

DANN CUTTER City Manager, City of Waldport

August 13, 2026

To: The Waldport City Council **From:** Dann Cutter, City Manager **Re:** Todd Swift's Formal Grievance (September 20, 2025) and Amendment (September 24, 2025) —

RE: Request for Dismissal

Members of the Council:

I write regarding the formal grievance Todd Swift submitted on September 20, 2025, and the amendment he submitted on September 24, 2025. Together they raise five matters: my communications with the Confederated Tribes of the Siletz Indians; the planned Township 13 workshop; my communications with the Sheriff's Office and District Attorney; public comments I made about Mr. Swift; and my reference to Mr. Swift's prior public employment. None of the five states a proper basis for discipline. Three of them concern the performance of my official duties and are, at most, questions for the Council's ordinary performance-review process — not grounds for discipline. The remaining two concern speech that is protected under the First Amendment and Article I, section 8 of the Oregon Constitution. I ask the Council to dismiss the grievance.

A Threshold Problem

Before the individual issues, one defect runs through much of the filing.

It is brought on behalf of unnamed persons. Mr. Swift states the grievance is a compilation of complaints from citizens who did not wish to put their names to it. As to those matters, I am left to answer accusations without knowing who makes them or on what basis — which makes it impossible to respond fully and would taint any action taken on them. Issues #1 and #3, in particular, are not Mr. Swift's own complaints; he advances them on behalf of others.

Issue #1 — Communications with the Siletz Tribe

This concerns how I advocated the City's position in correspondence with the Tribe. Communicating with outside governments and organizations on the City's behalf is a core function of the City Manager. I stand by the position I took, I advanced it in the City's interest, and — contrary to the suggestion that I aired the dispute publicly — this was a private email between two managers. Further, I honored the Tribe's request and did not take the matter to the media; their own actions made it a public matter. A disagreement with how I advocated for the City is not misconduct. Whatever one thinks of the tone of that advocacy, it was official conduct within the scope of my duties, and political disagreement with it is not a proper subject of discipline. Nor is it a proper subject for Mr. Swift to complain of — he is not a party to the discussion.

Issue #2 — The Township 13 Workshop

This too concerns the performance of my duties. The October 16 event is a meeting of the City Council on City business, to be attended by a quorum of the Council. A gathering of that kind is a public meeting; it cannot be reconstituted as a private session from which the City Manager is barred, and there is nothing improper in the City's counsel being present to advise the Council. Mr. Swift's request that I be excluded, and that the City's attorney be kept away, asks the Council to hold what would amount to a closed, off-the-record negotiation on a matter — easement issues — with real legal consequences for the City. Managing that meeting and ensuring the City is properly advised is my job, not misconduct. At the root of this discussion is legal dispute on the validity of easement access – a matter not of policy but of operations, and directly in the purview of the City Manager function, not the Council. Mr. Swift also portrays the meeting incorrectly – what he deems a town hall style, is what public meeting law requires for an open meeting.

Issue #3 — Communications with the Sheriff and District Attorney

The premise of this issue is factually wrong. I have no authority over the City's contract with the Lincoln County Sheriff's Office, and I did not purport to exercise any. What I did was raise a legitimate question about the value the City receives under a contract that costs it over \$300,000 — the kind of performance question a City Manager is expected to ask. I did not, and could not, direct the District Attorney's charging decisions, which remain hers alone. Advocating for effective service under a costly public contract is a proper exercise of my responsibilities.

Issue #4 — My Public Comments About Mr. Swift

This is the heart of the grievance, and it fails as a matter of law. My comments were posted in a public online forum, in direct response to Mr. Swift's own public post about a case from his law-enforcement career — the same post in which he called for my termination. Speech of this kind is protected on multiple, independent grounds.

These comments did not, as Mr. Swift suggests, merely test his 'thick skin.' Mr. Swift publicly criticizes the Yamhill County District Attorney's office and a 'liberal' judge, yet asks that his own public record be placed beyond comment. My statements rest on that record. Mr. Swift served as a Yamhill County corrections deputy for over a decade, during which the corrections team was sued multiple times over the neglect of inmates' medical needs, resulting in wrongful-death settlements and judgments. In *Beagle v. Yamhill County*, No. 3:17-cv-00711-AA (D. Or.) — a case in which Mr. Swift was personally named — counsel for the plaintiff stated that jail staff "basically isolated this guy who they know is hurt and watched him die," and resulted in the inmate's family being awarded in excess of \$5 million. That award is accurate and a matter of public record.

It should be noted that these comments, in response to Mr. Swift's claim of authoritative credibility, were made from my own personal Facebook account regarding a matter unrelated to the city of Waldport and in a forum labeled "Waldport Free Speech" and based entirely on matters and information in the public domain.

It is protected opinion and rhetorical hyperbole. A statement on a matter of public concern is actionable only if a reasonable reader would understand it to assert a provably false statement of objective fact. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19–20 (1990). Oregon and the Ninth Circuit apply a three-part inquiry: whether the general tenor of the exchange negates the impression of an objective factual assertion; whether the language is figurative or hyperbolic; and whether the statement can be proved true or false. *Neumann v. Liles*, 358 Or. 706, 718–19, 369 P.3d 1117 (2016); *Partington v. Bugliosi*, 56 F.3d 1147, 1152–53 (9th Cir. 1995). Statements that cannot reasonably be interpreted as stating actual facts are protected, so that public debate does not suffer for lack of imaginative expression or "rhetorical hyperbole." *Milkovich*, 497 U.S. at 20. Read in context — a heated public argument about how Mr. Swift handled a case, in which he cast himself as a wronged whistleblower and I disputed that account — my characterizations were expressions of opinion and exasperation, not verifiable assertions of fact. Where the speaker lays out the factual basis for his view and leaves the reader to draw conclusions, the resulting characterization is protected. *Partington*, 56 F.3d at 1153.

Mr. Swift's own conduct places these comments at the core of protected speech. Speech about the official conduct of a public official is entitled to the highest protection; liability cannot rest on it without proof of a knowing or reckless falsehood. *Milkovich*, 497 U.S. at 14–15; *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964). Mr. Swift is a former law-enforcement officer complaining about commentary on how he performed that public role. He is also a voluntary participant in this very public controversy: he created the Waldport Free Speech forum, has been quoted in the press, and publicly called for my firing. One who voluntarily injects himself into a particular public controversy to influence its outcome becomes a limited-purpose public figure as to that controversy and must likewise prove actual malice. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974); *Flowers v. Carville*, 310 F.3d 1118, 1129 (9th Cir. 2002). Truth is, in any event, a complete defense.

And it was my speech as a citizen. The dispositive First Amendment question is whether I spoke as a private citizen or pursuant to my official duties; only speech made pursuant to official duties is unprotected. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The Ninth Circuit resolves that question through a practical, fact-intensive inquiry into three factors: whether the employee confined the communication to the chain of command, the subject matter of the speech, and whether the employee spoke in contravention of a supervisor's orders. *Dahlia v. Rodriguez*, 735 F.3d 1060, 1074–76 (9th Cir. 2013) (en banc). My comments meet each factor: I posted from a personal account to the community at large — well outside any chain of command — on a subject I had no official duty to address. Speech communicated to the general public, beyond the chain of command, is unlikely to be made pursuant to official duties. *Burch v. City of Chubbuck*, 146 F.4th 822, 834 (9th Cir. 2025). *Burch* confirms the distinction: the court held that a public works director's internal, up-the-chain criticism of the mayor was made pursuant to his duties and therefore unprotected, while his public political expression displayed to

the community was protected citizen speech. My Facebook comments fall on the protected side of that line. *See also Greisen v. Hanken*, 925 F.3d 1097 (9th Cir. 2019). Whether speech touches a matter of public concern is, in any event, a low bar that commentary on a former public official's conduct easily clears. *Johnson v. Multnomah County*, 48 F.3d 420, 422 (9th Cir. 1995).

The Amendment — Reference to Mr. Swift's Prior Employment

The amendment objects that I referred to Mr. Swift's prior service in Yamhill County. This adds nothing. Mr. Swift's history as a public employee is a matter of public record, drawn from litigation that has been public since 2017; I referred only to Yamhill County and published no agency name or further detail. The government may not punish the disclosure of truthful information lawfully obtained from official court records open to public inspection, absent a state interest of the highest order, and privacy interests fade once information is in the public domain. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–96 (1975); *The Florida Star v. B.J.F.*, 491 U.S. 524, 533 (1989). Those decisions arose from sanctions on the press, but the constitutional vice is the government's punishment of truthful, public-record speech — and disciplining me for such speech is the City exercising that same sovereign power, whatever label is placed on the proceeding. Oregon law is to the same effect: the government may not selectively restrict the use of public information. *Zackheim v. Forbes*, 134 Or. App. 548, 895 P.2d 793 (1995).

Mr. Swift characterizes the reference as retaliation. That theory is backwards. My comment was responsive speech in a public forum, and the Ninth Circuit has cautioned against treating mere speech, made in response to speech, as itself a First Amendment violation, while recognizing that public officials retain their own speech rights. *Greisen v. Hanken*, 925 F.3d 1097 (9th Cir. 2019). If anything, it is the grievance — filed to punish me for protected speech — that raises retaliation concerns, not the speech itself.

The Council Cannot Discipline Me for Protected Speech

Two of these issues ask the Council, as my employer, to punish me for speech. It may not. A public employer may not retaliate against an employee for protected speech; courts in this Circuit apply the balancing framework drawn from *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968), and distilled into a five-step inquiry in *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009). Article I, section 8 of the Oregon Constitution independently forbids content-based restrictions on speech unless the restriction is wholly confined within a historical exception well established when the guarantee was adopted. *State v. Robertson*, 293 Or. 402, 412, 649 P.2d 569 (1982); *State v. Henry*, 302 Or. 510, 732 P.2d 9 (1987). Disciplining me on this record would not withstand review under either constitution.

Requested Action

For these reasons, I respectfully request that the Council:

(1) dismiss the speech-based matters — my public comments about Mr. Swift and the reference to his prior public employment — as directed at speech protected under the First Amendment and Article I, section 8; and

(2) dismiss the third party matters, the Siletz Tribe correspondence and the Sheriff's Office contract, and

3) address any bona fide concern about my performance of official duties — during the Township 13 workshop, if at all, through the Council's ordinary performance-review process rather than this grievance.

I remain willing to answer any legitimate question about the performance of my duties through the Council's ordinary process, and I will make the underlying correspondence and public records available to the Council and to the City Attorney on request.

Respectfully,

Dann Cutter City Manager, City of Waldport