

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	<p style="color: red;"> FILED Document CO Larimer County District Court 8th JD Filing Date: July 1, 2011 11:44 PM Case Number: 10CV925 Filing ID: 38474848 Review Clerk: Stephen Craig Adams </p> <p style="text-align: center;"> ▲ COURT USE ONLY ▲ </p>
<p> THE CITY OF LOVELAND, COLORADO, a home rule municipality; and WILLIAM T. CAHILL, City of Loveland City Manager </p> <p>Petitioners,</p> <p>v.</p> <p> PRAIRIE MOUNTAIN PUBLISHING COMPANY LLP, d/b/a THE LOVELAND DAILY REPORTER-HERALD </p> <p>Respondent and Counterclaim Plaintiff, and,</p> <p> KEN AMUNDSON, Counterclaim Plaintiff, </p> <p>v.</p> <p> THE CITY OF LOVELAND, COLORADO, a home rule municipality </p> <p>Counterclaim Defendant.</p>	<p>Case Number: 10CV925</p> <p>Courtroom: 5A</p>
<p>ORDER</p>	

This matter comes before the Court pursuant to its Order Regarding Judgment on the Pleadings, issued June 10, 2011. The City of Loveland (“City”), pursuant to that order, submitted a compact disc containing the recordings of the executive session held by the Loveland City Council (“Council”) on August 26, 2011, as well as the statements preceding and

following that session, and the statement made prior to the executive session held on September 7, 2011. The Court has reviewed those recordings *in camera* under C.R.S. § 24-72-204(5.5) and hereby determines that portions of them, as set forth below, shall be open to public inspection.

In conducting the *in camera* review, the court is required “to determine whether the ... local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4).” C.R.S. § 24-72-204(5.5)(b)(I). “If the court determines, based on the *in camera* review, that violations of the open meetings law occurred, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in section 24-6-402(3) or (4) or adopted [sic] a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection.” *Id.*

In this case, the Court assumes that the recordings of the proceedings before and after the August 26, 2010 executive session and before the September 7, 2011 executive session are already open to public inspection, as they were not made in executive session. To the extent that they are not, the Court hereby orders them to be open to public inspection.

The Court determines that the portions of the recording of the executive session between the following time markers reflect substantial discussion of matters not enumerated in C.R.S. § 24-6-402(4) and the adoption of a position or formal action. These sections thus constitute a violation of the Colorado Open Meetings Law (“COML”), C.R.S. § 24-6-402, and therefore must be open to public inspection:

- i. 25:48 to 28:54
- ii. 35:30 to 58:45

iii. 1:10:36 to 1:24:32

In making this ruling, the Court refrains from any discussion of the nature of these released sections or detailed explanation of its determination. In light of the possibility of an appeal and a ruling reversing this release, such a discussion would improperly compromise an right on the part of the City that these sections not be public, contrary to the Court's ruling. However, these sections reflect, in the Court's determination, substantial discussion of both the process of adopting a position and formal action and the actual adoption of that position and formal action, namely the decision to eliminate one of the three candidates from further consideration for the position of City Manager. The Court further determines that none of the discussion in the above portions of the recording fall under the enumerated exceptions in C.R.S. § 24-6-402(4). In particular, the Court, for the reasons stated in its previous order, finds that these sections did not involve "[d]etermining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators" or mere consideration of "personnel matters." C.R.S. § 24-6-402(4)(e) or (f). Therefore, with respect to the sections listed above, the Court finds and concludes that the Council violated the COML, C.R.S. § 24-6-402, and therefore those portions of the recording shall be open for public inspection.

In contrast, the Court determines that the portions of the recording not included in the sections above fall within one or more of the enumerated exceptions, in particular the exception discussed above under C.R.S. § 24-6-402(4)(e) and (f). The Court is satisfied, based on the discussion on the recording, that the accidentally unrecorded portion of the executive session of approximately 32 minutes involved a general discussion and evaluation of the candidates by the Council that falls under the exception for "personnel matters." There is no indication in the

recording that the Council had taken any action prior to the point the recording began and the discussion immediately following that time until the first section above—a period of about 26 minutes—is consistent with the City’s representation in its notice dated June 20, 2011.

The Court determines that the two portions of the recording between the three segments identified above fall under both of the exceptions set forth under C.R.S. § 24-6-402(4)(e) and (f) did not involve the adoption of a position or formal action, nor are they necessary for understanding the position or formal action adopted by the Council at that session. Therefore, the Court does not order the release of those sections.

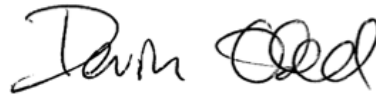
Finally, the Court also determines that the section of the recording dealing with the selection of an Acting Town Manager, which follows the last section identified above, falls within the “personnel matters” exception discussed at length in the previous order under C.R.S. § 24-6-402(4)(f) and did not involve the adoption by the Council of a position or formal action on this issue. Rather, the discussion during the executive session made clear that such a position or formal action would be discussed and adopted at a subsequent public session. Therefore, the Court declines to order that this portion of the recording be open to public inspection.

With respect to costs and attorney fees, the Court orders pursuant to C.R.C.P. 121 § 1-22, that Prairie Mountain Publishing Co., LLP and Ken Amundson file and serve a Bill of Costs and application for an award of attorney fees, along with briefing regarding any legal issues related to these requests (such as determination of the “prevailing party”), or a request for additional time to do so, within 15 days of this order. The parties shall file and serve any response or reply, and any request for a hearing in accordance with C.R.C.P. 121 § 1-22(2)(b) and (c).

WHEREFORE, the Court ORDERS that the sections of the recordings submitted for *in camera* review listed above shall be open to public inspection, and the City shall prepare a redacted version of the recording containing only these sections for such inspection by the public. The Court will maintain the compact disc of the entire recordings as submitted to it, with the City Clerk's certification, sealed in the Court's file for the record.

Dated this 1st day of July, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Devin Odell". The signature is written in a cursive, flowing style.

Devin R. Odell
District Court Judge