

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

| | | |
|---------------------------------------|---|------------------------------------|
| HEIDE LAMBERT, |) | Case No. |
| |) | |
| Petitioner, |) | PETITION FOR WRIT OF REVIEW |
| |) | |
| vs. |) | |
| |) | |
| CITY OF WALDPORT , a municipal |) | |
| corporation of the State of Oregon, |) | |
| |) | |
| Respondent. |) | |

OVERVIEW OF CASE

1.

This case arises out of an attempted small-town political coup. Heide Lambert, the duly-elected Mayor of the City of Waldport, seeks review under ORS 34.010 *et seq.* of the April 3, 2025, decision of the city council to summarily expel her from that position. That decision, the product of a slapdash local proceeding, is both substantively and procedurally improper.

PARTIES

2.

In November 2024 the people of Waldport elected as their Mayor Petitioner **Heide Lambert** (“Mayor Lambert”). She was seated in January 2025.

1 3.

2 The **City of Waldport** is a municipality in Lincoln County, Oregon. The Waldport city
3 council, composed of a mayor and six councilors, governs the city.
4

5 **FACTS**

6 4.

7 On April 3, 2025, the city council held a meeting. The written agenda for that meeting
8 included this item: “Consideration of action based on letters of complaint of Mayor.”
9

10 5.

11 At the meeting, and under that agenda item, the council and city manager engaged in a
12 wide-ranging 45-minute long discussion that was nominally about the circumstances
13 surrounding two letters of complaint filed by city staff, but that veered off into local political
14 disagreements and unrelated litigation involving the nearby town of Yachats.

15 6.

16 Near the end of the discussion, city staff suggested that Mayor Lambert had—it’s not
17 clear how—violated the city charter, and advised her that she could either resign or, instead, be
18 removed from office by the council.

19 7.

20 Caught off guard and unprepared, Mayor Lambert turned to the city attorney for advice
21 and direction, asking what her options were and if she needed to respond right then and there.
22 The city attorney responded that “You should be asking this of your personal counsel[.]” But
23 she was *not* given an opportunity to consult personal counsel. Instead, the council proceeded to
24 discuss removing her from office. Five minutes later, and without a motion being made and
25 seconded, one councilor called for a vote: “All those in favor of removing the Mayor from her
26

1 position, can you say ‘aye’?” To which another councilor responded: “Can I add to that,
2 though? ‘Cause I would say ‘based on the city charter,’ ‘for violation of the city charter.’ [...]’
3 ‘Based on the city charter, do we think that she violated it?’” This was an apparent reference to
4 the anti-cronyism provisions of section 21(g) of the charter.¹

5
6 8.

7 The council ultimately settled on the following “motion”:

8 “Do I have a motion to remove the Mayor from her position?”

9 “So moved.”

10 “Based on the violation of the charter?”

11 “[inaudible] of the city charter.”

12 9.

13 An oral vote was taken, and the motion—whatever it was—passed.²

15 ¹ Section 21(g) of the Waldport City Charter reads in full as follows:

16 “No member of the Council shall directly or indirectly, by suggestion or
17 otherwise, attempt to coerce the Manager in the making of any appointment or
18 removal of any employee; or to influence an award of contract contrary to City
19 Code; or, except through the Manager, attempt to direct any City officer or
20 employee under the Manager's supervision in the performance of his or her duties;
21 or attempt to exact any promise relative to any appointment to be made by the
22 Manager from any candidate for Manager. Nothing in this Section shall be
23 construed, however, as prohibiting the Council, or Council members, from fully
24 and freely discussing with or suggesting to the Manager anything pertaining to
City affairs or the interests of the City. A violation of this subsection may
occasion the censure or removal from office of the offending member of the
Council, by the Council or a court of competent jurisdiction. Neither the Manager
nor any person in the employ of the City shall take part in securing, or contribute
any money toward, the nomination or election of any candidate for a municipal
office.”

25 ² No charging instrument was ever filed, and the city did not enter an order reflecting its
26 decision. Accordingly, no written findings of fact or conclusions of law are available for this
Court to review.

10.

The following week, on April 10th, the city council held its regular public meeting. Mayor Lambert believed that the prior week's "expulsion" vote was invalid or otherwise ineffective and thus attended the meeting with the intention of participating as an elected official. But when she entered city hall, she was served with a document titled "Exclusionary Notice" signed by the city manager.

11.

The notice said that "effective immediately, you are hereby excluded from City Hall in any role other than as a general citizen. This decision has been made due to a council motion removing you from the elected office of Mayor." "Failure to comply," the notice continued, "may result in further legal action, including but not limited to trespassing charges."

12.

Moments later, when Mayor Lambert sat down near council table, the city manager gave a nod to the county sheriff who was in attendance. The sheriff approached Mayor Lambert at council table. After several minutes of discussion, the sheriff escorted Mayor Lambert out of the building and cited her for criminal disorderly conduct in the second degree (ORS 166.025).³ After being released by the sheriff, Mayor Lambert returned to the meeting, where she was required to sit in the audience.

13.

Ever since the oral expulsion vote on April 3rd, the council and city manager have refused to recognize Mayor Lambert as an elected official. For example, she has been barred from her city email account, excluded from receiving official city-related information, barred from participating in council deliberations and votes (including but not limited to those related

³ The Lincoln County district attorney has declined to file charges.

1 to the current budget adoption process), and otherwise treated as if she has been effectively
2 removed from office. Moreover, the council and city manager have publicly announced that the
3 mayoral seat is now vacant.

4 14.

5 Mayor Lambert timely filed this writ of review proceeding under ORS 34.010 *et seq*
6 challenging the city council's April 3rd expulsion decision.

7
8 **LEGAL STANDARDS**

9 15.

10 This case is brought under the writ of review statutes, ORS 34.010 *et seq*. Under ORS
11 34.040, a writ shall be allowed where an inferior tribunal, in the exercise of judicial or quasi-
12 judicial functions, appears to have:

- 13 (a) Exceeded its jurisdiction;
14
15 (b) Failed to follow the procedures applicable to the matter before it;
16
17 (c) Made a finding or order not supported by substantial evidence in the whole record;
18
19 (d) Improperly construed the applicable law; or
20
21 (e) Rendered a decision that is unconstitutional.

22 **FIRST CLAIM FOR RELIEF**
23 (Exceeded Jurisdiction)

24 16.

25 Mayor Lambert re-alleges all prior paragraphs.

26 /////

/////

/////

17.

ORS 34.040(1)(a) permits the Court to review whether the council exceeded its jurisdiction. If the Court finds that the council exceeded its jurisdiction, then it should modify, reverse, or annul the decision. *See* ORS 34.100.

18.

The council exceeded its jurisdiction in attempting to expel Mayor Lambert from office because only the voters and the courts have that authority.

19.

The voters of Waldport elected Mayor Lambert to office, and those voters have the authority to recall her if they want to. Or. Const, Art. II, § 18.

20.

In addition to a recall election, section 29 of the city charter (“What Creates Vacancy”) provides that an elected office becomes *automatically* vacant upon the incumbent’s “death,” “adjudicated incompetence,” “conviction of a felony or a crime pertaining to the office,” “unlawful destruction of public records,” “resignation,” “ceasing to possess the qualifications for office,” and “failure, following election or appointment to the office, to qualify for the office within ten days after the time for the term of office to commence.” *Id.* Further, the council can declare a vacancy upon “the incumbent’s removal of residency from the City,” “absence from the City for thirty consecutive days without consent of the Council,” or “absence from two consecutive regular meetings of the Council without like consent.” *Id.*

/////

/////

/////

1 21.

2 None of the vacancy provisions in section 29 of the charter have been triggered as to
3 Mayor Lambert. Nor is the council empowered to adjudicate Mayor Lambert's competence or
4 to convict her of a crime. Only a court can do so, and none has.

5 22.

6 The council's expulsion decision was *ultra vires* because the council lacked jurisdiction
7 to expel Mayor Lambert. Therefore, based on the violation of ORS 34.040(1)(a), this Court
8 should reverse or annul the council's expulsion decision.
9

10 **SECOND CLAIM FOR RELIEF**
11 (Failure to Follow Applicable Procedure)

12 23.

13 Mayor Lambert re-alleges all prior paragraphs.

14 24.

15 ORS 34.040(1)(b) permits the Court to review whether the council failed to follow
16 applicable procedures. If the Court finds that applicable procedures were not followed, then it
17 should modify, reverse, or annul the decision. *See* ORS 34.100.
18

19 25.

20 As explained in the First Claim for Relief, the council did not have jurisdiction to expel
21 Mayor Lambert from office. However, even if the council did have that jurisdiction, it failed to
22 follow its own procedures in doing so.

23 /////

24 /////

25 /////

1 26.

2 Robert's Rules of Order, newly revised, governs council procedure. Charter at § 13 ("The
3 Council shall adopt rules to govern its meetings and proceedings."); Council Rule 2.5 (adopting
4 *Robert's Rules of Order* as governing the proceedings of the council).

5 27.

6 According to Rule of Order 63:7 ("Steps in a Fair Disciplinary Process"), the "basic steps
7 [which] make up the elements of a fair disciplinary process" are: (1) a confidential
8 investigation; (2) a report and preferral of charges; (3) formal notification of the accused; and
9 (4) trial. *Robert's Rules of Order Newly Revised*, 12th ed. (2020) at 805-806. In attempting to
10 expel Mayor Lambert from her elected seat, the council did not follow these "basic steps,"
11 which are further described throughout section 63 of *Robert's Rules* ("Investigation and Trial").
12 See also *id.* at § 62, Rule of Order 62:16, at 803 ("Removal from Office") ("[A]n officer can be
13 removed from office only for cause—that is, neglect of duty in office or misconduct—in
14 accordance with the procedures described in [section] 63; that is, an investigating committee
15 must be appointed, charges must be preferred, and a formal trial must be held."). *Robert's Rules*
16 describes these basic steps as satisfying the accused's "right to due process—that is, to be
17 informed of the charge and given time to prepare [her] defense, to appear and defend [herself],
18 and to be fairly treated." *Id.* at 805.

19 28.

20 The council did not follow *Robert's Rules of Order* in attempting to expel Mayor
21 Lambert from her elected office. Accordingly, based on the violation of ORS 34.040(1)(b), this
22 Court should reverse or annul the council's expulsion decision.
23
24
25
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

(Finding or Order Not Supported by Substantial Evidence in the Whole Record)

29.

Mayor Lambert re-alleges all prior paragraphs.

30.

ORS 34.040(1)(c) permits the Court to review the council's decision to determine if its findings, and the decision itself, is supported by substantial evidence in the whole record, and whether the decision is supported by a sufficient and lawful explanation for the action taken. If the Court finds a lack of findings, findings unsupported by evidence, or a decision that is insufficiently explained, it should modify, reverse, or annul the decision. *See* ORS 34.100.

31.

Here, the council did not make findings, let alone findings supported by evidence. And it did not explain its decision with sufficient particularity to enable judicial review. To the extent the council’s generic vote—to remove Mayor Lambert from office for “violation of the charter”—constitutes a “finding,” it is not supported by substantial evidence in the whole record.

FOURTH CLAIM FOR RELIEF

(Improperly Construed the Applicable Law)

32.

Mayor Lambert re-alleges all prior paragraphs.

33.

ORS 34.040(1)(d) permits the Court to review the council’s decision for errors in construing the applicable law. If the Court finds that the council improperly construed the law, then it should modify, reverse, or annul the decision. *See* ORS 34.100.

1 34.

2 The council improperly construed the applicable law when it relied, apparently, on
3 section 21(g) of the charter as authority for expelling Mayor Lambert. That section is facially
4 unconstitutional under Judge Aiken's ruling in *Ellis v. City of Corvallis*, No. 6:24-cv-00205-AA
5 (D. Or. Jan. 10, 2025) (ruling that substantially similar charter provision was unconstitutionally
6 overbroad under the First Amendment to the U.S. Constitution and under Article I, section 8, of
7 the Oregon Constitution).

8 35.

9 Because the council misconstrued the law in concluding that it could expel Mayor
10 Lambert from her elected office, this Court should reverse or annul the council's expulsion
11 decision.
12

13 **FOURTH CLAIM FOR RELIEF**
14 (Rendered an Unconstitutional Decision)

15 36.

16 Mayor Lambert re-alleges all prior paragraphs.

17 37.

18 ORS 34.040(1)(e) permits the Court to review the council's decision for constitutionality.
19 If the Court finds that the council rendered an unconstitutional decision, then it should modify,
20 reverse, or annul the decision. *See* ORS 34.100.
21

22 38.

23 Mayor Lambert has a protected liberty interest in her elected position as Mayor of
24 Waldport. The local process used to attempt to deprive her of that interest was *procedurally*
25
26

1 insufficient under the Due Process Clause of the Fourteenth Amendment to the U.S.
2 Constitution. Therefore, the council's decision was unconstitutional under ORS 34.040(1)(e).

3 39.

4 Expelling Mayor Lambert for alleged noncompliance with an unspecified provision of
5 the city charter violated Mayor Lambert's *substantive* due process rights under the Fourteenth
6 Amendment to the U.S. Constitution. Therefore, the council's decision was unconstitutional
7 under ORS 34.040(1)(e).

8 40.

9 The local process used to attempt to expel Mayor Lambert from office violated Article I,
10 section 10 of the Oregon Constitution.

11 41.

12 Because the council's expulsion decision is unconstitutional under both the U.S. and
13 Oregon constitutions, this Court should reverse or annul it.

14
15
16 **WHEREFORE**, Petitioner respectfully requests that the Court order its clerk to issue a
17 writ of review commanding the city to return the writ with a certified copy of the record and
18 proceedings in this matter for review by the Court, and order a stay of the city's April 3rd
19 decision pursuant to ORS 34.070, including a stay on enforcement of the Exclusionary Notice.
20 Petitioner further respectfully requests, based on the claims set forth above, that the Court, via
21 judgment, find that:

- 22
- 23 1. The city exceeded its jurisdiction (ORS 34.040(1)(a));
 - 24 2. The city failed to follow the procedures applicable to the matter before it (ORS
25 34.040(1)(b));
- 26

1 3. The city made a finding or order not supported by substantial evidence in the
2 whole record (ORS 34.040(1)(c));

3 4. The city improperly construed the applicable law (ORS 34.040(1)(d)); and

4 5. The city made an unconstitutional decision (ORS 34.040(1)(e));

5 And so finding, then:

6 1. Reverse or annul the city's expulsion decision (ORS 34.100);

7 2. Award Petitioner her costs and disbursements; and

8 3. Grant such other relief as the Court deems just and proper under all the
9 circumstances.
10

11 Dated: May 7, 2025

Respectfully Submitted,

12 /s/ Jesse A. Buss

13 Jesse A. Buss, OSB No. 122919

14 /s/ Tom Christ

15 Thomas M. Christ, OSB No. 834064

16 *Attorneys for Petitioners*

17 SUBMITTED BY:

18 Jesse A. Buss, OSB No. 122919
19 WILLAMETTE LAW GROUP, PC
20 411 Fifth Street
Oregon City OR 97045-2224
ph: 503-656-4884
fax: 503-608-4100
jesse@WLGpnw.com

21 Thomas M. Christ, OSB No. 834064
22 SUSSMAN SHANK LLP
23 1000 SW Broadway, Suite 1400
24 Portland OR 97205
ph: 503-227-1111
fax: 503-248-0130
tchrist@sussmanshank.com

25 *Attorneys for Petitioner*
26

1 **CERTIFICATION**

2 Pursuant to ORS Chapter 34, I hereby certify that I have examined the record of the
3 proceedings in this matter to the extent that it is now available to me and have examined the
4 determination made in it and that in my view the decision and determination are erroneous as
5 has been alleged in this Petition.
6

7 Dated this 7th day of May 2025.

8 /s/ Jesse A. Buss
9 Jesse A. Buss, OSB No. 122919
10 *Of Attorneys for Petitioner*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26