

Confidential Preliminary Investigative Report

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On August 24, 2015, the City Council passed a motion "to authorize the Council President to execute a contract for investigation and prosecution services to examine the Mayor's conduct relative to the City Charter, Ordinances & Rules, and present such to the City Council."

The Council President subsequently executed an agreement with the Local Government Law Group of Speer Hoyt for services to conduct this investigation. I conducted this investigation on behalf of the firm.

In conducting this investigation, I interviewed all of the City Council members in office at the time, except the Mayor, who declined to be interviewed through his attorney. The attorney advised that, while he did not represent the Mayor's wife, he would encourage the Mayor and his wife to decline to be interviewed.

In addition, I interviewed the City Manager, City Attorney, the Planning Director, the City Recorder, a number of other city employees and citizens. The investigation was delayed for a number of months because the Oregon Department of Justice was conducting a separate investigation. I initially chose to await the outcome of the Department of Justice investigation, in the hopes that my investigation might benefit from any information which the DOJ might choose to share from their investigation. When I did not hear anything further, I contacted the DOJ on January 27, 2016 to inquire about the status of their investigation and was informed that their investigation was ongoing and that they would appreciate it if I held off interviewing others until they had completed their criminal investigation.

I again contacted the DOJ on June 20, 2016 and asked whether the DOJ still wished me to defer my investigation. The DOJ responded that they did not see any need for me to continue to suspend my investigation.

Coercion

The City Charter provides:

"4.8 Interference in Administration

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A member of the council shall not coerce or attempt to coerce the manager or any other city employee in carrying out the duties of the office; or coerce or attempt to coerce the manager or any other city employee in making an appointment or in removal of an officer or employee or in purchasing equipment, services or supplies; or attempt to exact a promise relative to an appointment from any candidate for manager. The council may, however, in open session, discuss with or suggest to the manager anything pertinent to city affairs or the interests of the city. A violation of this subsection may occasion the censure or removal from office of the offending member of the council, by the council or a court of competent jurisdiction."

The charter itself does not define the term "coerce". Merriam-Webster defines the term as follows:

1. to restrain or dominate by force <religion in the past has tried to *coerce* the irreligious — W. R. Inge>
2. to compel to an act or choice <was *coerced* into agreeing>
- 3 to achieve by force or threat <*coerce* compliance> "

Black's Law Dictionary defines "coercion" as follows:

"Compulsion; force; duress. It may be either actual, (direct or positive) where physical force is put upon a man to compel him to do an act against his will, or implied, (legal or constructive) where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his free will would refuse."

Findings: I found no evidence that the Mayor *directly* threatened, forced or attempted to force the City Attorney to do anything or to refrain from doing anything in the performance of the City Attorney's duties. The Mayor did criticize the City Attorney on several occasions during council meetings, but those criticisms did not amount to coercion or attempted coercion. After he was elected, but before he took office, the Mayor asked the City Attorney whether the City Attorney planned to resign, but this alone does not amount to coercion. The Mayor also attempted to persuade other city councilors to fire the City Attorney, and this appears to have been motivated by the City Attorney's efforts to enforce the existing Vacation Rental Dwelling (VRD) Ordinance which would have had a negative economic impact on the Mayor due to the Mayor's ownership, through an LLC, of a VRD, as well as having a negative impact on other VRD owners who were in violation of the ordinance or who might wish to violate the ordinance by renting their VRD's for more than the maximum allowable number of nights.

However, under the city charter, the City Attorney is an appointee of the Council, so one of the duties of council members is to hire and fire the City Attorney. I find that efforts to persuade fellow council members to fire the City Attorney, however motivated, do not amount to prohibited coercion under the charter, although those efforts could certainly have the effect of causing a City Attorney to reconsider enforcing ordinances on the books, at least against the Mayor.

There is also evidence that the Mayor sought to recruit and appoint to the budget committee citizens who would then propose elimination of the City Attorney's position in the budget. The city charter and

state law assign to the Mayor and council the duty of selecting the budget committee members. I find that selecting members who might promote elimination of the City Attorney's position does not constitute the type of coercion prohibited under the city charter, regardless of the Mayor's motivation.

One instance was reported in which the City Attorney and another city employee were in the City Attorney's office bantering about soccer. The Mayor appeared in the doorway to the office and asked the city employee whether the City Attorney was bothering him and said that he could have the City Attorney removed if he was bothering the other employee. Both the City Attorney and the employee said that the Mayor did not appear to be joking. The city employee was aware of the time that the Mayor was no fan of the City Attorney.

Again, however, this does not appear to be the type of coercion prohibited by the charter, particularly in light of the fact that there was no indication of what the Mayor wanted the City Attorney to do or not do specifically.

The far more difficult issue to address is whether the Mayor engaged in *indirect* coercion of the City Attorney by orchestrating, directing or otherwise participating in efforts by citizens to get the City Attorney fired, get him to quit, eliminate his position or get him to "put a gun in his mouth", as one citizen reportedly said.

Citizens have the right to criticize the performance of public officials. In my interviews with citizens I stressed that my investigation was limited to the Mayor's activities, and that the citizens were not the subjects of the investigation.

Given this right of citizens, it is unclear what degree of participation by the Mayor, even if it occurred, would be sufficient to constitute prohibited coercion under the charter. I found no relevant case law on this issue.

All of the citizens that I interviewed denied that the Mayor had orchestrated, directed or encouraged them to make any criticisms of the City Attorney or to urge the City Council to fire the City Attorney or eliminate the City Attorney's position. There was no evidence that the Mayor wrote any letters, emails or scripts outlining what his supporters should say or do with respect to the City Attorney, except that one citizen said that the Mayor encouraged him to "tone down" a draft of proposed testimony by the citizen before the Council, which the citizen had provided to the Mayor to get his feedback. This citizen said the Mayor had suggested that the citizen remove or reword parts of the testimony that were more directly critical of the City Attorney. The citizen said that he toned it down, as the Mayor suggested, but did not send the revised version to the Mayor before reading it to the Council.

As discussed below, it appears that the Mayor has a private email account which he has used to communicate with at least one citizen regarding city business, a fact which I confirmed in an interview with a citizen on July 6, 2016. I have not had access to the Mayor's private email account, which might well shed additional light on the extent of the Mayor's involvement in citizen efforts to get the City Attorney fired or to eliminate the position and outsource the position's duties through the budget

process. Due to the Mayor's refusal to be interviewed, I was unable to ask him directly what the level of his involvement was in these repeated citizen criticisms.

One citizen acknowledged establishing a website regarding the City Attorney which is highly critical of the City Attorney and which openly seeks the City Attorney's removal. However, the citizen denied that the Mayor had anything to do with that.

The Mayor did forward an email (from the Mayor's city email address) to a newspaper reporter. That email was from the City Attorney, addressed to the City Council, and was marked "confidential" by the City Attorney. The City Attorney's email did not say why the email was marked "confidential". Confidentiality could be claimed on the basis of attorney-client privilege or several other bases under the Oregon Public Records Law. The Mayor did not inquire of the City Attorney the basis for the claim of confidentiality before forwarding this email to the reporter. There is insufficient evidence to prove that the Mayor's purpose in forwarding the email to the press was to coerce the City Attorney in the performance of the City Attorney's duties.

It is clear that a small group of citizens has vigorously exercised their right to criticize the City Attorney at council meetings as well as in the press and one of those citizens established a website devoted to criticizing the City Attorney. At least some of the citizens were unhappy with the City Attorney because of his efforts to enforce the existing VRD ordinance, which they described as heavy-handed and overly aggressive. At this point, however, without the opportunity to question the Mayor and without access to the Mayor's personal email account or accounts, there is thus far insufficient evidence to prove that these citizens were acting at the direction of the Mayor in order to indirectly coerce the City Attorney into refraining from enforcing the existing VRD ordinance.

Similarly, I have thus far found insufficient evidence to prove that the Mayor directly coerced or attempted to coerce other city employees in the performance of their duties. While there were some instances of the Mayor making inquiries of City Hall staff, none amounted to prohibited coercion.

There were, however, some City Hall staff members who expressed that they felt intimidated and feared retaliation from the Mayor and his supporters when they performed official duties which they believed were perceived as being detrimental to the Mayor's agenda of eliminating or lessening the restrictions on the number of days that VRD's can be rented. There was, however, no indication that the Mayor directly participated in retaliation against or coercion of other city employees.

There were some suggestions that the Mayor had participated in coercion of the City Attorney by allowing citizens to personally criticize the City Attorney during City Council meetings. The City Charter includes the following relevant provisions:

4.5 Mayor's Functions at Council Meetings.

(1) The Mayor shall preside over council deliberations and shall have a vote on all questions before the council. The Mayor shall preserve order, enforce the rules of the council, and determine the order of business under the rules of council.

(2) Notwithstanding subsection (1) of this section, the Mayor may temporarily cease to chair a council meeting and delegate the functions described in subsection (1) to the council president or to another council member if the council president is absent, or unable to function as Mayor.

5.1 Mayor

The Mayor shall be deemed a member of the council and shall have the same rights as other council members. The Mayor shall appoint members of committees established by council rules, and where not otherwise specified in council rules or other city ordinances, such other committees as the Mayor deems appropriate. The Mayor shall represent the city at ceremonial functions, unless the Mayor or Council directs otherwise. The Mayor shall sign all records of proceedings approved by the council and shall sign all ordinances passed by the council after their passage. The Mayor shall have no veto power. After the council approves a bond of a city officer or a bond for a license, contract or proposal, the Mayor shall endorse the bond.

The Council Rules include this provision:

6.3 Guidelines for Councilors:

- A. Work with the staff as a team with a spirit of mutual respect and support.
- B. Except in a Council meeting, avoid influencing a department head or the city manager concerning personnel matters, purchasing issues, contracts, the selection of consultants, the processing of development applications, granting of City licenses and permits, or any other matter under the direction of the city manager. However, the sharing of ideas on these matters is appropriate.
- C. Limit individual contacts with city officers and employees so as not to influence staff decisions or recommendations, interfere with staff work performance, undermine the authority of supervisors, or prevent the full Council from having the same benefit of information received.
- D. Respect roles and responsibilities of staff, including if and when expressing critical opinions in a public meeting or in correspondence including electronic mail messages.

Nothing in these provisions requires the Mayor to attempt to limit or restrict criticisms of any public official by members of the public, or to require members of the public to respect the roles and responsibilities of staff. I find that allowing personal attacks on the City Attorney by members of the public during City Council meetings does not constitute prohibited coercion of staff members.

Confidentiality

If the Mayor released confidential information, that could constitute a violation of certain state criminal laws which are incorporated into the city's ordinances by reference. I had hoped that the Oregon Department of Justice investigation might shed some light on this, but, after many months, there is no indication that they are moving forward, so I provide the following analysis:

City Ordinances

9.04.010 provides, in relevant part:

B. All misdemeanor and violation offenses and penalties described in ORS Chapters 161, 162, 163, 164, 165, 166 and 167, as well as offenses described in the Oregon Vehicle Code and ORS Chapters 33, 133, 137, 153, 471, 475, 476, and 480, are hereby adopted by reference. When cited as a city ordinance violation, violation of an ORS section adopted by reference is an offense against this city and shall be punishable to the same extent as provided in the applicable state statute or city code. Notwithstanding the above, nothing herein prohibits or restricts the city police or City Attorney from electing to pursue a charge and prosecute defendants with state law offenses in the name of the state of Oregon pursuant to ORS 221.339.

Because the city ordinance incorporates ORS Chapter 162, the following state statutes are potentially relevant:

State Statutes

162.235 Obstructing governmental or judicial administration. (1) A person commits the crime of obstructing governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle.

(2) This section shall not apply to the obstruction of unlawful governmental or judicial action or interference with the making of an arrest.

(3) Obstructing governmental or judicial administration is a Class A misdemeanor. [1971 c.743 §198; 1981 c.902 §1]

162.405 Official misconduct in the second degree. (1) A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

(2) Official misconduct in the second degree is a Class C misdemeanor. [1971 c.743 §214]

162.410 [Repealed by 1961 c.649 §9]

162.415 Official misconduct in the first degree. (1) A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another:

(a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or

(b) The public servant knowingly performs an act constituting an unauthorized exercise in official duties.

(2) Official misconduct in the first degree is a Class A misdemeanor. [1971 c.743 §215]

In *State v. Florea*, 296 Or. 500, 677 P.2d 698, 701 (1984), the Oregon Supreme Court explained that this statute "requires these elements: (1) The defendant must be a "public servant." ² (2) He or she must knowingly perform an act. (3) The act must be performed "in" his or her official duties; that is to say, in the defendant's official capacity, exercising the powers or opportunities available by virtue of his or her official position. (4) The act must be an [296 Or. 504] unauthorized exercise of this official capacity, power, or opportunity. (5) The act must be done "with intent to obtain a benefit or to harm another."

162.425 Misuse of confidential information. (1) A public servant commits the crime of misuse of confidential information if in contemplation of official action by the public servant or by a governmental unit with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public, the public servant acquires or aids another in acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action.

(2) Misuse of confidential information is a Class B misdemeanor. [1971 c.743 §216]

State statute gives the City Attorney authority to prosecute these crimes, as follows:

221.339 Jurisdiction of municipal court; prosecutions by City Attorney. (1) A municipal court has concurrent jurisdiction with circuit courts and justice courts over all violations committed or triable in the city where the court is located.

(2) Except as provided in subsections (3) and (4) of this section, municipal courts have concurrent jurisdiction with circuit courts and justice courts over misdemeanors committed or triable in the city. Municipal courts may exercise the jurisdiction conveyed by this section without a charter provision or ordinance authorizing that exercise.

(3) Municipal courts have no jurisdiction over felonies.

(4) A city may limit the exercise of jurisdiction over misdemeanors by a municipal court under this section by the adoption of a charter provision or ordinance, except that municipal courts must retain concurrent jurisdiction with circuit courts over:

(a) Misdemeanors created by the city's own charter or by ordinances adopted by the city, as provided in ORS 3.132;

(5) Subject to the powers and duties of the Attorney General under ORS 180.060, the City Attorney has authority to prosecute a violation of any offense created by statute that is subject to the jurisdiction of a municipal court, including any appeal, if the offense is committed or triable in the city. The prosecution shall be in the name of the state. The City Attorney shall have all powers of a district attorney in prosecutions under this subsection. [1999 c.1051 §40]

The only evidence that I have found thus far, without access to the Mayor's private email account or accounts, of potential releases of confidential information by the Mayor are as follows:

1. The forwarding by the Mayor to a reporter of an email from the City Attorney to the City Council which was marked confidential and dated May 20, 2015. That email was forwarded to the reporter from the Mayor's city email account the same day.
2. The possible sharing by the Mayor of information from an executive session with the Mayor's wife.

3. The release of documents by the Mayor related to the Oregon Government Ethics complaint filed against the Mayor.

Forwarding of the City Attorney's Email

I find that the Mayor did forward the City Attorney's email, which was marked confidential, to a reporter. I find that this act did not violate ORS 162.425 Misuse of confidential information, cited above, because there is no evidence that the Mayor acquired or aided another in acquiring "a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action". The statute appears to contemplate situations where public officials use confidential information to, for example, buy property that may be affected by city development plans. It does not appear that the statute is intended to reach situations where the use of confidential information would not result in the Mayor or anyone else *acquiring* an interest in a property, transaction or enterprise.

I also find that forwarding the email did not constitute a violation of ORS 162.235, Obstructing governmental or judicial administration, because there is no evidence that it was done to *intentionally* obstruct, impair or hinder the administration of law or other governmental or judicial function *by means of intimidation, force, physical or economic interference or obstacle*. An allegedly incorrect story had previously been printed by the reporter's publication, possibly as the result of incorrect information provided by the Mayor, so it is possible that the Mayor forwarded the email simply to correct the record. The Mayor's email said only "Regards", followed by the forwarded email from the City Attorney. It's also possible that the Mayor forwarded the email for the purpose of further embarrassing the City Attorney and eroding support for the City Attorney. There is no evidence one way or another which would prove beyond a reasonable doubt the Mayor's motivation, but what is clear is that the forwarding of the email did not constitute "intimidation, force, physical or economic interference or obstacle".

The forwarding of the email also does not appear to have violated ORS 162.405, Official misconduct in the second degree, which applies only if the official knowingly violates any *statute* relating to the office of the person. Because ORS 162.425, Misuse of confidential information does not apply, as discussed above, there does not appear to be any state statute which was violated, unless it could be proven that the forwarding of the email violated the government ethics law by being part of the scheme by the Mayor to obtain financial gain or avoid financial detriment, as will be further discussed below.

There is also thus far insufficient evidence regarding the Mayor's motivation in forwarding this particular email to establish beyond a reasonable doubt that the purpose was to obtain a benefit or harm another, as is required to establish the crime of Official misconduct in the first degree. Under ORS 162.415.

I find that the release of this email did violate the Council rules, which provide:

5. CITY COUNCIL-CONFIDENTIAL INFORMATION

5.1 Councilors will keep confidential all information provided to them in executive session meeting, or information provided as a confidential communication under law, to insure the City's position in the

confidential matter is not compromised. No mention of the information obtained should be made to anyone other than to other Councilors, the city manager, City Attorney, or designated staff.

5.2 Any public statements, information or press releases, including those related to a confidential matter, should be handled by a designated Councilor or the city manager.

5.3 The Council may censure a member who discloses a confidential matter or otherwise violates these rules.

The email was marked confidential by the City Attorney and the information contained in the email could have been exempt from public disclosure under the attorney-client privilege or any number of other exemptions under the public records law. The Mayor made no inquiry as to the grounds for the claimed confidentiality of the memo before releasing it. The Mayor had no authority to make the unilateral decision to release the document.

Possible sharing by the Mayor of information from an executive session with the Mayor's wife.

March 9, 2015, Executive Session

On March 9, 2015, in executive session, the Mayor was specifically advised that he should not participate in efforts to repeal the accessory use limitation applicable to vacation rental use of residentially zoned property. At that meeting, the City Attorney explained that he was uncomfortable with what had occurred at the February executive session meeting. The Attorney explained that he was aware the Mayor was renting more than his land use approval (code violation under LCMC 17.84.020) and that repeal of the accessory use limitation would eliminate that violation.

Four days later, the Mayor's wife approached the city's planning director, saying that she had heard that the city was going to begin enforcing the VRD ordinance. She told the planning director that when she originally applied for her permit, she put 150 nights a year on the application, but only because she believed that was the maximum number of nights that the VRD owned by the LLC owned by her and the Mayor would be rented for the partial year remaining at the time she applied. In a press report the Mayor was quoted as saying of this allegation: "that's really interesting because I don't remember the (city) attorney being in the living room that night. How he knows what I told my wife is beyond me and to file an ethics charge on just hearsay is just ridiculous." Mrs. Williams submitted an affidavit in connection with the ethics complaint stating that her husband had returned home from a meeting of the Lincoln City Council on March 9, 2015 and asked her how many days she had put on their application for a VRD in 2010. She said that she asked her husband why he was asking about that information and he responded that he could not talk about it and they did not discuss it any further.

Thus far, in the absence of access to the Mayor's personal email account, there is insufficient evidence to prove that the Mayor was the one who informed his wife of information gleaned from the executive session. If Mrs. Williams had more specific information, a number of other people were in attendance at that executive session and it is logically possible that one of them, rather than the Mayor, might have shared the information with her.

Release of Oregon Government Ethics Commission records

As the Council is aware, there is currently a pending lawsuit against the city by Ross Smith claiming, among other things, that a number of executive sessions, including this one, were improper because allegedly improper notice was given of those executive sessions and topics were discussed in the executive sessions which did not qualify for consideration in executive session. If successful, the lawsuit might establish that the discussions in the executive session should not be considered confidential because the executive session was improper. The city is represented in that lawsuit by a separate independent legal counsel, who has filed a motion to dismiss the lawsuit on the grounds that some of the claims are barred by the statute of limitations and on the grounds that Ross Smith does not have legal standing to bring the lawsuit. A ruling on that motion is pending.

I find that the Mayor did release OGEC records, which included partial transcripts of exchanges which occurred in executive session and which were submitted pursuant to ORS 192.502 (10), which creates an exemption from public disclosure of exempt documents transferred from another governmental entity.

I find that this disclosure did not constitute a violation of ORS 162.235, Obstructing governmental or judicial administration, because there is no evidence that it was done to *intentionally* obstruct, impair or hinder the administration of law or other governmental or judicial function *by means of intimidation, force, physical or economic interference or obstacle*.

From the press report, it appears that the Mayor was attempting to defend himself against the charges. One of the challenges in this particular situation is that the charges involved things that happened in executive sessions, which is why the city submitted the partial executive session transcripts to the OGEC under the "transferred documents" exemption.

I find that this act did not violate ORS 162.425 Misuse of confidential information, cited above, because there is no evidence that the Mayor acquired or aided another in acquiring "a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action".

I also find that releasing the OGEC documents did not constitute second or first degree official misconduct under ORS 162.405 or 162.415, because the release of the documents by the Mayor does not appear to have been a knowing violation of any *statute* relating to the Mayor's office, and this particular release does not seem designed to obtain a benefit or harm another, as is required to establish the crime of Official misconduct in the first degree.

Even if there is some debate about whether the Mayor was entitled to release these documents under the Oregon public records laws, it is clear that the Mayor had an independent obligation to maintain the confidentiality of executive session minutes under section 5 of the Council rules.

The OGEC Decision and the Criminal Statutes

The OGEC dismissed the complaint filed by the city. The decision curiously failed to address one of the primary bases of the complaint against the Mayor which was that the Mayor had attempted to use his official position to obtain financial gain or avoid financial detriment (loss of rental revenue or fines) by

advocating in executive sessions for elimination of the accessory use limitation. Instead, the commission's decision said:

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

The complaint alleges that Mr. Williams disclosed confidential information from an executive session discussion on 3/9/15 to his spouse, in an attempt to further his personal gain or that of his relative or a business with which he and his relative are associated. The transcribed exchange provided in the complaint seems to show the City Attorney informing Mr. Williams that his VRD business was in violation of the accessory use provisions of the Lincoln City municipal code, which could result in an enforcement action and monetary penalties. Mr. Williams apparently denied any noncompliance. From the limited information available during preliminary review, it appears that this very specific and personal notification was delivered to Mr. Williams due to his ownership of a VRD business, and it does not appear that the method of notice delivery, during an executive session of the governing body, would prohibit Mr. Williams or co-owners of the VRD from disputing the City's notice of violation."

The decision never addressed whether it was an ethical violation for Mr. Williams to advocate for a change to the ordinance which would have been to his financial benefit.

While the Council rules incorporate the government ethics laws by reference, those laws are not incorporated as one of the state laws that the city is entitled to enforce through its criminal code. The question then arises as to whether the Council could make its own determination that an ethical violation was committed and, if so, whether the criminal statutes cited above would apply. I can find no cases where a council has ever made that determination and then pursued criminal prosecution for government ethics violations. However, it is theoretically possible.

I find that, by advocating for elimination of the accessory use component of the ordinance, the Mayor violated the government ethics law. The Mayor had received trainings and warnings from the City Attorney, but continued to advocate for elimination of the accessory use requirement, which had been a centerpiece of his campaign for office. The Mayor and his wife were one of the top 25 violators of the ordinance. While the Mayor claimed in press reports not to be motivated by personal financial gain, he clearly stood to financially benefit, along with some other VRD owners, if the ordinance were changed. He did not seek or obtain a formal determination from the OGEC that he was exempt from the rules as a member of a class of similarly situated people that was sufficiently broad to qualify for a class exemption from the rules.

I can find no cases holding that the official misconduct statutes do not apply to violations of the government ethics laws. Accordingly, I find that the Mayor could be prosecuted for first or second degree official misconduct. When elected officials receive repeated warnings and trainings and elect to ignore them in order to pursue an agenda which happens to benefit them financially, that constitutes official misconduct.

162.405 Official misconduct in the second degree. (1) A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

(2) Official misconduct in the second degree is a Class C misdemeanor. [1971 c.743 §214]

162.410 [Repealed by 1961 c.649 §9]

162.415 Official misconduct in the first degree. (1) A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another:

(a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or

(b) The public servant knowingly performs an act constituting an unauthorized exercise in official duties.

(2) Official misconduct in the first degree is a Class A misdemeanor. [1971 c.743 §215]

Conclusions: I find that the Mayor violated the Council Rules by leaking to the press an email from the City Attorney that was marked confidential and by releasing OGEC records which contained partial transcripts of confidential executive sessions. I find that the Mayor violated the government ethics laws by advocating for a lessening of the restrictions on renting VRD's. I find that there is sufficient probable cause to prosecute the Mayor for official misconduct in either the first or second degree.

Council options.

Continue investigation and make public records request for emails discussing public business from Mayor's private email account.

Referral for prosecution by a special independent prosecutor.

Motion to censure for confidentiality breaches and, if not referred for criminal prosecution, for attempted use of office to avoid financial detriment.