuss the topic at hand which is what has been noticed. You can come to a consensus but you have to close the executive session before you can make a decision. The decision has to be made in public.

Mitchell advised Council that since Councilor Orr had requested that staff not be present at the executive session portion of this meeting, she had provided a template for Mayor Burroughs. The only things remaining to be done is to have a council vote as to whether or not staff is going to stay or whether they are going to be excused.

Open Executive Session – ORS 193.660 (2)(B)

Councilor Orr said that he would like to remain in open session tonight rather than going into executive session. The meeting continued in open session.

Burroughs stated that there had been a consensus of opinion that there would be a letter of apology to the people. Orr stated that he would like to apologize to the City of Lyons; a generic apology. He said that he had requested counseling from the Mayor which has been declined.

Burroughs asked if everyone had had a chance to review Mitchell's report, attached hereto and made a part hereof by reference.

Burroughs then asked if Council had any questions regarding the report. Burroughs next asked if Orr disputed the accountings. Orr said that at the last Council Meeting Baldwin stated that some of the elements in the Conner letter are wrong.

Mitchell stated that she had done a line by line comparison of each one of the reports; the letter from Conner, Councilor Orr's account, Mrs. Orr's account and Baldwin's account (which was received subsequent to the executive session meeting). O'Dell asked why Mrs. Orr had not been interviewed. Mitchell advised him that Mrs. Orr had submitted her accounting of the incident in writing. Burroughs stated that he had received three e-mails from her regarding the incident. Orr asked that the e-mails received by Burroughs from Mrs. Orr be read and Mitchell complied with his request as to the first 2 e-mails; Orr read the third e-mail dated **September 5th** inquiring whether Mayor Burroughs or the City had made any progress regarding her concerns for safety for herself and all the public.

Mitchell informed Council that a letter signed by Mayor Burroughs had been sent to Mrs. Orr on **August 30th** assuring her that her concerns had been reviewed; that Council Rules will be applied and adhered to and that her safety would not be jeopardized should she choose to attend future Council meetings. Orr said that if she had received the letter it would have been included with his documentation regarding this issue and that she is still not attending Council meetings.

Burroughs said that he had reviewed the letters from Conner and Baldwin and that Baldwin's letter stated that he was the one who had made the comment that he wouldn't talk behind Orr's back; that he would talk to his face. Burroughs went on to say that no one but Orr and his wife had seen Conner shake his finger in Mrs. Orr's face.

Burroughs asked Orr if he disputed the accounting. Orr responded that he was not disputing the accounting but that he wanted the fact that Baldwin had stated that some of the elements of Conner's letter were wrong taken into consideration by Council when making their decision.

O'Dell referred to the correspondence he had received from Mitchell which stated in pertinent part that Councilors have no authority when acting as an individual. Mitchell referred to page 7 of her report entitled "Issue(s): Councilor Behavior." She stated that the rules stated thereon were the rules applicable to the complaint that was submitted. Council must decide for themselves, based upon these rules, whether or not the councilor behavior referenced constitutes a "substantial violation" and if so, the resulting disciplinary action. O'Dell asked why this complaint had gone any further because the meeting had been closed and at that point he was acting as a citizen. Burroughs responded that Orr had just stepped away from the Council table and was still a Councilor in the eyes of those in the room at the time.

There was additional discussion as to when a Council person is deemed to be an individual and Mitchell quoted from Section 6.2 of the Council Rules which state in pertinent part that Council members shall, when addressing staff, fellow Council members or *members of the public...shall not engage in personal attack, ...and shall at all times, while in session or otherwise, conduct themselves in a manner appropriate to the dignity of their office.* Mitchell said that according to two different accounts, and according to Conner's letter, Councilman Orr interjected himself rudely and contemptuously stating that he wanted to thank him for his comments during the Council meeting because they were the reason he was sitting on Council and Conner was not. She went on to say that Conner's and Baldwin's accounts agree but use different descriptive terms. Conner's states "rude, contemptuous, antagonistic verbal attack." Baldwin's states "bullish and rude." She said that ultimately Council has to make a determination as to whether they consider this behavior a substantial violation of the rules.

Burroughs polled Council for their vote on this issue. Council's vote was that Orr's action did not constitute a substantial violation. Orr said that at the start of the next Council meeting he will make an apology on tape that he stepped out of line if Council feels that that would be appropriate. Burroughs polled Council for their vote as to whether Orr's proposed action was appropriate.

O'Dell – Aye.
Alkire – Aye.
Burroughs – Aye.

There was further discussion with regard to precedents and O'Dell remarked that if they were to go by precedents that would take away each Councilor's ability to make a decision. He agreed with Mitchell's report that these issues should be decided on a case by case basis.

Mitchell asked for the disposition of the approval of the August 15th Executive Session Minutes. O'Dell reminded her that Orr and he were going to contact staff, listen to the recording and determine what changes, if any, were to be made at a later date.

There was discussion regarding language used in that meeting and O'Dell suggested that a jar be set on the table and if a word is used that shouldn't be it will cost a quarter with the money collected to go to the Friends of the Library. Orr made a motion to have a jar set on the Council table and if a Councilor uses a vulgar word he will be required to put a quarter in the jar. The funds raised in this manner will be donated to the Friends of the Library. O'Dell seconded the motion. Voice vote. Motion carries.

There being no further business to come before Council, the meeting adjourned at 10:30 P.M.

Audrey McNerney
Assistant City Manager