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TRACEY M. SLAGLE, CLERK

240

21 MAR -3 P3:47

SUPERIOR COURT
YAKIMA CO. WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

LESTER CALLAHAN,

NO.

2120035039

Plaintiffs,

SUMMONS

vs.

CITY OF SELAH, a public agency,
SELAH CITY COUNCIL, a governing body.

Defendants.

TO: YAKIMA COUNTY SUPERIOR COURT CLERK

TO: CITY OF WAPATO

A lawsuit has started against you in the above-entitled court by the above-named Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for plaintiff within twenty (20) days after service of this Summons (or within sixty (60) days after the service of this Summons if served out of the State of Washington) excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what it asks for because you have not responded. If you serve a Notice of Appearance on the undersigned attorney, you are entitled to a notice before a default may be entered.

You may demand that plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon plaintiff. Within fourteen (14) days

1 after you serve the demand, plaintiff must file this lawsuit with the court, or the service
2 on you of this Summons and Complaint will be void.

3 If you wish to seek the advice of an attorney in this matter, you should do so
4 promptly so that your written response, if any, may be served on time.

5 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of
6 the State of Washington.

7 DATED this 3rd day of March, 2021.

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11 
12 DAVID THERRIEN-POWER, WSBA #40627
13 ALEX NEWHOUSE, WSBA #40052
14 Newhouse & Power, PLLC
15 Attorneys for Plaintiff
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SUPERIOR COURT
YAKIMA CO WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

LESTER CALLAHAN,

Plaintiffs,

vs.

CITY OF SELAH, a public agency,
SELAH CITY COUNCIL, a governing body.

Defendants.

NO.

2120035039

COMPLAINT FOR VIOLATIONS OF
WASHINGTON'S OPEN PUBLIC
MEETING ACT OF Ch. 42.30 RCW & FOR
INJUNCTIVE RELIEF UNDER THE OPEN
PUBLIC MEETINGS ACT.

COMES NOW, Plaintiff LESTER CALLAHAN, by and through his attorneys of
record, Alex S. Newhouse and David M. Therrien-Power of Newhouse & Power, PLLC, and
hereby alleges as follows:

I. JURISDICTION & VENUE

1.1. The above captioned case alleges violations of Washington State's Open Public
Meetings Act ("OPMA") 42.30 et. seq. These violations of the OPMA occurred in
Yakima County, Washington. As a result, this court has jurisdiction pursuant to RCW
42.30.120, and RCW 42.30.130.

1.2. Lester Callahan is a resident of Yakima, County.

1.3. The Defendant City is a municipal corporation located within Yakima County State of
Washington. Therefore, this Court also has personal jurisdiction.

COMPLAINT FOR VIOLATIONS OF
OPMA - 1

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308 Yakima Valley Hwy
Sunnyside, Washington 98908
Phone: 509-515-2113
Email: staff@newhouselawpllc.com

1.4. Venue is proper as to all named defendants because the alleged causes of action in this Complaint arose from actions which took place in Yakima County.

II. PARTIES

2.1. Defendant City of Selah is a "Public Agency" as defined in RCW 42.30.020(1).

2.2. Defendant City of Selah City Council is a "Governing Body" as defined in RCW 42.30.020(2).

2.3. Plaintiff lives in and is a citizen of Yakima County, State of Washington.

III. FACTS

3.1. On July 28, 2020 the Selah City Council held an online study session which preceded a City County Meeting. Recordings of that which occurred on July 28, 2020 during study session and council meeting were posted by the City of Selah to www.youtube.com on July 29, 2020. <https://www.youtube.com/watch?v=Flu16UdZvjw>

3.1.1. During the July 28, 2020 City of Selah study session Selah City Council member Kevin Wickenhagen made the following statement:

I think the chalk thing is going to be a difficult thing, uh, you know, Russ, you say about the, the chalk, we haven't done it. I never remember seeing a full-sized road painted with anything anywhere in the city, ever, and they were painting on the, the full size in the middle of the road of a, the city-owned property. I don't think that's right either. I have, I have a real concern about the chalk as far as on the sidewalks because if we say its first amendment, you can do it, what happens when somebody writes something and then the neighbor comes over and writes over the top of it. Where are we going to be at that point in time? What if somebody comes out and is painting swastikas and nooses on the road...black lives matter. How are we going to handle that if we say it's all, you know, it's all first amendment right. You can do what you want. I'm feeling at this point in time we have to continue what we're doing. We clean everything that is out there. I don't know how we back away from that. Rob, you might have an idea of it, but I don't know how we back away from the stance we've taken at this time because if we go forward, I guarantee we're going to get confrontations with chalk out on our streets on our side.

1
2 3.2.Immediately following the statement in paragraph 3.6 above, Selah City Administrator

3 Don Wayman commented as follows:

4 So, Chris, uh, we have in our last council meeting before the last council meeting
5 we, we brought the issue up that we are cleaning it up aggressively at this time. We
6 haven't had pushback from a majority of the council on that. Uh, We've been
7 moving forward with that, consistently, since this all started. So as far as cleaning
8 it up, we've been doing it. We're going to continue to do it at the direction of the
9 mayor, and consistently, no matter what the message is. So there's nothing new
10 here. Uh, and moreover, my understanding is that we've, uh, we presented it
11 to the council and there was not an overwhelming objection. We had two
12 council members vote against cleaning it up. But there were five that voted
13 for it, so where are we at here? Are we changing? Are we, are we revisiting this
14 again? Uh, because right now the mayor is directing us to clean it up and we're
15 doing it, consistently. (Emphasis Added).

16 3.3. In sum, during the study session, which was recorded and occurred on July 28, 2020, Mr.

17 Wayman stated that the City of Selah City Council voted 5-2 in favor of removal of chalk
18 art.
19

20 3.4.Moreover, during the study session on July 28, 2020 City administrator Don Wayman

21 stated that the Selah City Council met prior to the July 14, 2020 Selah City Council meeting
22 to discuss and/or vote on the removal of chalk art in the City of Selah.
23

24 3.5.In his July 28, 2020 study session comments Don Wayman made it clear that Wayman

25 believed that the matter of the removal of chalk art by the Selah City Council was resolved
26 with finality.
27

28 3.6.On July 29, 2020 a Selah City Council member sent and electronic mail ("email") to the

29 other City Council members and the Mayor about the 5-2 vote that was referenced by City
30 Administrator Don Wayman on July 28, 2020. A true and correct copy of that email is
31 attached hereto and marked as EXHIBIT A. The subject line of the email was "For
32 council's informational purposes only, Council please do not reply to preserve OPMA"

1 3.7. In the email attached as EXHIBIT A, Selah City Council Member Suzanne Vargas stated:

2
3 "Madam Mayor,

4
5
6 I'm concerned that the rules governing our executive sessions are being violated.

7
8 During our Study session last night, Mr. Wayman referenced some information
9 about a council vote on chalk removal that I believe to be derived from our
10 executive session.
11

12
13 This comment also exposed our use of a straw poll, which I believe to be beyond
14 the parameters of permitted activities within executive sessions.
15

16
17 I'd like to request these matters be investigated and reported back on.
18

19 Thank you, Suzanne"
20

21 3.8. The disclosure of EXHIBIT A was the subject of a lawsuit under Yakima County Superior
22 Court Cause No. 20-2-02261-39. A true and correct copy of a ruling dated January 19,
23 2021 is attached hereto and marked as EXHIBIT B.
24

25 3.9. In EXHIBIT B, the Court found, in relevant part:

26 "After reviewing the document in camera it is obvious that an action occurred that
27 is not authorized to take place in an executive session therefore the action itself is
28 not protected. See e.g., Miller v. City of Tacoma, 138 138 Wash.2d 318 (1999);
RCW 46.30.060(2). Any discussion of the action likewise should not be afforded
the protection of the PRA in light of the policy to narrowly construe exemptions.

1 As noted by Mr. Wilkinson, citing Attorney General Opinion AGO 2017 No. 5
2 August 3, 2017, "A participant who discloses conversations not legally within the
3 scope of an executive session would not transgress the public purpose for which
4 executive session are authorized in the first place." Citing In Re Recall of
5 Lakewood City Council members, 144 Wn.2d at 586."

6 See EXHIBIT B at page 4.

7 3.10. The Defendant(s) action of having a vote of the quorum of its members that occurred
8 in executive session violated Washington law, as no votes are allowed to take place in
9 executive session under the OPMA.

10 3.11. By so acting, the Defendants materially violated the policy, intent, and express
11 language of the OPMA.

12 3.12. No public vote on chalk art was taken at the June 24, 2020 Selah City Council meeting.
13 A true and correct copy of the minutes and agenda from the June 24, 2020 Selah City
14 Council meeting is attached hereto and marked as EXHIBIT C.

15 3.13. No public vote on chalk art was taken at the July 14, 2020 Selah City Council meeting.
16 A true and correct copy of the minutes and agenda from the July 14, 2020 Selah City
17 Council meeting is attached hereto and marked as EXHIBIT D.

18 3.14. No public vote on chalk art was taken at the July 28, 2020 Selah City Council meeting.
19 A true and correct copy of the minutes and agenda from the July 28, 2020 Selah City
20 Council meeting is attached hereto and marked as EXHIBIT E.

21 3.15. The claimed purpose of the Executive session on June 24, 2020 was to evaluate
22 complaints brought against a public employee (RCW 42.30.110(1)(f)) and review the
23 performance of a public employee (RCW 42.30.110(1)(g)).

24 3.16. The claimed purpose of the Executive session on July 14, 2020 was "Potential
25 Litigation, RCW 42.30.110(1)(i)."

IV. CAUSE OF ACTION

A. Violation of OPMA by engaging in votes and final deliberation action while in Executive Session.

- 1.1. The Plaintiff repeats and incorporates by reference all paragraphs 1.1 – 3.21 above.
- 1.2. The open public meetings act, herein “OPMA” defines “Action” to mean the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.
- 1.3. RCW 42.30.020(4) defines the word “meeting” to mean any meeting “at which action is taken.”
- 1.4. A quorum of the Selah City Council as governing body met and took actions in violation of the OPMA by engaging in a deliberation and vote in executive session.
- 1.5. A quorum of the Selah City Council did arrive at a final action by consensus agreement in Executive Session in violation of the OPMA.
- 1.6. The Selah City Council has a long-standing practice of participating in meetings, taking votes and engaging in routine business practices that violate the OPMA during executive session.
- 1.7. Meeting and voting by the Selah City Council during executive session on whether or not to remove chalk art for the City of Selah constitutes a meeting and final action for purposes of the OMPA and its violation for actions which took place ultra vires and illegally during executive session in violation of RCW 42.30.020(3) and the OPMA.

1 1.8. Taking a vote or “straw poll” during an executive session which was for the stated purpose
2 of “Potential Litigation” goes beyond the stated purpose under RCW 42.30.110(1)(i) and
3 is in violation of the OPMA.
4

5 1.9. Taking a vote or “straw poll” during an executive session which was for the stated
6 purpose of evaluating complaints brought against a public employee (RCW
7 42.30.110(1)(f)) and review the performance of a public employee (RCW
8 42.30.110(1)(g)). goes well beyond the stated purpose under RCW 42.30.110(1)(f) and (g)
9 and is in violation of the OPMA.
10

11 1.10. Defendants have failed to permit the public to attend meetings in which final actions
12 were taken in violation of the OPMA.

13 1.11. The public is threatened with continuing violations of the OPMA by Defendants.
14

15 1.12. No notice was given by the Selah City Council to the public that a vote would be taken
16 on whether or not the City of Selah would be removing chalk art.

17 1.13. Defendant’s conduct in making decisions in violation of the OPMA is ongoing and
18 violates the clear intent and purpose of the OMPA to ensure transparency and public trust
19 in governmental action.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the OPMA provides for mandamus or injunctive relief, as well as civil
23 penalties against individuals named defendants, for which they are personally liable if they
24 knowingly violate the OMPA. (RCW 42.30.130 and 42.30.120), Plaintiffs pray for relief
25 against the above captioned Defendants as follows:
26

27 6.1 A declaration from this Court that Defendants’ actions described above violate the
28 OMPA.

29 COMPLAINT FOR VIOLATIONS OF
OPMA - 7

NEWHOUSE & POWER, PLLC
308 Yakima Valley Hwy
Sunnyside, Washington 98908
Phone: 509-515-2113
Email: staff@newhouselawpllc.com

1 6.2. For this Court to rescind the ultra vires and illegal actions of the Defendants in clear
2 violation of the OPMA.

3 6.3. For this Court to impose the maximum statutory penalty against each individual city
4 council member for violation of the OPMA.

5 6.4. For this Court to issue injunctive relief ordering the City of Selah, the Selah City Counsel,
6 and each individual City Council member to refrain from continuing to violate the action.

7 6.5. For this Court to order a permanent injunction against Defendants for using executive
8 session as a means to take secret votes to violate the OPMA.

9 6.6. For an award to Plaintiff of reasonable costs and attorney fees for bringing forth this
10 action against Defendants for violation of the OPMA as authorized in RCW 42.30.120(2).

11 6.7. For any other just and equitable further relief that this Court deems proper to prevent
12 Defendants from continuing to violate clear Washington law.

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15
16 Dated this 3rd day of March, 2021

17
18 Attorneys for Plaintiff

19
20
21 By: 
22 Alex S. Newhouse, WSBA #
23 David M. Therrien-Power, WSBA #40627
24 Newhouse & Power, PLLC

EXHIBIT A

COMPLAINT FOR VIOLATIONS OF
OPMA - 9

NEWHOUSE & POWER, PLLC
308 Yakima Valley Hwy
Sunnyside, Washington 98908
Phone: 509-515-2113
Email: staff@newhouselawpllc.com

From: Vargas, Suzanne
To: Raymond, Sherry; Carlson, Russell; Peterson, Clifford; Bell, Roger; Wickenhagen, Kevin; Matson, Jacquie
Subject: For council's informational purposes only, Council please do not reply to preserve OPMA
Date: Wednesday, July 29, 2020 3:25:21 PM

Madam Mayor,

I'm concerned that the rules governing our executive sessions are being violated.

During our study session last night, Mr Wayman referenced some information about a council vote on chalk removal that I believe to be derived from our executive session.

This comment also exposed our use of a straw poll, which I believe to be beyond the parameters of permitted activities within executive sessions.

I'd like to request these matters be investigated and reported back on.

Thank you, Suzanne

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EXHIBIT B

**COMPLAINT FOR VIOLATIONS OF
OPMA - 10**

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P. 6

Superior Court of the State of Washington
For the County of Yakima

FILED

'21 JAN 19 19:10

SUPERIOR COURT JUDGES

Judge Kevin S. Naught
Judge Elisabeth M. Tutsch
Judge Douglas L. Federspiel
Judge Blaine G. Gibson
Judge David A. Elofson
Judge Ruth E. Reukauf
Judge Gayle M. Harthcock
Judge Richard H. Bartheld

Yakima County Courthouse
128 North Second St.
Yakima, Washington 98901

SUPERIOR COURT
YAKIMA CO. WA

SUPERIOR COURT
COMMISSIONERS

Shane M. Silverthorn
Susan C. Arb

Phone: (509) 574-2710
Fax: (509) 574-2701

January 19, 2021

Timothy Hall, Attorney
Hall and Gilliland PLLC
1111 W. Yakima Avenue
Yakima, WA 98902

D.R. (Rob) Case, Attorney
Larson, Berg & Perkins, LLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907

Re: Wilkinson v. City of Selah, Cause No. 20-2-02261-39

Dear Mr. Hall and Mr. Case:

This shall serve as my letter opinion following the hearing on Friday January 15, 2021 and my *in camera* review of the document produced for inspection by the City of Selah as a result of Mr. Wilkinson's Motion for Order to Show Cause filed December 23, 2020.

Factual & Procedural Statement. Mr. Hall made a public records request to the City of Selah on September 24, 2020 to the then Public Records Officer, Mary Wurtz. The request stated:

I am requesting electronic copies of any email sent by any Selah City Council Member to any other Selah city Council member since June 1, 2020 regarding any alleged violations of the Open Public Meetings Act – including but not limited to - the use of straw polls by the Selah City Council during executive sessions. If there were any investigations/reports/discussions conducted by any agency within the City of Selah regarding any violations of the Open Public Meetings Act by any employee of the City of Selah or by any Selah City Council member since June 1, 2020 please provide those electronic records – as well as any emails detailing the same.

Having received no response, Mr. Hall filed suit on Mr. Wilkinson's behalf on December 8, 2020. On December 17, 2020 the City of Selah responded claiming that its new Public Records Officer, Treesa

Morales, that it had just become aware of the PRA request by Mr. Hall, that she had located one such document, a one page email, and that the document was exempt from production. The City claimed the following exemptions: RCW 42.56.280, RCW 42.56.510; Selah Municipal Code 1.06.060; attorney-client privilege per Hangartner v City of Seattle, RCW 42.56.070(1), RCW 5.60.060(2) and WAC 44-14-06002; and the work product privilege.

Mr. Wilkinson next filed a Motion for an Order to Show Cause under RCW 42.56.550 and an Order to Show Cause was entered ex parte setting a time for the City of Selah to appear and show cause why an order requiring the City to disclose the record denied to Mr. Wilkinson should not be entered. The City Opposed the relief via the Show Cause Process and claimed the following five exemptions: (1) RCW 42.56.280 (Intra-Agency Opinion); (2) RCW 42.56.520 (Any Other Law) and/or RCW 42.56.070(1) (Any Other Statute); (3) Selah Municipal Code section 1.06.060 and/or RCW 42.23.070(4); (4) Attorney Client Privilege and Common Interest Doctrine; and (5) Work Product Privilege.

Public Records Act -- RCW 42.56 & Open Public Meetings Act -- RCW 42.30

RCW 42.56.550 provides a process for a member of the public to seek public records that have been denied to him or her for inspection or copying by an agency. Subsection (1) provides in part that the responsible agency must:

Show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

Further, the statute allows the court to examine any record in camera and the court may conduct a hearing based solely on the affidavits. RCW 42.56.550(3). This Court has done both.

In examining the affidavits/declarations in this matter and the record in camera, together with the assorted exemption claims of the City, this Court keeps in mind RCW 42.56.030 which provides:

Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

Similar to RCW 42.56.030, RCW 46.30.010 provides:

Legislative declaration. The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

RCW 42.30.110 provides:

Executive sessions. Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

- (i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
- (iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

RCW 46.30.060(2) provides:

No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

Analysis of Claimed Exemptions.

First Exemption. RCW 42.56.280 (Intra-Agency Opinion). The email in question was sent by one council member to the mayor and other council members and no other person. Dec. of Case, para 8; Dec of Morales, para 5. The City claims the sender expressed an opinion in the email. Id.

This exemption fails as the City has not met its burden. After reviewing the document in camera it is obvious that it is not a pre-decisional deliberative process that is being discussed in the email. See West v. Port of Olympia (2008), *rev denied* 165 Wn.2d 1050 and Progressive Animal Welfare Soc v. University of Washington, 125 Wash 2d 243, 256-57 (1994). It also may very well contain the author's opinion but it is not the type of opinion that falls within the exemption. Id.

Second Exemption. RCW 42.56.150 (Any Other Law) and/or RCW 42.56.070(1) (Any Other Statute). The City relies on Hangartner v City of Seattle, 151 Wn2d 439, 450-454 (2004) which holds that the attorney-client privilege can make documents exempt even if not otherwise listed as a specific exemption. This exemption was briefed with the attorney client and work product exemptions.

Third Exemption. Selah Municipal Code section 1.06.060 and/or RCW 42.23.070(4). The cited Code requires City Council members, mayor and staff to hold in confidence anything that transpired in executive session unless given approval by the council to discuss them outside of executive session. RCW 42.23.070(4) prohibits disclosure of a municipal officer to disclose confidential information gained by reason of his or her position. The City provided declarations which indicates that the executive session discussions are supposed to be confidential and that the City Council has not granted approval for any attendee(s) to disclose what occurred during its executive session of July 14th. Dec. of Case, paras 9-10; Dec of Morales paras 6-7.

This exemption fails as the City has not met its burden. After reviewing the document in camera it is obvious that an action occurred that is not authorized to take place in an executive session therefore the action itself is not protected. See e.g., Miller v. City of Tacoma, 138 Wash.2d 318 (1999); RCW 46.30.060(2). Any discussion of the action likewise should not be afforded the protection of the PRA in light of the policy to narrowly construe exemptions. As noted by Mr. Wilkinson, citing Attorney General Opinion AGO 2017 No. 5 August 3, 2017, "a participant who discloses conversations not legally within the scope of an executive session would not transgress the public purpose for which executive sessions are authorized in the first place." Citing In Re Recall of Lakewood City Council Members, 144 Wn.2d at 586. The reasons for and permissible scope of executive sessions are construed narrowly as I have done here.

Fourth Exemption. The Attorney-Client Privilege and Common Interest Doctrine. The City declares that the July 14th, 2020 executive session was convened for the purpose of enabling confidential discussions between the City Council, Mayor, City Administrator and Mr. Case (the City's attorney) regarding actual or threatened litigation. That the meeting was convened so that the other attendees could obtain legal input and advice. Dec. of Case, para 11, Dec. of Morales, para 8. Further that all of those in attendance shared a common legal interest as to the litigation that was discussed during the July 14 executive session. Dec. of Case para 12. The City relies on Hangartner v. City of Seattle 151 Wn.2d 439, 450-454 (2004); RCW 42.56.070(1); RCW 5.60.060(2) and WAC 44.14.06002. In Hangartner, the court determined that the attorney-client privilege was one of the "other statutes" that that qualified as an exemption, citing RCW 5.60.060; Hangartner, 151 Wn.2d 450-454. Even so, the appellate court remanded the case to the trial court to determine if the withheld documents were actually covered by the privilege.

This exemption fails as the City has not met its burden. Even though an executive session can be had in order for the attendees to discuss with legal counsel representing the agency matters relating to pending or threatened litigation (See RCW 42.30.110 cited above), the document at issue is an email generated after

the fact about an action that occurred at the executive meeting in question. It does not discuss legal advice sought or given. It is not a document between a client and an attorney. It is not a document generated by a request for legal advice. It does not appear to this Court to be a document created by a client with the intention of communicating with their attorney. As to the common interest doctrine, that cannot apply due to the content of the email in light of the action described which is not authorized to take place within executive session. Certain conversations within the July 14 executive session may very well be privileged, but the actual action taken is not in this case.

Fifth Exemption. The Work Product Privilege. Work product obviously applies to communications which take place in anticipation of litigation.

This exemption fails as the City has not met its burden. The same analysis applies as set forth above. The City cannot claim this exemption as explained under the analysis of the Third and Fourth Exemption.

Conclusion.

I have conducted an in camera review of the sole document in dispute. I have reviewed the declarations and the law. I have heard arguments of counsel. I conclude that the City has not met its burden to show that the document falls within an exemption to the PRA. As a result, I will prepare a separate generic order (a copy of which is enclosed). Said generic order will require that the City of Selah release a full unredacted copy of the email to the Plaintiff, Trent Wilkinson by delivering same to Mr. Wilkinson's attorney, Timothy Hall no later than 4 p.m. January 29, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gayle M. Hartcock', with a stylized flourish extending to the right.

Gayle M. Hartcock,
Yakima County Superior Court Judge

Encl.

EXHIBIT C

COMPLAINT FOR VIOLATIONS OF
OPMA - 11

NEWHOUSE & POWER, PLLC
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Phone: 509-515-2113
Email: staff@newhouselawpllc.com

City of Selah
Council Minutes
June 24, 2020

Special Meeting
Electronically Via Zoom
115 West Naches Avenue
Selah, WA 98942

- A. Call to Order Mayor Raymond called the meeting to order at 6:00 pm.
- B. Roll Call
- Members Present: Kevin Wickenhagen; Jacquie Matson; Clifford Peterson; Roger Bell; Christopher Lantz; Russell Carlson
- Members Absent:
- Staff Present: Donald Wayman, City Administrator; Rob Case, City Attorney; Rick Hayes, Police Chief; Joe Henne, Public Works Director; Andrew Potter, Human Resources Manager; Monica Lake, Executive Assistant
- C. Councilmember Absence – Motion to Excuse **None**
- D. Pledge of Allegiance

Mayor Raymond led the Pledge of Allegiance.

Mayor Raymond asked City Attorney Case if he wished to speak now.

City Attorney Case answered not at this time, adding that he believed that Executive Assistant Lake had provided her with a statement to read.

Mayor Raymond read aloud the following statement, provided verbatim from the original source:

We will now enter an Executive Session. Consistent with law, the public will be excluded from participating or watching. The general subject matters that will be addressed during this Executive Session have already been stated via the written Agenda. However, I will state them again now orally. There are two subject matters. (1) to evaluate complaints brought against a public employee. (2) to review the performance of a public employee.

Pursuant to Selah Municipal Code section 1.06.060, no councilmember or other participant in the Executive Session is permitted to disclose to non-participants what is said during the Executive Session. Specifically, the relevant sentence of such section says: "All members of the city council, mayor and city staff shall hold in confidence all discussions concerning issues in the executive session and shall not discuss them outside of executive session except upon approval of the council."

Human Resources Manager Potter inquired if the executive session would still be one hour in length.

Mayor Raymond asked Council for a show of hands of those who would like to make it one and a half hours versus one hour.

Council Member Carlson moved, and Council Member Wickenhagen seconded, to extend the Executive Session to one and a half hours. By a show of hands, approval was unanimous.

E. Executive Session

1. 60 Minute Session to evaluate complaints brought against a public employee – RCW 42.30.110 (1)(f) and review the performance of a public employee – RCW 42.30.110 (1)(g)

Council went into Executive Session at 6:05m. At 7:35pm, Council went back on the record.

Mayor Raymond asked if there was a motion to take a five-minute recess.

Council Member Peterson moved, and Council Member Wickenhagen seconded, to take a five-minute recess. By a show of hands, approval was unanimous.

Mayor Raymond stated that they would be extending the Executive Session for an additional 30 minutes after their five-minute break.

Council went back into Executive Session at 7:47pm. At 8:17pm, Council went back on the record. Mayor Raymond stated that no action was taken during the Executive Session.

Mayor Raymond said that their community was in turmoil now for many reasons. She extended an apology to a few people who had sent emails or called that she had yet to respond to, saying that there had been so much going on in the City with everyone having their own opinions on the topics. She appreciated Council's honesty that night, as these are different times for them, and they have never had to make or update policies during something like this. She remarked that she had a Selah Council code of conduct done years ago, that Executive Assistant Lake thought was done by former City Attorney Bob Noe but never finished by prior councils, and they also have policies to set up on what is expected from City employees and Council Members regarding conduct with citizens. She mentioned talking with Executive Director Henkle from the Selah Downtown Association about Anthony Blue, who does trainings. She expressed appreciation everyone's honesty that night, and asked if anyone wished to make a motion.

Council Member Wickenhagen read aloud the following statement:

To My fellow Selah Residents

As you all know, I wrote a letter to our citizens last week that has generated a great deal of angst in our community.

On reflection, and I have spent a great deal of time reflecting, I didn't stop to think that most of the Selah citizens that marched, or supported the march, probably didn't care about the politics, political affiliations or some of the underlying policies of the organization Black Lives Matter. The emails I received tell me they were marching because another black person died unnecessarily at the hands a police officer. They were marching because racism continues to occur in communities, and it needs to stop. They were marching because they want to do what Selah does best and pull together during a troublesome time. I failed to fully address those reasons, and I focused on the politics of an organization. I do not agree with the all the foundational policies of Black Lives Matters or the organization Movement 4 black lives, but I'll defend the right of these organizations to peacefully protest. There are two areas I agree with. Black lives DO matter and we need to have open dialogue on how we best go about that ending racism.

My worst nightmare as a councilmember occurred and I caused division and pain to our community. I truly love this city, it's citizens and the way they pull together during difficult times and I damaged some of that. So, as one of our citizens suggested in her letter to me, I will listen, I will ask questions and not be so quick to react, not so quick to justify a position without first listening to the people in this community and better understand how they actually feel about an event or cause.

I apologize for not considering the worthy goals of those who were supporting the march, and to those that felt I attacked their character, I am truly sorry.

Mayor Raymond thanked Council Member Wickenhagen.

Council Member Carlson agreed with the Mayor that the executive session was very important and very good, and commended Council Member Wickenhagen for his personal introspective. He didn't think anyone on the Council had a desire to deal with the repercussions they've seen, and that he personally had reviewed information and filtered out what he didn't know to be factual or real, as opposed to hearsay. He thought it important that the City finish the Code of Conduct for Council Members and staff, as they ask for a specific decorum at their own Council Meetings that should apply to each of them at Council Meeting and in public.

Council Member Carlson moved, and Council Member Peterson seconded, to finish the Code of Conduct and request a recommendation of the date when it can be done.

Council Member Carlson clarified that he desired a recommendation from the Mayor and staff as to how long to take that official vote.

Mayor Raymond responded that she would give it to City Attorney Case to review, and that it could be done by the July 14 meeting.

Council Member Carlson amended his motion to include the date of July 14th as a time frame. Roll was called: Council Member Wickenhagen – yes; Council Member Matson –yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

Mayor Raymond posed asked Council whether they wished to clarify or amend the City's Code with regard to graffiti or chalking on city property.

City Administrator Wayman noted that, as with all street cleaning, they don't have a policy for cleaning streets or sidewalks but simply do it when they see it or it's reported to them, as they are very aggressive with removing anything that defaces streets, sidewalks, or walls. He stated that they don't differentiate based on message or artistic virtue; if it's something that's truly destroying property then they would look to take legal measures but other than that they simply clean it up.

Mayor Raymond felt that the question from Council was chalk, as it is not specified in the City's Code.

City Administrator Wayman said that they clean it whether it's chalk or anything else.

Council Member Carlson requested clarification on that, saying that he would like the graffiti code studied and clarified because under definitions what was there is considered graffiti but another part of code eliminates chalk from that. He opined that one of the biggest issues is interpretation of the Code.

Mayor Raymond replied that they would look at the code and work with code enforcement, and come back with it at the first meeting in July.

Council Member Carlson said that as he pondered comments that have been made and listened to those comments be confirmed by the City Administrator, he was concerned and bothered that it was creating division in the city, which he as a taxpaying person doesn't appreciate. He went on to say that if was his business and he had an employee speaking out like that they would receive discipline and training, and subsequently be fired if unchanged, and that while his recommendation wasn't for the City Administrator to be asked to resign or fired, he should have training for what's appropriate. He requested that a formal reprimand be placed in his file.

Mayor Raymond responded that as they discussed earlier, they were already in talks of doing some training.

City Administrator Wayman read aloud a prepared statement, clarifying prior to reading it that they were his opinions, not those of the City of Selah. The following is a copy of said statement:

We, as Americans, have been blessed with a legacy of governance that provides protections from the depredations of evil men. Our constitution has a vision for unity that presupposed a flawed human nature. People were capable of bad behavior individually but capable of the greatest of sin when backed by the power of the will of the people. The founding vision of unity (our constitution), also presupposed an agreement on the nature of rights and liberty: No man had a right to demand anything from his neighbor. Furthermore, the founding version for unity presupposed our strongest relationships would exist outside of government – in our families, our churches and local communities.

This founding vision has now been abandoned in pursuit of something more fulfilling to burgeoning tyrants: A communitarian vision of reality in which the mob is perceived as virtuous; in which every man has the right to protect himself from the hardships of life and the cruelties of history by demanding recompense from his neighbors.

This second path toward unity requires purification. This is where my current situation stands. My observations of a local BLM protest were critical of the sloganeering and the origins and intentions of the BLM movement. I made no racist comment or racist insinuation. These comments and observations have come to the attention of the directors of false racial outrage. This has precipitated a

very coordinated DEMAND for me to be fired by left wing agitators and their acolytes, angrily emoting based upon their own flawed assumptions and poorly informed opinion. There is a loud clamor for homogeneity of thought. There has been no rational discussion of the merits of my opinion and observations. However, there has been a demand for me to bow to a set of beliefs that are illogical, devoid of reason, untrue and unconstitutional. Ideological enforcers are now conducting a coordinated campaign to destroy my reputation and eliminate me as your City Administrator.

Diversity of viewpoint cannot be tolerated by neo-Marxists. Unity of viewpoint is essential in all things great and small. To them, unity of viewpoint is a requirement for all serious change. Once the group has been purified, change will only require the snap of a finger. No more gridlock; no more conversation. The collective can be activated quickly and powerfully.

The second path is totalitarian in nature, and it is this model that certain members of this council are bending toward. Perhaps some of you believe you are representing a universally outraged community. That is simply not true. The vast majority of our residents still value a City Administrator who is willing to stand up to a group so devoid of intellect, and reason.

The great irony of this situation for those of you who might be swayed by this left-wing mob, is that you will never be able to free yourself from fealty to their required dogmas. If you fall short on parroting their version of ideological purity, the same thing will eventually happen to you.

To the residents of Selah,

As long as I remain as the City Administrator of this fine city I promise the following:

1. I will continue to provide strong and competent leadership for the staff and thoughtful advice to your elected representatives.
2. I will continue to be a responsible steward of your tax dollars and will remain mindful of the great trust you give to me to faithfully execute the city budget.
3. I will continue to be fair in all deliberations. I will not favor one group or person due to a differing viewpoint or race and religion.
4. Equal protection under the law will be strictly followed.
5. I will do everything in my power protect this city from the mayhem that we are witnessing in Seattle and Portland.
6. I will continue to support our police department through adequate funding, emphasis on training and understand the difficult and sometimes thankless work they must do every day.
7. I will always stand for our flag, honor our nation's history and remember the sacrifices of those who made our nation the greatest republic in the history of the world.
8. I will never forget or forsake the oath that I took nearly four decades ago: I swear to protect and defend the constitution against ALL enemies, foreign AND domestic...
9. I will never quit or take a knee. Even in the face of personal slander and lies.

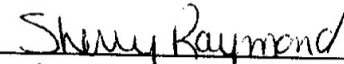
Council Member Vargas took great offense of his characterization of people speaking out against him as left-wing agitators and a mob, saying that those she has spoken to were citizens of Selah speaking out about something that's important to them. She felt that they needed to stop the rhetoric of calling them things like left-wing agitators, as they have a right to speak without being disrespected or spoken of as he just had. She said that she didn't appreciate it or agree with it.

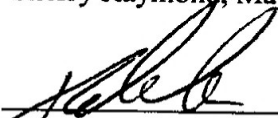
F. Adjournment

Council Member Matson moved, and Council Member Wickenhagen seconded, that the meeting be adjourned. By hand vote, approval was unanimous.

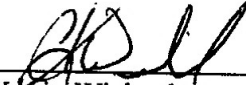
The meeting adjourned at 8:41pm.

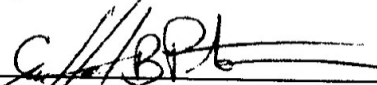

Roger Bell, Council Member


Sherry Raymond, Mayor

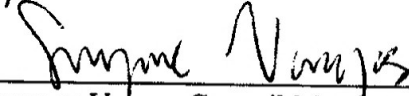

Russell Carlson, Council Member


Jacquie Matson, Council Member


Kevin Wickenhagen, Council Member


Clifford Peterson, Council Member


Christopher Lantz, Council Member


Suzanne Vargas, Council Member

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

EXHIBIT D

COMPLAINT FOR VIOLATIONS OF
OPMA - 12

NEWHOUSE & POWER, PLLC
308 Yakima Valley Hwy
Sunnyside, Washington 98908
Phone: 509-515-2113
Email: staff@newhouselawpllc.com

City of Selah
Council Minutes
July 14, 2020

Regular Meeting
Electronically Via Zoom
115 West Naches Avenue
Selah, WA 98942

- A. Call to Order Mayor Raymond called the meeting to order at 5:30 pm.
- B. Roll Call
- Members Present: Jacquie Matson; Clifford Peterson; Roger Bell; Christopher Lantz; Russell Carlson; Suzanne Vargas
- Members Absent: Kevin Wickenhagen
- Staff Present: Donald Wayman, City Administrator; Rob Case, City Attorney; Gary Hanna, Fire Chief; Rick Hayes, Police Chief; Joe Henne, Public Works Director; Jeff Peters, Community Development Supervisor; Andrew Potter, Human Resources Manager; Treesa Morales, Recreation Manager; Monica Lake, Executive Assistant
- C. Councilmember Absence – Motion to Excuse
- Council Member Peterson moved, and Council Member Carlson seconded, to excuse Council Member Wickenhagen. By a show of hands, approval was unanimous.**
- D. Pledge of Allegiance
- Mayor Raymond led the Pledge of Allegiance.
- E. Invocation
- Pastor Jason Williams gave the prayer.
- F. Agenda Changes None
- G. Public Appearances/Introductions/Presentations None
- H. Getting To Know Our Businesses None
- I. Communications
1. Oral None
2. Written

a. Recycling Data Report for the 1st Quarter of 2020

J. Proclamations/Announcements **None**

K. Consent Agenda

Council Member Bell moved to approve the agenda.

Council Member Carlson requested that Resolution N – 4 be removed from the Consent Agenda.

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

- * 1. Approval of Minutes: June 9, 2020 Council Meeting and June 24, 2020 Special Meeting
- * 2. Approval of Claims and Payroll:
 - Payroll Checks Nos. 83597 – 83613 for a total of \$223,523.94
 - Payroll Checks Nos. 83614 – 83633 for a total of \$296,765.36
 - Payroll Checks Nos. 83634 – 83704 for a total of \$245,121.22
 - Claim Checks Nos. 74986 – 75054 for a total of \$177,830.91
 - Claim Checks Nos. 75055 – 75141 for a total of \$643,502.98
- * 3. Resolution N – 1: Resolution declaring Fire Department Property as Surplus and Authorizing Its Disposal
- * 4. Resolution N – 3: Resolution Accepting the Well No. 6 and Zone 3 Pump Station Rebuild Project, as Complete and Accepted

Council Member Bell moved, and Council Member Carlson seconded, approval of the amended Consent Agenda. By voice vote, approval was unanimous.

L. Public Hearings **None**

M. General Business

- 1. New Business **None**
- 2. Old Business **None**

N. Resolutions

- * 1. Resolution declaring Fire Department Property as Surplus and Authorizing Its Disposal

2. Resolution Authorizing the Mayor to sign a Construction Contract between the City of Selah and Lewis Surface Development Co. Yakima Washington, for the Crack Repair and Resurfacing of Eight Tennis Courts at Carlon Park

Public Works Director Henne addressed N – 2. He said that this Resolution was to authorize the Mayor to sign a construction contract for crack repair and resurfacing of eight tennis courts at Carlon Park. He explained that they had two companies look at the courts and bid on the project, one from Spokane and one local, and that the local one was the low bid. He requested that Council approve the contract.

Council Member Matson remarked that in looking at the processes and comparison of prices, repair using the Rite Way crack repair system was seventeen dollars per lineal foot versus the other system at two dollars and seventy-nine cents per lineal foot. She inquired if there were two types of courts.

Public Works Director Henne answered that they were the same type, but the north courts require removal of the existing patching material, the cracks to be cleaned out and filled with filler, then resurfaced and new color applied, while the south courts are in relatively decent shape.

Council Member Matson commented that in looking at the cost outlines for them one says Rite Way crack system and the other says crack repair.

Public Works Director Henne responded that there are cracks in the courts that have to be repaired, then the courts need to be resurfaced and have color applied, and the cracks along the fence and between the courts get blown out and a caulking type material applied.

Council Member Matson wondered if that was the other four.

Public Works Director Henne replied that along the fence they don't require coloring, just fill with caulking, as it's not a playable area.

Council Member Matson reiterated that the second line for one set of courts shows seventeen dollars per lineal foot, while the other set of courts is two dollars and seventy-nine cents per lineal foot.

Public Works Director Henne answered that the south courts don't have the fiberglass repair that was done on the north courts, which would require the filler material and surfacing sheet removed and sanded down before the resurfacing could be done. He noted that for the south courts they would simply be providing filler material and surfacing color applied on top.

Council Member Matson thanked him for the clarification.

Council Member Carlson observed that they normally get comparable side by side and an engineer's estimate.

Public Works Director Henne responded that there wasn't an engineer involved. He met with both contractors onsite and simply listed the second one on the AIS, as they would have used the same materials and manufacturer.

Council Member Carlson asked if they had a projected budget.

Public Works Director Henne replied that Council had discussed this some time ago, and that Recreation Manager Morales was instructed to move forward to this point with the project. He went on to say that Recreation Manager Morales, Public Works Utility Supervisor Jones and himself met onsite with two contractors, and he was presenting Council with the low quote.

City Administrator Wayman remarked that they discussed the issue during budgeting and Council had agreed to hold off on putting it into the budget until later in the year.

Council Member Peterson felt it wasn't clear whether all eight courts would be finished the same.

Public Works Director Henne answered him in the affirmative.

Council Member Peterson pointed out that currently half the courts are blue, and half are green. He wondered if they would look the same or be two different colors when done.

Public Works Director Henne responded that they would all be the same color, with additional lines for pickleball on the south four courts.

Council Member Peterson inquired as to a timeline and how long the courts would be unavailable.

Public Works Director Henne replied that it needs to be done while the temperature is relatively warm, and that he asked Recreation Manager Morales to contact the company to confirm the length, which he believes would be sixty days.

Council Member Peterson commented that they were usable at present but during the resurfacing no one will be able to use the tennis courts, asking if they were talking a week, two weeks, or a month.

Public Works Director Henne answered that it would be about sixty days, briefly outlining the steps to be taken. He noted that he was informed that the high school would not be playing tennis this year.

Council Member Peterson wondered if the use agreement between the City and the School District would come into play at all.

Public Works Director Henne responded that was brought up last year during budget talks, and it was decided then that the School District would maintain theirs, and the City would do the same.

City Administrator Wayman added that the School District reminded them that their tennis teams are being impacted by it. He said that people won't be able to play on it for sixty days, but then it will be done and in use.

Council Member Bell moved, and Council Member Matson seconded, to Approve the Resolution Authorizing the Mayor to sign a Construction Contract between the City of Selah and Lewis Surface Development Co. Yakima Washington, for the Crack Repair and Resurfacing of Eight Tennis Courts at Carlon Park. Roll was called: Council Member Matson – yes; Council Member

Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

- * 3. Resolution Accepting the Well No. 6 and Zone 3 Pump Station Rebuild Project, as Complete and Accepted
- 4. Resolution establishing August 11, 2020 as the date to conduct a public hearing to consider the vacation of a portion of North First Street right-of-way lying north of West Bartlett Avenue requested by the Selah School District

Community Development Supervisor Peters addressed N – 4. He said that this Resolution established August 11, 2020 as the Date to conduct a public hearing to consider the vacation of a portion of North First Street right-of-way lying north of West Bartlett Avenue requested by the Selah School District. He referred Council to the background information provided in the packet, saying that per State law whenever a member of the public has requested a right of way vacation the City has to consider the right of way vacation petition. He went on to say that this was the first step in the process, and that they would then notify property owners, post signage, and start preparing documentation to be presented to Council at the Public Hearing. He noted that there was no obligation on the part of the City to approve the right of way vacation, and it was simply a Public Hearing like any other.

Council Member Carlson inquired if they knew if they were going to replace that parking elsewhere and where the location would be.

Community Development Supervisor Peters replied that they were moving the sidewalk out to take away the bus parking area and expand landscaping into that area, with additional parking just on the inside of that along with a bus lane and another lane of travel to bring parents into the parking lot, similar to the middle school.

Council Member Matson remarked that the date for the hearing was August 11 and wondered if it would be held via Zoom if they were unable to meet in Council Chambers at that time.

Community Development Supervisor Peters responded in the affirmative, saying that they would post on the website if it would need to be done via Zoom.

Council Member Matson thanked him for the answer.

Council Member Matson moved, and Council Member Carlson seconded, to Approve the Resolution establishing August 11, 2020 as the date to conduct a public hearing to consider the vacation of a portion of North First Street right-of-way lying north of West Bartlett Avenue requested by the Selah School District. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

- 5. Resolution Authorizing the Mayor to sign a Construction Contract between the City of Selah and Ken Leingang Excavation, Inc. to provide Construction Services for the Taylor

Ditch Outfall Pollution Reduction project, Department of Ecology Project No. WQC-2017-SelahPW-00101

Public Works Director Henne addressed N – 5. He said that this is a Resolution to sign a construction project for the Taylor Ditch Outfall Pollution Reduction project, which was a seventy percent Ecology grant to treat stormwater from north Wenas Road lying north of North Park Drive and to treat stormwater from the High School parking lot, as those two areas enter into the Taylor Ditch and out to the Yakima river

Council Member Peterson commented that the project cost was listed as two hundred thirty-eight thousand, with another forty-seven thousand in engineering, of which the City is paying thirty-two thousand, and the Selah School District thirty-five thousand. He asked if the remaining two hundred eighteen thousand was coming from the Department of Ecology (DOE).

Public Works Director Henne answered in the affirmative, adding that the Selah School District was responsible for the amount listed in Schedule B.

Council Member Peterson remarked that they have a history of watering the roadway when there are heavy rains, and wondered if this would have any impact on that and other possible water, or if it would make it worse because it was going through a pre-treatment stage. He inquired if it would slow the water flow down, speed it up or have no effect.

Public Works Director Henne replied that it should be a net zero on anything south of Taylor ditch, as that would still go into City's stormwater treatment system.

Council Member Carlson moved, and Council Member Peterson seconded, to Approve the Resolution Authorizing the Mayor to sign a Construction Contract between the City of Selah and Ken Leingang Excavation, Inc. to provide Construction Services for the Taylor Ditch Outfall Pollution Reduction project, Department of Ecology Project No. WQC-2017-SelahPW-00101. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

O. Ordinances

1. Ordinance providing for the annexation of certain real property by the City of Selah, Washington, and incorporation the same within the corporate limits thereof and zoning said real property, Business, General

Community Development Supervisor Peters addressed O – 1. He briefly reviewed the history of the annexation, saying that the Boundary Review Board had finished their review and authorized the City to complete the annexation process. He said that adoption of this Ordinance would complete the annexation, with the property retaining its Business General zoning, and it would allow applicants to submit applications to the City of Selah for development.

Council Member Carlson asked for clarification that it would be zoned B-1.

Community Development Supervisor Peters replied in the affirmative.

Council Member Matson moved, and Council Member Lantz seconded, to Approve the Ordinance providing for the annexation of certain real property by the City of Selah, Washington, and incorporation the same within the corporate limits thereof and zoning said real property, Business, General. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

2. Ordinance Amending the 2020 Budget for the Redevelopment of Well No. 7

Clerk/Treasurer Novobielski addressed O – 2. He stated that this was an Ordinance to amend the 2020 budget for redevelopment of Well 7, saying that last September Council approved a contract to evaluate Well 7, and that Public Works had determined that the total cost for the current year will be three hundred thirty thousand, of which one hundred eight thousand five hundred was a grant from DOE, with the remaining funds coming from Water Reserve Fund 461.

Council Member Bell moved, and Council Member Peterson seconded, to Approve the Ordinance Amending the 2020 Budget for the Redevelopment of Well No. 7. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

3. Ordinance Amending the 2020 Budget for Police Interview Room Recording System

Clerk/Treasurer Novobielski addressed O – 3. He said that this Ordinance was to amend the 2020 budget for a police interview room system, as the one in place was no longer working. He explained that Police Chief Hayes had four or five different quotes ranging from five thousand four hundred to twenty thousand and requested a budget adjustment for the lowest amount.

Council Member Carlson moved, and Council Member Lantz seconded, to Approve the Ordinance Amending the 2020 Budget for Police Interview Room Recording System. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

P. Public Appearances **None**

Q. Reports/Announcements

1. Departments

Public Works Director Henne said that the West Goodlander project is essentially completed, and that once the punch list is done he would bring it to Council for acceptance of completion. He went on to say the grind and overlay, road widening, and sidewalk on West Goodlander would start on July 20, with a

thirty-day construction window, the Taylor Ditch pollution prevention project was scheduled to start August 10 with a thirty-day construction period, tomorrow and he would contact the tennis court resurfacing company and tell them to get started. He commented that they haven't received a request for a final walkthrough on south Third Street for the Lince School project, but Public Works Utility Supervisor Jones and HLA were both reviewing civil plans for the new John Campbell school project. He finished by saying that DOT would start doing some grinding and patching on south First Street up to Jim Clements Way next week.

Fire Chief Hanna said that training with career and volunteer members has been on hold and created a few issues for them, but they would work their way through it. He went on to say that as manufacturing has opened back up again, they have been moving forward on projects such as the new command vehicle, remount of the rescue unit with a completion date of around September 1, and the brush truck conversion of an older duty vehicle. He remarked that they completed servicing of the fire hydrants throughout the City and were just about finished with annual hose testing. He commented that on the Fire District side they have a have building project in the infancy stages, and hope to have some new paint on the downtown station. He finished by saying that the disinfecting machine had been backordered but they hope to see it within the next week or so, and that Deputy Fire Chief Lange had received FEMA funding to cover almost twelve thousand of the fifteen thousand dollars to purchase.

Community Development Supervisor Peters said that the Planning Department was slowly starting to pick back up due to lessened restrictions, with the building community submitting more and more permits. He remarked that they have caught back up revenue-wise for projected income, with several big permits expected soon. He went on to say that they have been working on Comprehensive Plan updates with Gregg Dohrn, the shoreline master program update is expected sometime between September and December, HLA and Public Works have been working on a water plan update, and he has been working on revising public notice requirements to comply with State law.

Recreation Manager Morales said that the food bank has been operating with increased numbers, and there is another blood drive coming up. She informed Council that SHARES gave her notice that they have been closed indefinitely at this point.

City Administrator Wayman asked what they were doing with all the clothing.

Recreation Manager Morales not ours to dispose of, SHARES will be taking to other clothing places throughout valley

City Administrator Wayman wondered if there would be additional space for the food bank to expand.

Recreation Manager Morales replied in the affirmative.

Mayor Raymond asked if she knew the reason why they closed.

Recreation Manager Morales answered that they had problems transitioning but she also thinks they were just out of space with the amount of stuff and the number of people coming through. She noted that she has been working on new programs to hopefully engage the community in other ways beyond regular recreation programs.

City Attorney Case had no report.

2. Council Members

Council Member Matson had no report.

Council Member Bell gave a brief update on the aquatic facility, which only has a few minor items to be completed, saying that their permit to open was withdrawn the following day due to the current phase Yakima County is in. He read aloud the following statement and motion:

Whereas Chief Hayes has indicated that the Selah community has experienced a higher call volume for drug overdose, suicide and domestic violence over the past several months;

And Whereas several community members have expressed the desire to elevate the general awareness within the Selah area of these issues;

And Whereas at least one Selah family is directly and visibly involved with raising funds in support of these issues;

I therefore make the following motion: that the City Staff be directed to bring back to our next Council meeting a resolution asking the citizens of Selah to educate themselves on the seriousness and frequency of drug overdose, suicide and domestic violence; and to encourage all citizens to actively become involved with addressing them within our community where possible.

Council Member Council Member Lantz seconded the motion. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

Council Member Lantz thanked his fellow Council Member Bell for bringing that up, saying that Council Member Peterson has brought that up a few times and he has also had conversations about it. He remarked that the amount of contact via emails he has received has been a bit overwhelming. He had a conversation with Dan Peters from the Selah School District and will be talking to others in the community. He acknowledged that people were running out of patience, and felt that discussion might lead to a panel of people who can rotate out as a sounding board for these types of tough situations.

Council Member Carlson gave an update on the Selah Downtown Association, saying that the projects are moving along and mostly finished. He asked if the Clerk/Treasurer was still online to provide an update on the status of the Marudo property tax, when they expect to have full collection of funds, and when it would sunset.

City Administrator Wayman replied that the bonds won't mature until 2022, and whether they have enough money collected will depend on how well they do on taxes at the end of the year. He went on to say that the projection is approximately October, and as soon as they have collected enough funds for the bond they would notify Council and put it on the agenda to be sunsetted as promised.

Council Member Peterson said that he and Mayor Raymond attended a roundtable discussion last week, to which he invited anyone who wished to open a dialogue to talk substance. He went on to say that they met with representatives of the Selah School District and members of community, including the organizers of some protests, and the two big things that came of it were opening a dialogue and committing to continue that dialogue and try to bring the community back together.

Council Member Vargas said that the Red Cross has an urgent need for blood, and they are offering COVID 19 anti-body testing for those who donate. She commented that Brian Harris was doing a fundraiser for YWCA and domestic violence in honor of his daughter Emily and encouraged people to check out his creative way to raise funds.

Council Member Vargas moved to allow for public comment immediately following Council comments and then at its normal location at our Council Meetings going forward.

Mayor Raymond requested that Executive Assistant Lake reply.

Executive Assistant Lake said that there are some logistics to address with regard to public comment during virtual meetings. She remarked that she, the Mayor and Human Resources Manager Potter had been discussing a different forum for elected officials and citizens to have an interaction and discussion, which the Mayor would talk about later in the meeting.

City Administrator Wayman commented that they were looking at a town hall meeting with the Mayor and a limited number of council members per session to be available to listen to comments and questions and be able to respond in a way that won't interfere with business. He noted that this was a business meeting, and opined that a town hall type meeting was a better venue for that.

Council Member Vargas expressed interest in a town hall type meeting, but would be interested in that but also wished to allow public comment during regular meetings, as she felt it was really valuable for elected officials to hear from citizens. She thought it could be achievable in the same way as they have done with the public transit hearing.

Mayor Raymond replied that she would like to try the townhall next week and see how that works out, and that she was hopeful they might be able to meet in person by next month.

Council Member Vargas responded that it wouldn't replace public comment in a Council Meeting for her, and didn't satisfy what she was looking for with regard to public comment.

Mayor Raymond asked that she clarify the difference between public comment and a town hall where they could get answers from the Mayor or Council Members.

Council Member Vargas answered that all Council Members couldn't be present, and that was a factor for her.

Mayor Raymond remarked that they wouldn't have just one meeting, but would rotate out Council Members.

Council Member Vargas thought that public comment was useful and had its own merits as well.

Council Member Carlson inquired if this was being done elsewhere using zoom and public comment for meetings.

Council Member Vargas answered in the affirmative.

Mayor Raymond responded that she didn't know.

Council Member Carlson commented that if it was legally and appropriately being done in other communities, he didn't see why they couldn't adopt a similar scenario, but he requested verification from other cities as to how they were conducting public comment.

Executive Assistant Lake addressed Council Member Carlson's comment, saying that she had talked with a couple jurisdictions in the past about public comment, and the one that was allowing public comment required that those who wished to speak contact the City Clerk prior to the meeting, and were given a set amount of time to speak during the meeting when acknowledged.

Council Member Vargas amended her motion to follow a similar format beginning at the next Council Meeting.

Mayor Raymond requested that they give Executive Assistant Lake some time check into that and see how it's going for other jurisdictions before they commit to it.

Council Member Vargas inquired if she was speaking legally, or what she meant.

Mayor Raymond replied so that they can see how it interrupts their business meeting.

Council Member Vargas opined that it wouldn't be an interruption more than what they normally allow during in person meetings.

Mayor Raymond said that there are so many different opinions and divisions in the City right now, and that having a town hall where they could discuss matters rather than tying up time in a business meeting would be her concern.

Council Member Vargas felt that if they were opening a town hall in conjunction with it that people could also speak up during meetings regarding matters not discussed during the town hall.

Mayor Raymond suggested that they do not commit to it tonight, but she would talk with staff and get back to Council before the next meeting.

Executive Assistant Lake said that, with regard to setting it up, it should only take a couple days to reach out to other jurisdictions to see how they are handling public comment. She pointed out that the Governor's Proclamation that suspended portions of the Open Public Meetings Act and Public Records Act clearly stated that meetings held by jurisdictions were to be for essential conduct of business, which

was why some regular agenda items were removed, including public comment. She noted that public comment was not required under State law, but instead is up to each jurisdiction whether they wish to provide for it during their meetings.

3. City Administrator

City Administrator Wayman no report

4. Boards **None**

5. Mayor

Mayor Raymond reminded Council Members to stop by City Hall and sign papers. She said that the town hall meeting was tentatively set for next Tuesday, and that information would be available on the City's website. She stated that it wasn't a time for media or a forum, but a time for citizens to share their concerns. She expressed hope that it would alleviate some concerns that the City wasn't addressing public comments and concerns, and noted that she had checked with WCIA regarding training for promoting a workplace free of harassment. She added to Council Member Peterson's remarks about their meeting with the SSD and members of the community, saying that she was reviewing what their requirements were and what they want of the City. She said that, with regard to a code of conduct for Council and employees, the Council already has a code of conduct, although there is no code of conduct out there for employees. She added that City Attorney Case had looked at other cities and they don't have a code of conduct. She asked Council Member Carlson if he wished to write up a code of conduct with what he wanted to say.

City Attorney Case remarked that the Mayor referenced a draft started in a prior year that originated from the City of Sunnyside, and that it was for Council Members, not employees. He thought that Council Member Carlson was asking for a code of conduct for employees, which came up in reference to only one employee, City Administrator Wayman, and as he was unsure what the Council Member might want as far as a code of conduct for some or all employees, he didn't have enough guidance to go about drafting such a thing. He opined that a code of conduct can be tricky, as employees have rights to express opinions, but if the majority of Council still wants something like this then perhaps they could send the information to him or to each other, without violating the OPMA. He warned that if their desire for a code of conduct was to prohibit some opinions that would be hard to draft.

Council Member Peterson remarked that he wondered if it would be covered in a review of personnel policies, as they have a number of department heads who do employee evaluations, and did they have standards in personnel policies that address how they expect employees to interact with the community in a manner that was consistent from one employee to another no matter which department. He was anxious to see a code of conduct because it didn't sound like what he was asking about anyway.

City Attorney Case replied that some of the some workforce is union, some is not, and the union situation was more difficult to change, with things specified in contracts. He didn't know with regard to non-union employees, but noted that there had been a couple times that a department head brought a matter to Mayor Raymond, City Administrator Wayman or himself and a decision was made there. He opined that they might be borrowing trouble, and asked if Council wanted something universal or

something that addresses the recent situation. He added that if it was only in regard to one worker that would potentially have to be a renegotiation of that worker's contract.

Council Member Carlson stated that it wasn't an email he sent, but a motion, second and unanimous vote to bring a code of conduct to this meeting. He said that in terms of who this covers, there was a reason he specified Mayor, Council and staff, as they all deal with situations where they have a high level of expectations from the community due to the positions they hold in terms of words and actions, and that they weren't free from the consequences of things they say or do. He reiterated that it was a motion from the entire Council, and that the latest event was one of but not the only motivating factor.

City Attorney Case responded that he was wanting him to write whatever he thinks the rules should be.

Council Member Carlson commented that he had never seen the code of conduct for Council Members, and that he was open to discussion on how to apply a code of conduct for staff and elected officials, pointing out the irony of a code of conduct only directed at Council members and not for the staff.

City Attorney Case replied that his understanding was that Council was seeking a Code of Conduct that would apply to employees and possibly the Council as well, and that the draft mentioned was just for Sunnyside Council Members between themselves, which meant there was no prior document that applies to employees to bring forward.

Council Member Carlson stated that his motion was for a rough draft, voted on by the Council, and not only did it not make the agenda, not even the Sunnyside Code of Conduct make the agenda.

City Attorney Case responded that he was explaining the reason and that Council was welcome to see the Sunnyside version. He reiterated that he didn't know what they wanted terms for employees unless they were wanting him to create one.

Council Member Carlson answered that his motion was staff as all-inclusive and to bring a draft to Council for input.

Council Member Lantz City inquired if the City had an employee handbook.

Mayor Raymond answered in the affirmative.

Council Member Lantz requested to see it.

City Administrator Wayman commented that it doesn't address political speech or when it's appropriate to speak.

Council Member Lantz understood but felt if they had something to start with as a good faith foot forward it wouldn't hurt to have that anyway.

City Administrator Wayman said that he wouldn't classify it as a code of conduct.

Council Member Lantz agreed, but said that it would give them some documentation as a basis.

Human Resources Manager Potter asked if Council like a brief description of what it includes.

Mayor Raymond answered in the affirmative but let Council Member Matson speak first.

Council Member Matson remarked that her request was the same as Council Member Lantz regarding an employee handbook. She asked City Attorney Case if they could have a copy of the Sunnyside Code of Conduct to review for council to have input for the next meeting.

City Attorney Case asked if Executive Assistant Lake had a copy to email Council Members.

Executive Assistant Lake replied in the affirmative, adding that former City Attorney Noe had given it to her when he worked on it years ago.

City Administrator Wayman noted that former City Attorney Noe advised that it was very problematic to go forward with that.

Human Resources Manager Potter explained that the document referred to is the City of Selah Personnel Policies and Rules, which is a forty plus page document that summarizes the employment agreement, contracts and benefits for non-represented employees that lays out many of their benefits and how they are handled, and that while there are several sections that speak briefly to appropriate behavior, in large part the document is a procedural document that has two pages of definitions of types of employees and goes on to explain the procedures by which the City of Selah hires its employees. He said that the section to which Council Member Lantz referred is three pages of drug and alcohol use, which discusses appropriate management and reactions to that and services and support if they need rehab from addiction to drugs and alcohol. He noted that there are several sections that need lengthy adjustment, and he has several annotations on working copies on my desk but would send the current version.

Council Member Lantz thought that would work, as he didn't think any Council Members had seen it.

Council Member Peterson requested that they also include the current Council Code of Conduct.

Executive Assistant Lake stated that it was part of the City's code.

Council Member Peterson replied that was what he was referring to.

Council Member Carlson remarked that they were trying to accomplish a rough draft of what's expected, as there should be expectations of staff to be above reproach and consequences for those choices. He said that it was not about free speech but actions as well, pointing out that school districts have a level of professionalism for their employees. He expressed disappointment that they had nothing when the full Council approved to have it in, and apologized if he didn't speak clearly at the last meeting. He stated that he wants something good that takes care of who they are and what they expect.

Human Resources Manager Potter clarified that the employee handbook does specify procedures and the appropriateness of tiered discipline one should take, but outside lying or stealing he felt it would be difficult to describe what appropriate behaviors are for an employee outside of their working hours.

Council Member Carlson inquired about an employee during working hours.

City Attorney Case thought that certain things could be specified, but the genesis of this was an employee who expressed personal opinions that aren't right or wrong.

Council Member Carlson agreed.

City Attorney Case voiced concerns similar to those of the former City Attorney regarding prior restraint, adding that conduct was easier but opinion-based was a lot dicier. He added that he could try to hash through this to get something subject to a potential vote, but would have comments regarding legal pitfalls.

Council Member Carlson replied that he didn't expect a perfect first draft, as free speech versus actions are very different things. **He moved to request that on July 28 they have an official rough draft of a Code of Conduct or Personnel Policy to get comments from Council.**

City Attorney Case requested a clarification of the motion, saying he assumes it would be brought forth for information not to be acted on.

Council Member Carlson responded that he was correct, it would be as a rough draft only to address and discuss as a Council.

City Attorney Case asked if there was a second.

Council Member Matson wanted to bring forth a suggestion that after we receive copies of the employee handbook and code of conduct that they could entertain a study session instead of moving forward with a motion to implement or have a rough draft, to allow for review or to have suggestions to get everyone talking.

Council Member Carlson liked that suggestion. He amended his to have a rough draft presented by July 28 for information only, and at that time set a study session to review.

Council Member Lantz suggested that they add in there a deadline of Monday July 20 to review and add any notes to allow people to get it done.

Mayor Raymond asked if they would send their suggestions to City Attorney Case.

Council Member Lantz answered in the affirmative, saying that City Attorney Case brings a legal aspect to this, and if he looks at it and feels there are things that wouldn't work he could bring them up at a study session. He wanted to do it right the first time.

Mayor asked City Attorney Case if that would be enough time.

City Attorney Case commented that it was a short time frame.

Council Member Carlson revised his motion to have a rough draft by July 28 and then do a study session. Council Member Lantz seconded the revised motion. Roll was called: Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

Council Member Peterson wanted to follow up Council Member Lantz's comment, saying that if City Attorney Case wants their responses and suggestions by Monday, when would staff provide them with the information to review to form opinions on Monday.

Council Member Lantz believed that they could do an open review on July 28, and then City Attorney Case could provide reasons.

Council Member Carlson added to also receive a copy of the information that currently exists.

City Attorney Case commented that as an informational item they would typically get that with their packet prior to a Council Meeting.

Council Member Carlson felt that the information should be provided.

Human Resources Manager Potter stated that he would send it out at 8am tomorrow.

Mayor reminded everyone that there is a ballot box at City Hall.

Council Member Bell commented that they received a report a while back that through the Federal CARES act they were awarded a considerable amount of money. He inquired as to an update on what they might be able to do with that and where they were headed.

City Administrator Wayman replied that they were looking at getting some information systems upgrades, perhaps applying it to decontamination equipment for both the Police and Fire Departments, and that his instruction to Department Heads was to be sure it could be directly linked to the virus issue with why they were ordering that particular item, as the guideline is that it needs to be a reasonable request that can be linked to the virus.

Council Member Bell expressed concern about a sunset on receiving funds, as he wouldn't wish that to fall through the cracks.

Council Member Carlson remarked that other communities have chosen to provide business grants with that money, and while there is an obvious need for the City there was also opportunity to help businesses stay afloat and apply for grants.

Mayor Raymond commented that City Administrator Wayman had talked about that earlier in the day.

City Administrator Wayman remarked that they could take it up tomorrow if Council Member Carlson would like to come in and meet with them, adding that there are some cumbersome ties that go along

with that. He added that it could be presented as an option if Council would like a copy of report to review and make a decision about offering money to the community with all ties that are there.

Council took a five-minute recess.

R. Executive Session

1. 60 Minute Executive Session – Potential Litigation, RCW 42.30.110(1)(i)

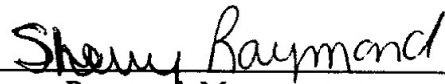
Council went into Executive Session at 7:32pm. At 8:32pm, Council went back on the record. Mayor Raymond stated that they would be extending the Executive Session for an additional 15 minutes.

Council went back into Executive Session at 8:35pm. At 8:50pm, Council went back on the record. Mayor Raymond stated that no action was taken during the Executive Session.

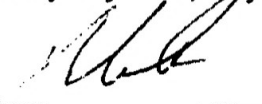
S. Adjournment

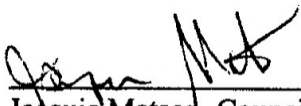
Council Member Bell moved, and Council Member Peterson seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 8:51pm.

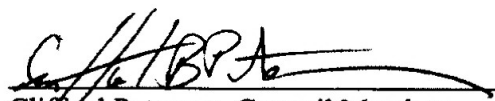

Sherry Raymond, Mayor

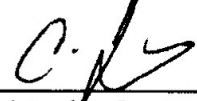

Roger Bell, Council Member

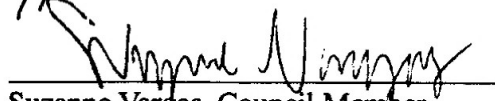

Russell Carlson, Council Member


Jacquie Matson, Council Member

EXCUSED
Kevin Wickenhagen, Council Member


Clifford Peterson, Council Member


Christopher Lantz, Council Member


Suzanne Vargas, Council Member

ATTEST:

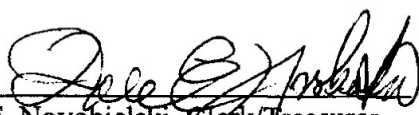

Dale E. Novobielski, Clerk/Treasurer

EXHIBIT E

COMPLAINT FOR VIOLATIONS OF
OPMA - 13

NEWHOUSE & POWER, PLLC
308 Yakima Valley Hwy
Sunnyside, Washington 98908
Phone: 509-515-2113
Email: staff@newhouselawpllc.com

Study Session Minutes
Selah City Council
July 28, 2020
4:00pm

Mayor Raymond opened the Study Session. She asked for clarification as to whether this code of conduct was for City employees or the City Administrator.

Council Member Carlson felt it should be all-encompassing, for the staff, council and Mayor.

City Attorney Case offered some clarification regarding respective roles, legal opinions, and warnings recodes of conduct, noting that Mr. Wayman's contract and the Union contracts would likely need to be renegotiated upon adoption of a code of conduct.

Discussion included standards for handling complaints and grievances for represented and unrepresented employees; how to ensure equal compliance at all levels; discipline variances for different departments; the current rules of decorum for Council Members; the need to be mindful of prior restraint; an individual's First Amendment rights, being responsible and careful when one speaks as a representative of the City; the perception or expectation of being held to a higher standard in representing the City as an employee; actions that appear to follow an acknowledged bias rather than applying the standard equally; the suspension of the City's main Facebook page; addressing personal matters and using inappropriate descriptions of citizens during a Council Meeting, which should be for the Council and the business of the City; the ability of the Council to make a code of conduct for themselves and enforce said code by Resolution; trying to find a solution for a problem that doesn't exist; and citizens' expectations of employees and Council as being above reproach.

Mayor Raymond took a consensus of the Council with regard to a future study session on the topic. Consensus was unanimous.

Council Member Carlson recommended a committee of Council Members to work with the City Attorney and staff to come up with concepts and ideas to be presented at a study session.

Mayor Raymond asked for volunteers, saying that they need to keep it to three.

Council Members Bell, Peterson, Vargas, and Carlson volunteered. Seeing that there were four volunteers, Council Member Vargas withdrew.

Mayor Raymond advised the three Council Members to coordinate with City Attorney Case on a time to work on the project.

The Study Session ended at 5:26pm.

City of Selah
Council Minutes
July 28, 2020

Regular Meeting
Electronically Via Zoom
115 West Naches Avenue
Selah, WA 98942

A. Call to Order Mayor Raymond called the meeting to order at 5:33 pm.

B. Roll Call

Members Present: Kevin Wickenhagen; Jacquie Matson; Clifford Peterson; Roger Bell;
Christopher Lantz; Russell Carlson; Suzanne Vargas

Members Absent:

Staff Present: Rob Case, City Attorney; Gary Hanna, Fire Chief; Rick Hayes, Police
Chief; Joe Henne, Public Works Director; Jeff Peters, Community
Development Supervisor; Andrew Potter, Human Resources Manager;
Monica Lake, Executive Assistant

C. Councilmember Absence – Motion to Excuse **None**

D. Pledge of Allegiance

Mayor Raymond led the Pledge of Allegiance.

E. Invocation

Pastor Darin Brown gave the prayer.

F. Agenda Changes

ADD: Proclamation J – 2: Proclamation declaring August 2020 Mental Health Awareness
Month

Mayor Raymond read aloud J - 2.

Mayor Raymond read aloud J – 1.

G. Public Appearances/Introductions/Presentations **None**

H. Getting To Know Our Businesses **None**

I. Communications

1. Oral

Council Member Peterson moved, and Council Member Wickenhagen seconded, approval of the Consent Agenda with the Scribner error correction. By voice vote, approval was unanimous.

L. Public Hearings

1. Public Hearing to consider the adoption of the "Selah Transit Development Plan 2021-2026 and 2020 Annual Report"

Public Works Director Henne addressed L – 1. He said that every year they do an update to the Transit Development Plan and Annual report, which includes fees, route development and maps of the routes, a section on history, service characteristics, our contract with Medstar, future plans, a description of the monthly ridership and ADA service we provide, boardings on particular routes, general rules about boarding and loading bikes, and guidelines and behavior when riding the buses. He noted that it was published in the Yakima Herald and on the City's website to provide the information to the public.

Mayor Raymond asked if they were having a public hearing.

Public Works Director Henne replied in the affirmative, noting that they didn't receive any comments in the mail.

Mayor Raymond inquired if Council had anything to say.

Human Resources Manager Potter reminded her that they normally hold a public hearing then have discussion prior to a vote.

Mayor Raymond wondered if people could talk.

Andrew answered that it could be facilitated as was done at a previous meeting for the transportation improvement plan.

Mayor Raymond opened the public hearing.

Human Resources Manager Potter reminded the public that if they wish to speak at this point it would be solely regarding the Selah Transit Development Plan, and choosing to speak on another topic would result in them being muted. He identified Jose Rocha as having his virtual hand raised and asked that he speak if he had anything to say about the plan.

Jose Rocha chose not to provide comment.

Seeing no one else raise a hand to speak, Mayor Raymond closed the Public Hearing.

Council Member Matson commented that in section 8 the first paragraph says that the "contractor will continue to work closely with the City of Selah and its residents to promote Selah Transit with an emphasis on increasing the fixed route ridership" and use surveys to improve routes. She wondered if that had happened.

Public Works Director Henne answered in the affirmative, saying that they have revised one of the routes, but haven't had any additional requests from the public.

Council Member Matson remarked that it also states that the contractor will work with the City to promote local businesses and asked how that was being done.

Public Works Director Henne replied that, while he doesn't know how they were doing currently, he had spoken with them a couple times about that issue but didn't receive much input back. He added that if they call in and ask for suggestions he would certainly look into it.

Council Member Matson inquired as to any adjustments made to create separation due to COVID-19.

Public Works Director Henne responded that they are requesting riders to wear masks and sanitize buses periodically throughout the day. He noted that Dial-A-Ride sanitizes after every rider transported to his or her selected destination.

City Administrator Wayman added that Medstar was asking for additional money with as additional hazard pay for drivers and to cover the additional time it takes to sanitize Dial-A-Ride vehicles between each ride, and that they were considering the request for a raise in their fees. He opined that the additional cost could be counted as expenditures for funds received from state, which would be accessed as necessary if they come to an agreement on an increase for Dial-A-Ride.

Council Member Bell commented that, while it probably wasn't their business to tell them the age of their buses, he noticed that one was twenty-seven years old and another was nineteen. He felt it appropriate to have a conversation regarding upgrading those buses, as they don't want to get hit with a huge increase to replace aging buses.

Public Works Director Henne answered that they supposedly have a standby bus if one should break down, and they've been looking into that.

Council Member Carlson requested that any funds to bump their fees be solely surrounded around the time frame of the coronavirus and not in perpetuity. He commented that, when Council first discussed and approved this, there was discussion about adding on location destination specific routes, and wondered what effort they have gone through to accomplish that and adapt these routes to the customers.

Public Works Director Henne replied that they have outlined the routes so they are going to the Fred Meyer/Bi-Mart area on 40th Avenue, then down to the Valley Mall across from the breezeway station, and to the Costco/WinCo area.

Council Member Carlson responded that they talked about creating a Walmart Wednesday or a YVC route, which was one of the items specifically mentioned as opportunity to do.

Public Works Director Henne reminded him that the City of Yakima nixed that. He went on to say that they allow buses to go on 40th Avenue down to Fruitvale Boulevard, then down 22nd Avenue and to 16th Avenue and up South 1st street past Miner's, but beyond that, their hands are tied.

Council Member Carlson did recall that, but countered that they have the right to drive on the roads, and the question was about using bus stops.

Public Works Director Henne replied that it would be using bus stops and operating a business in their city.

Council Member Carlson found it interesting that Selah buses weren't able to drop people off in the parking lot of a specific business.

Public Works Director Henne remarked that he was correct; they aren't able to at present.

Council Member Lantz brought the conversation back to aiding or helping Selah businesses in utilization of bus services, wondering if they could do some pro bono advertising to help smaller businesses struggling in Selah, possibly allocate a small amount of funds to work with a local graphics company to help businesses out.

City Administrator Wayman answered that they did contemplate allowing independent advertising from businesses on buses, but Council at the time opted to just keep Selah Transit signs on buses. He added that, if Council wishes it, they could revisit the matter, although he didn't feel they would need to supplement it with additional funds.

Council Member Lantz felt that would be good, and if it could help a few struggling businesses for a thirty- or sixty-day period it would be good to help them out.

Public Works Director Henne commented that the only cost would be a message board on the sides of the bus or a wrap on the back of the bus.

Council Member Carlson remarked that one concern was that they can't differentiate if it's opened up for advertising; the City can't dictate which businesses could or couldn't advertise on the buses. He asked City Attorney Case for his opinion.

City Attorney Case requested that he repeat his remark.

Council Member Carlson did so.

City Attorney Case opined that there might be ways to impose some restrictions but it would be difficult.

Council Member Carlson stated that was his concern.

Council Member Bell recalled that the other matter was that there would be no increased revenue to the City, as Medstar would be getting the advertising money.

Council Member Peterson inquired about a printed schedule or brochure of some sort available at Selah businesses to promote both Selah Transit and local businesses.

Public Works Director Henne replied that they have bus books done jointly with Yakima and Union Gap, currently at the Civic Center, City Hall, and Public Works, as well as online.

M. General Business

- | | | |
|----|--------------|------|
| 1. | New Business | None |
| 2. | Old Business | None |

N. Resolutions

1. Resolution authorizing the adoption of the "Selah Transit Development Plan 2021-2026 and 2020 Annual Report"

Public Works Director Henne addressed N – 1. He asked that Council approve the Resolution.

Council Member Bell moved, and Council Member Matson seconded, to Approve the Resolution authorizing the adoption of the "Selah Transit Development Plan 2021-2026 and 2020 Annual Report". Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Lantz – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

O. Ordinances

1. Ordinance Amending the Selah Municipal Code Chapter 9.02 relating to Water Connection Permit Fees, Meter Installation Charges, and Connection Fees; Providing for Severability; and Establishing an Effective Date

Public Works Director Henne addressed O – 1. He said that this Ordinance amending Chapter 9.02 would combine the Water Connection Permit Fees, Meter Installation Charges, and Connection Fees into one and update the cost of those fees. He went on to say that costs for materials, water meters, and labor have all gone up, and after doing an estimate and determining an average they came up with the amounts listed on page one of the Ordinance, noting that anything over two inches would be a time and materials cost unless they opted to let the builder install them and pay an inspection fee. He asked that they approve the Ordinance.

Council Member Matson inquired as to the rate per hour on meter sizes larger than two inches.

Public Works Director Henne replied that it would be the established wages in effect at time of the meter request.

Council Member Matson wondered whose wages it would be established against.

Public Works Director Henne answered that it would be the City utility workers who install the meter.

Council Member Matson asked for confirmation that it would be utility works wages.

Public Works Director Henne confirmed that it would be.

Council Member Matson inquired if the installation charge included the cost of the meter, and if it was more work to install a larger meter.

Public Works Director Henne replied in the affirmative.

Council Member Matson requested further information on the additional work for a three-inch line versus a two-inch one.

Public Works Director Henne answered that the service pipe is larger and more difficult to install and the meters are heavier, adding that the fees are mostly based on cost of the meter, pipe, and fittings.

Council Member Matson commented that there was a substantial increase in fees and requested that he explain why they were such large increases.

Public Works Director Henne responded that they haven't increased fees for fifteen to twenty years, and the cost of items has gone way up.

Council Member Matson asked if the City had a water conservation program.

Public Works Director Henne replied that it's in the water system plan. They try to encourage people to go with dry land landscaping, and encourage them through the plumbing code to install things such as water conservation washers.

Council Member Matson wondered if there was any benefit when implemented.

Public Works Director Henne answered that a person's utility bill would be less, and that water conservation stretches out water rights.

Council Member Carlson inquired about a scenario where the City may elect not to do the install and why they would do so.

Public Works Director Henne gave an example of a right of way encroached upon with landscaping or retaining walls, which would exceed the cost in the Ordinance, although he added that normally they do the installation themselves.

Council Member Carlson commented that he had hoped see a comparison of what the fees were versus what they would be.

Public Works Director Henne referred him to the last page of the packet.

Council Member Bell asked if a contractor could choose to do their own install or if the decision was solely on the City.

Likewise, not a single Council Member has expressed any concern to me about Mr. Wayman's time in Texas. Please move on.

Secondly and similarly, people are now attacking our City Attorney. They're spreading hateful lies, creating fake Facebook accounts under his name, and even trying to get him disbarred, but our City Attorney has done nothing wrong. Quite the contrary. He has been a major asset to our government, and has done exactly what I have asked him to do. Each letter that he has issued was prepared by me, by our City Administrator, and by others as well.

It is truly sickening just how low so people have stooped. While falsely claiming that they are supposedly seeking justice or advocating for policy changes. I'm going to mention a few names here, so, just to be crystal clear.

Jose Rocha and Gabriel Fabian are vivid examples. These messages posted under your Facebook accounts are downright evil. You are accusing our City Attorney of stalking little girls. You are talking about his genitalia. And you are lying about our Police Department. And on and on.

Then there are additional people, including public school teachers and people who desperately want political power for themselves, who cheer on these evil posts, circulating them and even adding to them.

That includes you, Courtney Hernandez, and you, Damian Alvarez. And neither of you are voters of the City of Selah anyway.

Bill Callahan is a voter of the City of Selah, and he too has chosen to cheer on these attacks and to celebrate fictitious Facebook accounts that are slandering our City Attorney. You've certainly made your true colors known, Bill.

Many other names could be mentioned as well. You people know who you are. None of you will ever hold any sway on matters of policy as long as I'm Mayor. None of you know anything about justice. You are just spewing and spreading hate among our City's citizens.

Thirdly and relatedly, I want to address the constant harping about our City Attorney supposedly having a conflict of interest because he is also representing the City Administrator on a personal lawsuit. This is flatly untrue. Before our City Attorney was hired, the entire City Council was briefed on the City Administrator's personal lawsuit. Everyone agreed that no conflict of interest and a signed waiver contract was put in place and added as a precaution. That waiver is public record, available to anybody who wants to see it. But few people have ever asked to see it, choosing instead to press on with their false narrative because they don't like the actual facts.

Fourth, I want to once again address the City's stance on the Governor's Emergency Orders. Selah is really not doing anything different from what the City of Yakima and Yakima County are doing. Neither the Yakima Police Department nor the Yakima Sheriff's Department are out there writing tickets when someone does not adhere to the Governor's Emergency Orders, just like how Selah is not doing so. Moreover, the City Council unanimously backed my May 8 Proclamation, and the Governor's Office conceded that my Proclamation is lawful. The issue is over and done with.

Fifth and finally, I will briefly address the chalk issue. The City policy has been clearly explained. I refer everyone to our City Attorney's letter on July 16. Please do not be confused or misled by inaccurate media reports nor by certain activists who are outright lying. The City is not trying to punish people for drawing on their own driveways. We are

not trying to punish people for using traditional stick chalk on sidewalks. Rather, we are only punishing people who cause true property damage or who deface public streets or government buildings.

It is stupefying that some people think that this is an outrageous policy. It is stupefying that some people feel entitled to damage property or to deface public streets and buildings. That sort of nonsense might be tolerated or even celebrated in Seattle or Portland, but it will not be tolerated in Selah while I am Mayor. There is no First Amendment right to property damage. There is no First Amendment right to deface public streets and buildings. This is not all that complicated.

I hope these strong words resonate particularly with the bad actors who I've mentioned or described earlier. Selah is a great place with great people. We don't all have the same opinions, and that's okay. What is not okay are the personal attacks, slander, and outright hatred that some are engaging in. I want to emphasize the word *some*. It is a small group of people.

I call on everyone else to help improve the City. If you disagree on a policy, then please send a respectful email that advocates your preference. Or schedule a meeting. Or engage in a lawful protest if you choose. There are sensible people in every political party and on all sides of any issue if you need to get active. You need to help us restore sanity. You need to stand up for the rule of law. We can disagree without being monstrous. We owe it to ourselves, to our forefathers, and to our future generations.

And I was sitting here tonight thinking about the Council Meeting, I have a book on my desk. And if you're all bored tonight, read this book. (Mayor Raymond holds up a copy of The Selah Story.) This is what we are about. Read where we came from. Remember who we are and why we love our city.

Mayor Raymond thanked everyone for hearing her out and moved onto department reports.

1. Departments

Public Works Director Henne gave a brief update on current construction projects, and the improved status of the wastewater treatment plant. He noted that they were still reviewing plans for the John Campbell / Sunset School site, and that the Lince School project still needed to get some school crossing and school speed zone flashing lights up.

Deputy Fire Chief Lange said that the Fire Department was doing well, with their vehicle replacement program in full swing. He added that they were busy with Lince and some other inspections going on, and that the office is closed but feel free to give them a call as they're happy to assist people.

Council Member Peterson wondered whether they were keeping up with commercial inspections since a number of businesses are closed.

Deputy Fire Chief Lange replied that they have a backlog of those who are closed, but those operating or semi-operating they are keeping up with.

Council Member Bell expressed his thanks to the Fire Commission for changing their meeting time next month to a time when he could attend, as the most recent change in Council Meeting times conflicted with Fire Commission meetings, rendering him unable to attend as the Council representative.

Human Resources Manager Potter said that they've had one change of employment internally, to fill a position after letting go an employee who didn't pass the probationary period satisfactorily. He went on to say that they chose to advertise the position internally, which requires them to work for a year and then test to certify, and the one respondent, Mr. Andrew Lee, who had been reassigned to the wastewater treatment plant from his former job as a recreation coordinator, was appointed. He noted that they weren't currently advertising the Recreation Coordinator position as there is a heavy loss of revenue in that department and with the loss of functions at the Civic Center.

City Attorney Case wanted to forewarn the public that the City continues to suffer fictitious online accounts that purport to be from the City officially, which have now crossed over into fictitious accounts for humans. He advised people not to trust things posted online.

2. Council Members

Council Member Matson no report, noting that YVCOG hasn't had a meeting in quite a few months, although they hope to have one in September. She commented that the new kindergarten looks great.

Council Member Peterson had no report.

Council Member Bell had no report.

Council Member Wickenhagen had a brief report from Yakima Valley Tourism, saying that some hotel stuff has picked up a little bit. He added that there is a community at yvopenandsafe.com for businesses, which provides resources and avenues of assistance.

Council Member Vargas had no report.

Council Member Carlson echoed Council Member Matson's comment about Lince, which he feels is a great looking building. He gave kudos to Council Member Bell and the Harris family, and everyone who recognized a need for a Mental Health Awareness month. He recognized Brian Harris specifically for the money he raised for the YWCA, encouraging people to reach out to them. He asked for clarification on the public comments read aloud earlier in the meeting.

Mayor Raymond responded that they only had two prior to the cutoff time, noting that the one received late would have to resubmit for the next meeting.

Council Member Lantz commended Dan Peters, Kim Brewer, and others who were professional and polite when emailing concerns, expressing his disappointment in the vulgarity used by those professing to be educators in this town. He stated that was his idea for people to sit outside and eat, spurred by seeing people eating at picnic tables, and he suggested that they allow people to utilize their own parking lots once the County has progressed forward to maximize space. He didn't understand those saying it was for personal gain on the Mayor's part, adding that as far as Jeremy Burke's involvement, he's had contacts from Mr. Burke's current county contact him to ask what his agenda was and express their lack of appreciation for Mr. Burke's remarks, and that he personally did not appreciate the pretty personal attack. He said that, with regard to those people who did write in tonight they are working diligently to find something that's legal and in their best interest. He ended by saying that this would be his last City

Council meeting, and that while he would stay involved in the City via other groups, COVID has impacted his household. He tendered his resignation effective at midnight that night, thanking everyone for their support. He spoke directly to Council Member Vargas, saying that he's had some people tell him the decision to nominate her was wrong but he stands by it. He advised her to be wary of what she pursues, as emotions are running high right now.

Mayor Raymond responded that he would be missed.

3. City Administrator

City Administrator Wayman read aloud the following post from the Selah Police Department page:

There is a post circulating on social media that states the Selah Police Department has "Confirmed" that the city's attorney is/was following women and 'Staking Out' people's homes. This post/story is totally made up and not true.

There was/is a report that was taken on Monday (July 27th) about what was reported as a suspicious circumstance, and it has been cleared as not being suspicious or illegal. There is also a fake satirical city of Selah Facebook page that is also spreading false information that some may believe is true or real. The City of Selah has temporarily suspended it's Facebook page.

City Administrator Wayman said that they had suspended the City's Facebook page to avoid entanglements with the ACLU or any other organization looking to trap us, per recommendation by the City Attorney. He explained that there are rules for comments and certain settings for lewd or inappropriate language that puts people in a timeout on Facebook, or the administrator, Executive Assistant Lake, would have to suspend them for a period of time. He went on to say that Executive Assistant Lake was spending an inordinate amount of time trying to parse out who was saying what and how egregious it was, putting her in the position of splitting hairs and trying to make a judgment on one or the other, which was politically very difficult and legally untenable. He stated that the City is not required under any statute or code to have a Facebook page; it's a convenience, and in this circumstance, it was a hindrance and a liability, which was why he and the City Attorney recommended to the Mayor that they suspend it for an undetermined period of time. He opined that the premise of the entire editorial by a former Council Member was false, saying that he had a particular political viewpoint that bled into policy decisions, specifically as pertains to political propaganda in chalk graffiti and art, which was far from the truth. He stated that those policies are crafted at his level as well as the City Attorney, and the Mayor has the final decision. He told Council that they were welcome to give him a call if they had any questions, but Mr. Burke was entirely incorrect in his editorial.

4. Boards **None**

5. Mayor

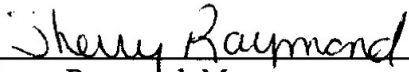
Mayor Raymond said that there would be a rally against sex trafficking and human life trafficking in front of the Civic Center Thursday night from 5-7pm, and that she would like to dedicate July 30th as a day against human trafficking in Selah. She wished everyone a great evening, and asked that they remember where they come from, as they are Selah strong.

R. Executive Session None

S. Adjournment

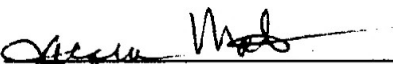
Council Member Bell moved, and Council Member Wickenhagen seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 6:53pm.

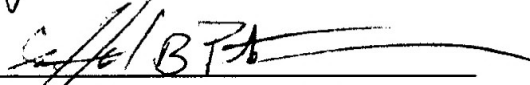

Sherry Raymond, Mayor


Roger Bell, Council Member

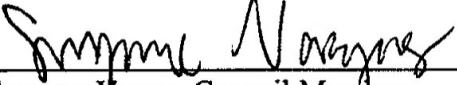

Russell Carlson, Council Member


Jacquie Matson, Council Member

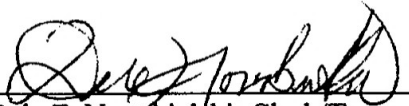
Kevin Wickenhagen, Council Member


Clifford Peterson, Council Member

Christopher Lantz, Council Member


Suzanne Vargas, Council Member

ATTEST:


Dale E. Novobielski, Clerk/Treasurer