



## **CITY OF KIRKLAND**

City Attorney's Office

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### **MEMORANDUM**

**To:** Marilynne Beard, Assistant City Manager

**From:** Robin S. Jenkinson, City Attorney

**Date:** September 9, 2009

**Subject:** Draft Response Letter to David Alskog

### **RECOMMENDATIONS:**

Staff recommends that the Council authorize Mayor Lauinger to sign the attached letter to David Alskog.

### **BACKGROUND:**

At the September 2, 2009, Council Meeting, the City Council passed a motion for the Mayor, Deputy Mayor, and City Attorney to prepare a draft letter in response to David Alskog's letter of August 10, 2009. Mr. Alskog's letter was addressed to the City Council and asked that the Council take certain action.

The attached letter has been reviewed and approved by the Mayor and Deputy Mayor.

LAW OFFICES

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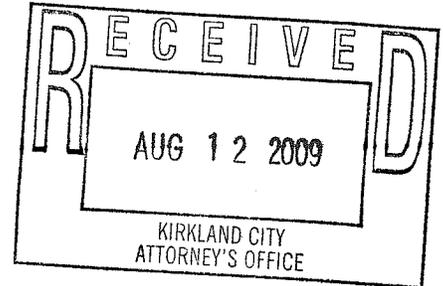
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GORDON A. LIVENGOOD (1921 - 2001)

August 10, 2009

Kirkland City Council  
123 Fifth Avenue  
Kirkland, WA 98033

**Re: August 4, 2009 City Council Meeting  
Lodging Tax Advisory Committee Membership**



Dear Council:

This firm represents Les Utley, General Manager of the Heathman Hotel in Kirkland. I am writing to each of you regarding the character attack on Mr. Utley by Councilmember Tom Hodgson during the City Council Public Meeting of August 4, 2009. On the New Business agenda was the annual review of the LTAC Membership and Council selection of a Councilmember to serve as Chair of the Committee. The meeting was turned over to Councilmember Hodgson who immediately indicated he wanted to continue as the Chair of the committee and then he went on to speak about "turmoil" in the Committee. He first mentioned by name former long-term employee Sheila Cloney and then began his personal diatribe against Mr. Utley.

By resolution, the City Council has adopted Roberts Rules of Order, Revised to govern the deliberations of the Council except when such rules may be in conflict with any of the rules set forth in Resolution R-4665, which sets forth the Rules of Procedure for the conduct of the City Council. Robert's Rules require a fair and orderly meeting and that all participants should be courteous in language and avoid all personalities and never allude to others by name or by motive. Courtesy and respect for others should be paramount and required by a City Council. The comments of Councilmember Hodgson not only violate the Council's own rules and resolution, but also constitute statements of personal attacks or statements that could be construed as slanderous or defaming a person's character. This type of conduct by a public body should never be permitted and should have been stopped by the Mayor, as the presiding officer of the Council.

In the context of the discussion and appointments, it would also appear to be a violation of the

Appearance of Fairness Doctrine as Councilmember Hodgson used the names of the six applicants for the Committee and then singled out Mr. Utley after he admitted he had not even reviewed the written applications that were sent to him. Councilmember Hodgson specifically recommended that the Council not reappoint Mr. Utley and then began a litany of defamatory and disrespectful statements such as he was a "polarizing influence on the group"; that he was "disrespectful to staff, other members of the committee and the Chair"; that he was not a "team player"; that he had been "reprimanded for conducting serial non-public meetings with committee members"; that he had been "reminded more than once that he was out of order"; and that longtime City of Kirkland employee Sheila Cloney's departure was due to Mr. Utley and that he "caused an extremely stressful situation for her." All of these statements are false, insulting, a breach of privacy, cause of public ridicule, and defamatory to Mr. Utley. Unbelievably, when one councilmember objected to the personal attacks by Councilmember Hodgson, she was overruled by the Mayor.

Councilmember Hodgson admitted he had not talked to Ms. Cloney, but still stated that the actions of Mr. Utley were "a factor in her departure." I have a copy of the letter Sheila Cloney sent to the Council dated August 6, 2009. In her letter she states that Councilmember Hodgson's "unprecedented attack on Les Utley" is "categorically not true." She states that Mr. Utley had "no influence whatsoever on her decision to leave the City of Kirkland" and "rather it was largely driven by the actions of Councilmember Hodgson." She says that a large factor in her leaving was due to the "unethical pressure from Councilmember Hodgson, which I did not believe would end."

As you know, our client is not a public official nor is he a public employee of the City of Kirkland and even if he was I would hope that no councilmember or official of the City of Kirkland would treat anyone in the way that he was treated in the open public meeting last Tuesday. This type of action casts a pall on all citizens who might consider volunteering their time and efforts to serve on a committee for the benefit of the City of Kirkland. I found it interesting that Councilmember Greenway was critical of the Committee members who had served on the committee and had complained about the behavior of Councilmember Hodgson. She said she found the whole process "chilling," when, in fact, the process employed by the Council, and specifically Councilmember Hodgson, is the exact type of chilling effect that will make many citizens and members of the public think twice before considering serving on a committee.

By this letter, we are requesting a public apology within 3 business days from the Kirkland City Council to Les Utley for the unprofessional and unprecedented handling of this issue by the Council and for Councilmember Hodgson to retract the defamatory and highly

Kirkland City Council  
August 10, 2009

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offensive statements he made in the Council Meeting on August 4, 2009. Moreover, Mr. Utley is one of 3 hoteliers representing 3 seats that applied for membership on the Committee for a term ending June 30, 2010 and should be reappointed by the Council. If you have any questions, please contact me.

Very truly yours,

LIVENGOOD, FITZGERALD  
& ALSKOG, PLLC



David A. Alskog

DAA/rlp

cc: Dave Ramsay, City Manager  
Robin Jenkinson, City Attorney

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September 9, 2009

**D R A F T**

David A. Alskog  
Livengood Fitzgerald & Alskog  
123 Third Avenue  
PO Box 908  
Kirkland, WA 98083-0908

Re: August 4, 2009 City Council Meeting

Dear Mr. Alskog:

Thank you for your letter of August 10, 2009, addressed to the Kirkland City Council regarding the August 4, 2009 City Council meeting. Your correspondence requested that the City Council take certain action. Due to the August meeting schedule, the earliest regular meeting at which the City Council could discuss your letter was the September 1 meeting.

At the September 1 meeting, the City Council voted to reconsider the vote on the motion made August 4, 2009, which reappointed Council Member Tom Hodgson as chair of the Lodging Tax Advisory Committee (LTAC). Additionally, the City Council will reexamine the selection process for all LTAC members and request a self-assessment of the LTAC from current committee members.

The City of Kirkland, its residents, businesses, and the City Council have a common interest in the efficient and effective performance of the LTAC. The Council understands that Mr. Utlely was offended by the opinions expressed by Mr. Hodgson. The City Council deeply appreciates all volunteer board and commission members' service to the community.

Please understand that this correspondence is not intended to address, nor waive, the City's defenses to the allegations in your letter of potential liability for allegations of defamation. The Council's interest lies in working with Mr. Utlely and the remaining members of the LTAC to secure appointments of members and continue with the important work of the committee.

Sincerely,

Kirkland City Council

by James Lauinger, Mayor