

WORKSHOP SESSION
Tuesday September 17, 2019
6:00 P.M.

Meeting to be held at the Merrill City Hall, 301 E. Second Street, Merrill, OR

WORK SESSION CALLED TO ORDER:

Mayor Carlson called the Tuesday, September 17, 2019 Work Session to order at 6:00 p.m.

ROLL CALL:

Roll call was taken with the following members of Council and others being present: Councilor Smith, Councilor Johnson, Councilor Carleton, Councilor Hinton, Mayor Carlson, City Clerk Jensen, Marshal Bicknell, and City Recorder Hernandez.

CONSENT AGENDA:

Item #1: Code Enforcement Organization: Councilor Hinton is the newly appointed Commissioner. A policy for Code Enforcement was suggested. A meeting was held between Mayor Carlson, Commissioner Hinton, City Clerk Jensen, and City Recorder Hernandez. Ordinance 2023 was the collaboration of staff. Councilor Smith suggested an alternate method, whereas the complexity demanded a Work Session.

- The case for code enforcement being a police function – Counselor Smith leads discussion

Councilor Smith stated Law Enforcement has the ability to perform Code Enforcement. Law Enforcement can document and speak with citizens during patrol. Councilor Smith stated the opinion of better results with Law Enforcement. Merrill Police Department prides the department on public relations. Merrill Police Department has the time, public relations, and the ability to perform Code Enforcement tactfully. Councilor Smith stated the merging of Code Enforcement and Law Enforcement has been eliminated for years. Klamath County has a Code Enforcement Officer. Councilor Smith stated lack of knowledge of issues contributing to the disbanding of Code Enforcement and Law Enforcement in Klamath Falls. City of Merrill is a smaller community than Klamath Falls. Merrill Police Department should note violations with City Clerk Jensen performing clerical duties. Councilor Johnson inquired whether the Code Enforcement Officer position was paid in Klamath Falls. Marshal Bicknell affirmed. Klamath Falls has two Code Enforcement Officers with full benefits at \$18-20 hourly. Mayor Carlson inquired how Police Commissioner Hinton and Code Enforcement Hinton would balance the two departments.

- The case for code enforcement being a stand-alone function – Counselor Hinton leads discussion

Councilor Hinton stated Code Enforcement and Law Enforcement has been separated in Klamath Falls again due to unaddressed issues. Councilor Hinton stated opposition to combining Code Enforcement and Law Enforcement. The majority may vote in favor of the merge; however, Councilor Hinton stated the right to vote against the merge, hence democracy. Guidelines, job description amendments, hours, and days per week dedicated to Code Enforcement must be discussed. Councilor Hinton's responsibility as liaison for Marshal Bicknell must also be addressed.

Councilor Smith mentioned including Code Enforcement to the priority list. Marshal's job description addresses the enforcement of codes and ordinances though not in detail. City Clerk has never been solely responsible for clerical work. Volunteers performed many of the duties.

Councilor Johnson inquired to liability for volunteers not on payroll performing Code Enforcement.

Marshal Bicknell stated every volunteer is covered by Workman's Compensation. Code Enforcement volunteers were listed on Auto Insurance Policy before any duties were performed. The City Clerk, prior to City Clerk De Leon resigning, performed all clerical work. Marshal Bicknell and Volunteer Code Enforcement Officer Shilling acquired the Code Enforcement clerical work voluntarily until City Recorder Cobb and City Clerk Jensen could become

efficient in the office, which became the evolution of Code Enforcement Officer Shilling performing all clerical work. Code Enforcement Officer Shilling was familiar with the clerical duties of Code Enforcement once Code Enforcement Officer Hinton resigned. The transition to field assistance was natural. Marshal Bicknell proposed merging Code Enforcement with the Merrill Police Department. Include Officer Srch and Marshal Bicknell due to patrol and observation times. City Clerk Jensen will perform all clerical duties, which was the original design. Marshal Bicknell originally designed Code Enforcement structure. Code Enforcement increases property values, resolves neighborhood disputes, and enhances police and public communications. Marshal Bicknell stated beginning notifications verbally followed with a written notice for record keeping for habitual offenders and persons whom claim ignorance. A written notice clarifies a conversation. The procedural aspects of Code Enforcement are based on City Charter. City Council appoints Officer Srch, Marshal Bicknell, and City Clerk Jensen as Code Enforcement Officers. City Clerk Jensen would be appointed due to correspondence with citizens. Appointment empowers staff. Code Enforcement must be added to Officer Srch and Marshal Bicknell's job descriptions. Allow Marshal Bicknell and Officer Srch to perform Code Enforcement. Marshal Bicknell and Officer Srch will report to City Council. Marshal Bicknell chose the title Marshal for historical reasons and by definition (The duty to resolve civil issues originating from local government).

Councilor Johnson stated Councilor Hinton has a vast knowledge of codes. The City of Merrill needs to utilize Councilor Hinton's knowledge.

Councilor Carleton was in agreement except for a couple of points. Marshal Bicknell would be the Code Enforcement Officer under the direction of Commissioner Hinton. Officer Srch would work under Marshal Bicknell but not be a Code Enforcement Officer. Staff would report complaints to Marshal Bicknell. Councilor Carleton volunteered to assist with codes. Structural codes fall under Planning Commission. Clerical duties would be the responsibility of City Clerk Jensen.

Marshal Bicknell stated clerical duties are the most time consuming aspect of Code Enforcement.

Councilor Carleton stated City Clerk Jensen should not patrol.

Marshal Bicknell was in agreement. Complaint forms are available and user friendly.

Discussion of complaint forms ensued.

Councilor Hinton stated the City of Merrill is combining civil matters and criminal matters into "one pot". Councilor Hinton wanted City Council to comprehend the implications. Councilor Hinton is troubled with the merge.

Councilor Hinton inquired to the white Dodge Charger.

Marshal Bicknell stated the white Dodge Charger is the back-up vehicle as a necessity.

Mayor Carlson stated the Work Session has identified two options for City Council. 1) Original proposal. 2) Revised proposal developed by Marshal Bicknell and Commissioner Hinton of Code Enforcement.

Marshal Bicknell stated City Council is the first court in the citation process and should be approved thereof.

Citation is for those who refuse to comply. Marshal Bicknell is the prosecutor in court. The ability to present a file with notifications with City Council authorization is crucial. The process is similar to a traffic citation. The citation is a Class A violation under State Statute in the same court. A City Ordinance violation is a violation no different than a traffic citation.

No objections followed.

Marshal Bicknell wants clear direction from City Council.

Councilor Carleton recommended creating generic policies.

Marshal Bicknell stated allowing Officer discretion. The goal is compliance with the least amount of authority.

Item #2: Use of the Executive Session: Mayor Carlson clarified any public person or City Councilor may have an item agendaized for the following month. The question is when and can a City Council hold an Executive Session? City Attorney Schade provided the relevant code for City Council detailing specific Oregon Revised Statutes. Executive Sessions CANNOT be held for the purpose of taking any final action or making any final decision. The matters do have exceptions on when Executive Meetings can be held. The document is an inclusive list and that is all City Council can discuss at or call an Executive Meeting pursuant to ORS 192.660. Mayor Carlson inquired if there any circumstances where the City Council can discuss or develop departmental policy in executive session. A formal response from City Attorney Schade has not been submitted, but legal opinions from other organizations have replied. City Recorder Hernandez read the responses from League of Oregon Cities. "Discussing and voting

upon volunteer code policies and/or volunteer police policies are not one of the identified reasons." "It's unlikely that you can hold an executive session to discuss the development of departmental policies. Chapter 192 of the Oregon Revised Statutes govern the rules surrounding public meetings and the use of executive sessions. ORS 192.660 outlines the *limited* reasons a city council can hold an executive session." Mayor Carlson stated, as chair, has the responsibility to determine if an issue is to be held in Executive Session. Mayor Carlson understands there are difference of opinions, and the method to adjudicate the disagreement is to allow the City Attorney to determine if an Executive Session is allowed with participation from requesters.

- Review of Attorney Schade's document listing City business that can be conducted while the City Council is in executive session
- Review of Attorney Schade's responses to City Councilor, staff and public questions

Councilor Smith stated the quotes read by City Recorder Hernandez contradicts the document from City Attorney Schade. Councilor Smith is of the opinion that Executive Sessions "should not be the decision of the mayor or a deciding member of any of it. The document stating from the attorney, where did she get her information from?" (*sic*)

Mayor Carlson state ORS.

Councilor Smith reiterated the contradiction.

City Recorder Hernandez stated League of Oregon Cities quoted ORS.

Councilor Smith stated all communications will be stated during City Council meetings and will not follow the process of requesting an Executive Session from past experience.

Mayor Carlson inquired under what condition, as listed, would City Council hold an Executive Session?

Councilor Smith stated no comment.

Councilor Carleton stated practice of Executive Sessions varies with a particular body.

Councilor Smith reiterated contradiction.

Councilor Hinton stated a hypothetical situation and inquired to the process City Council would follow.

Mayor Carlson responded correctly.

Councilor Hinton expanded upon the inquiry detailing time limits and responses.

Discussion ensued and Councilor Hinton detailed personal experience of an unlawful Executive Session and the repercussions.

Councilor Carleton stated City Council should follow the legal advice provided by City Attorney Schade.

City Recorder Hernandez stated and then read after Councilor Hinton requested verification: "If the commission determines that a violation of the executive session statutes occurred, it may impose a civil penalty in an amount that does not exceed \$1,000. The civil penalty is imposed on individual public officials (i.e. city council members) for violating any executive session provision. Public officials can avoid the risk if this penalty by taking one simple action--getting a legal opinion from the city attorney wherein the city attorney advises that the executive session is lawfully permitted under Oregon law. As long as a city attorney has advised a governing body that the executive session is legally permissible, the individual city officials cannot have a civil penalty imposed on them by the commission."

City Clerk Jensen inquired about a past executive session.

Marshal Bicknell stated the necessity of an emergency clause.

Councilor Carleton prefers to use executive session for disciplinary actions and if the employee wishes to hold a public meeting, the choice is the employee's prerogative.

Marshal Bicknell inquired to the Code Enforcement Procedures the City Attorney was to review and expand upon.

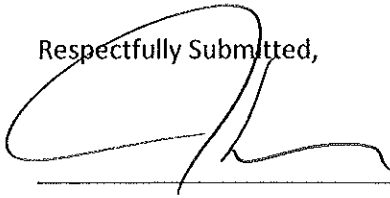
City Recorder Hernandez stated City Attorney Schade reviewed and was to add lien process.

Discussion ensued.

ADJOURN MEETING:

Councilor Smith made a motion to adjourn the September 17, 2019 Meeting. Councilor Hinton 2nd the motion. With all in favor, the meeting adjourned at 6:39 p.m.

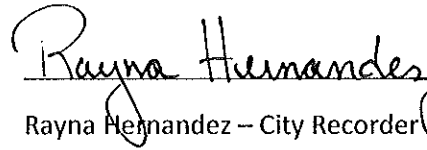
Respectfully Submitted,



08.05.19

Bill Carlson - Mayor

Date



10.08.19

Rayna Hernandez - City Recorder

Date