

Paige Winfrey

Councilor , City of Shady Cove

August 21st, 2025

To: Mayor Richardson, Councilor Mitchell, and the citizens of Shady Cove

CC: City Administrator, City Attorney

To my colleagues, and citizens of Shady Cove,

Over the course of the last three consecutive council meetings, motions have been made and voted upon during the “Council Comments” period which were neither placed on the published agenda nor properly noticed to the public. After reviewing the applicable provisions of Oregon law, our City Charter, and our adopted Rules of Government, I must respectfully register my objection to these actions and formally rescind my two prior affirmative votes on these matters.

One of these votes pertained to pushing out the acceptance date for Council applications, postponing the appointment of candidates to fill two vacant city council seats—from July 9 to August 20th purportedly to be voted upon August 21st. Which subsequently was pushed out from August 20th to September 5th, the day after council meeting pushing the selection of two very much needed and anticipated councilors out to Sept 21st. Keep in mind that we had 5 applications as of July 9th, some of which are very qualified candidates. When I voiced my strong objection to the second postponement, I was told this was transparency. There is nothing about this that I find as being transparent. Based on the numerous comments I have received from our citizens, the feeling is mutual.

While my vote corrections do not alter the outcomes, However, they reflect my growing concern about our current governance structure's inadequacy and legal vulnerabilities. I felt that what was happening was just wrong, so I did a little research and what I discovered is alarming to me. I am bringing this information out into the light and my earnest prayer is that the wrongs will be righted and that the necessary corrections will be made so we can move forward in governance of our city in transparency and integrity.

The unexpected July 1, 2025 resignations of Jon Ball and Kathy Nuckles created significant institutional instability. Our current city council structure presents multiple risks:

City of Shady Cove Charter

A complete Shady Cove City council is comprised of a mayor and four councilors. Under the City Charter, the council's authority is to be liberally construed so that the city may exercise, to the fullest extent, all powers granted under this charter and under United States and Oregon law.

The question before us is whether, with our current diminished Council, we can truly fulfill the essential democratic functions required by this body. **My answer is no for the following reasons:**

- A full council structure prevents dangerous concentration of authority.
- A full council ensures appropriate oversight, community input, and governmental accountability
- A full council upholds the principle of collective oversight, providing proper checks and balances, particularly during contentious situations requiring objectivity and careful deliberations.
- A full council preserves transparency in governance and ensures that all citizens are fairly represented.
- A full council provides structure for decision making processes that are less susceptible to external pressures, thereby protecting the integrity of democratic governance.

With the continued postponement of filling vacancies, these dangers of a diminished Council are no longer theoretical- they are real and evident. This condition is unnecessary and inconsistent with the Charter. There is no valid reason for the City of Shady Cove Council to continue operating without a full Council when qualified applicants are available and ready to serve.

Why Motions Under “Council Comments” Are Impermissible

A. Violation of OPML Notice Requirements

- “Council Comments” is noticed to the public as an opportunity for statements—not deliberation or action

- . ORS 192.640(1) the subject must have been itemized in the agenda.
- **Per Marks and TriMet**, acting on an un-noticed subject is voidable and exposes the Council to injunctive relief and attorney-fee liability.

B. Conflict with City Charter Structure

- § 12 mandates pre-adopted rules; any action outside those rules exceeds authority.
- § 16 makes OPML compliance a precondition to legality.
- Entertaining a motion under “comments” contradicts § 13’s requirement that meetings (and therefore motions) follow designated procedure and agenda order.

C. Procedural Ambush and Due-Process Concerns

- Stakeholders, staff, and the public cannot prepare for debate or provide input.
- Handy condemns tactics designed to skirt public participation; courts construe such conduct as “deliberation in disguise.”

D. Governance & Ethics

- Surprise decision-making undermines public confidence and violates the spirit of ORS 244.040(1) (the statewide ethics mandate to act in the public’s interest).
- Best-practice manuals (e.g., League of Oregon Cities) treat “Council Comments” as informational only; action items belong under “New Business” or “Action Items,” posted in advance.

Practical & Legal Risks

- Invalidation: Any measure adopted during “Council Comments” is susceptible to being declared void under ORS 192.680(1).

“Surprise” action under the guise of comments is viewed by courts and the public as an attempt to thwart open governance, eroding legitimacy and exposing the Council to litigation, invalidation of its acts, and fee-shifting under ORS 192.680(3).

Ethical and Governance Concerns

This practice undermines transparency, due process, and public confidence in our governance. Stakeholders, staff, and the public are denied the opportunity to prepare input or attend for matters of interest. As emphasized in Handy and other Oregon case law, such tactics are viewed as attempts to evade public participation.

Rescission of Votes

Pursuant to my duty under ORS 244.040(1) to act in the public interest, I hereby rescind my two affirmative votes cast in favor of matters decided through these procedurally improper surprise motions.

I respectfully request that these rescissions be recorded in the minutes and that the Council take immediate action to nullify the affected measures as void for failure to comply with OPML and our governing rules.

Qualified candidates await appointment to restore proper governance and balance. Continued delays not only violate our established standards and policies but expose the city to legal liability. We must prioritize institutional integrity and citizen representation by immediately filling these vacant positions.

The City of Shady Cove deserves—and our legal obligations demand—a fully functional council capable of providing proper oversight, diverse representation, and transparent governance.

Respectfully submitted,

Paige Winfrey

City Councilor, Shady Cove, Oregon

Appendix A – Governing Law and Rule Provisions Violated

Oregon Public Meetings Law

ORS 192.640(1) – *Notice requirements*

“The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, including news media that have requested notice, of the time, place and principal subjects to be considered at the meeting.”

ORS 192.680(1) – *Effect of violation*

“Any decision made in violation of ORS 192.610 to 192.690 is voidable.”

ORS 192.680(3) – *Attorney fees*

“The court shall award reasonable attorney fees and costs to a successful plaintiff in a suit brought under this section.”

Shady Cove City Charter

Section 12 – Rules

“The council shall, by resolution, prescribe rules to govern its meetings and proceedings.”

Section 13 – Meetings

“The council shall meet in the city regularly ... at a time and place designated by council rules and may meet at other times in accordance with its rules.”

Section 16 – Proceedings to Be Public

“No action by the council shall have legal effect unless the motion for the action and the vote by which it is disposed of takes place at proceedings open to the public, and all within the provisions of the Oregon Open Meetings Law.”

Section 19 – Vote Required

“The expressed concurrence of a majority of the council members present and voting and constituting a quorum is necessary to decide a question before the council.

Shady Cove Rules of Government (Adopted April 2020)

Chapter 1, Section V – Agendas

“The City Administrator shall prepare an agenda for every regular meeting ... Agendas and informational material for meetings shall be distributed to the Council by the Friday before the regular meeting.”

Chapter 1, Section VI – Order of Business

The “Council Comments and Liaison Reports” period (Item 14) is for reports only, not for deliberation or formal action.

Chapter 5, Section I – Motions

“The Council will discuss a motion only after the motion has been moved and seconded. Nothing in this section prevents general discussion ... before a motion is made.”

Chapter 5, Section III – Public Comment

“The public shall be entitled to comment on all matters before the Council that require a vote. Public comment shall occur after the matter up for vote has been presented by City Staff and before the Council takes any formal action on the matter.”

Note:

The practice of making motions during “Council Comments” violates these rules because:

1. The items are not placed on the agenda by the City Administrator in advance.
2. Public notice of the “principal subject” is not given.
3. The public is denied its guaranteed opportunity to comment before action is taken.