City of Springfield
Work Session Meeting

MINUTES OF THE WORK SESSION MEETING OF
THE SPRINGFIELD CITY COUNCIL HELD
TUESDAY, FEBRUARY 17, 2009

The City of Springfield Council met in a work session in the Library Meeting Room, 225 Fifth Street, Springfield, Oregon, on Tuesday, February 17, 2009 at 6:00 p.m., with Mayor Leiken presiding.

ATTENDANCE

Present were Mayor Leiken and Councilors Lundberg, Leezer, Ralston, Woodrow and Pishioneri. Also present were City Manager Gino Grimaldi, Assistant City Manager Jeff Towery, City Attorney Joe Leahy, City Attorney Matt Cox, City Attorney Bill Van Vactor, Assistant City Attorney Mary Bridget Smith, City Recorder Amy Sowa and members of the staff.

Councilor Wylie was absent (excused).

1. Springfield Library Board Application Review.

Library Director Rob Everett presented the staff report on this item. The Library Board has one vacancy caused by the expiration of Betty Adams' term. Ms. Adams chose not to apply for a 2nd term.

The Board reviewed applications and interviewed both candidates on February 3rd and 5th.

The Board recommends the appointment of Carol Philips to the board. Her 4-year term will run until December 31, 2012.

Ms. Philips is a 12-year resident of Springfield and a regular patron of the Library. She currently works as the Programming Manager of the Hult Center for the Performing Arts in Eugene. She has extensive experience working for non-profit performing arts organizations and in developing community partnerships and fund raising strategies. Her experience and expertise will be a welcome addition to the Board.

Mr. Everett said Council had asked that he follow-up with Michael Olson, an applicant for the Historic Commission that had not been selected. Mr. Olson had considered applying for the Library Board, then decided not to apply.

Mayor Leiken confirmed that the other applicant was a librarian at the University of Oregon (UofO), but had lived in Springfield for only two and a half years. That was correct. Ms. Philips had been in Springfield for twelve years. He was pleased that there were two such qualified applicants. It must have been difficult for the Board to choose.

Mr. Everett said it was difficult to make a choice. The Board looked at what was needed at this time, and Ms. Phillips' experience working with other agencies had been beneficial.

Mayor Leiken asked Mr. Everett to keep the other application on file.

Council agreed to appoint Ms. Philips to the Library Board during the Regular Meeting.

2. Council Legal Refresher/Update.

City Attorney Joe Leahy presented this item. He said counsel would go through some red flags, reminders and nuances for the Council. He noted the outline for this evening.

Mr. Leahy said by Charter, the Council members were nominated by Ward and elected by the City at large. That contrasted with Eugene and Lane County, where they were nominated and elected by ward. He noted some of the advantages to each. From his perspective, he was glad they were elected by the entire City body. The Council had the power to appoint and remove the City Manager, City Attorney and Municipal Judge. They had the power to combine the City Manager and City Attorney position, but not the Municipal Judge with either. The City Manager or City Manager's designee appointed and removed all other employees. A quorum of the Council was a majority, which were four. He had talked to each of them about this over the years. No individual Councilor has any power on his or her own to wield the power of the Council. They derived their power as a whole body. If one Councilor called him or called City staff, they would do what they could to help, but if a Councilor tried to take some major policy and move a department in a particular direction, they would be asked to talk to the rest of the Council.

Mr. Leahy said under Chapter 2, Section 6 of the Charter all powers of the City were vested with the City Council. They had power to execute the powers of the Constitution, statutes, and laws of Oregon. Staff and the City Manager's office exercised those powers as directed by Council. The powers should be construed so the Council could affect the things they wanted to do. They did have limitations. He noted several of those limitations as they related to Federal and State law. They were State requirements regarding public meetings, public records, ethics, and finance.

Mr. Leahy said Section 1 of the Charter stated that the City Manager was the chief administrative officer of the City, and except in a Council meeting, no Councilor may directly or indirectly by suggestion or otherwise attempt to influence the City Manager in the appropriate discipline or removal of City personnel or in decisions regarding City property or contracts. He explained. The Charter also provided that in a Council meeting, members of the Council may discuss with or suggest to the City Manager, anything pertinent to the affairs of the City. He had only one time sent a reminder to a City Councilor about separating the function of providing direction to staff, but not making staff's decisions.

Assistant City Attorney Mary Bridget Smith spoke regarding Personal Liability. She referred to the Oregon Tort Claims act and a case called Clarke vs OHSU which made a big impact on this act, and the legislative response that was currently making its way through the legislature. In Oregon a citizen could sue the government for actions of their officers, agents, or employees acting in the scope of their employment. In Oregon this rule had a cap on damages of $100,000 per claim. That gave government some stability in knowing their liability. This also allowed the local government to substitute in for an individual. She explained.

Ms. Smith said the Oregon Tort Claims Act was enacted in the late 1960's and stayed pretty steady until the Clarke vs OHSU Case in 2005. She explained this case in further detail. From this case, the Oregon State Supreme Court looked at the situation and determined what was adequate. She explained the process and how it affected the damage cap. These would now be considered on a case by case basis. The legislature formed an Oregon Tort Claims Task Force to look at this

statute to see if it needed to be updated. Currently, a senate bill was going through the legislature to increase the cap and makes a distinction from local governments. The new cap was $500,000, with an increase each year of about $33,000 until 2014. In 2014 and 2015, the Task Force would reconvene to see if the caps and statute needed changing. This was not yet a law, but was heading that way. If the law did pass, the cap would increase and the City would need to carry more insurance.

Ms. Smith spoke briefly on defamation, an oral or written communication that was an injury to someone's reputation. As a City Councilor they had absolute immunity when they were in a public meeting. Outside of a public meeting, a Councilor could be sued for defamatory comments. Even if the statute was not changed in 2015, the damage cap would be increased by the consumer price index (CPI).

Mr. Leahy said even though the damage cap was increasing, it was a requirement that the government agency must defend and indemnify the Council members when they were doing their job.

Councilor Pishioneri said there would rarely be a case of gross negligence by the Council members unless they were outside of a public meeting.

Mr. Leahy said the City didn't have an obligation to defend a Councilor if they did something outside of the purview of Council business.

City Attorney Matt Cox spoke regarding the Public Records and Public Meetings laws, specifically regarding email and text messages. Oregon had a very broad public records law. Any citizen could request a public record, and the City couldn't contest their motives, identity or intentions. Records must be provided unless they fell under an exception in the law. Emails and text messages between public officials and staff were public records and could be requested by the media. If those documents were not turned over, the District Attorney's office could force that those records were turned over.

Mr. Cox spoke regarding quorum issues related to email and text messaging. If the City Council was chatting in an email chain, the Attorney General's (AG) office would consider that a public meeting. The AG's office expanded that any communications that constituted a decision or deliberations towards a decision for which a quorum would be required, could trigger the public meetings law. The City Attorney's office would recommend that if three Councilors were talking in an email or text situation, that would be permissible. If a fourth Councilor became involved, one Councilor would need to drop out of the chain. That was not an issue with our Council, but it was an issue in other cities. He discussed a big case involving Nike and the City of Beaverton. Beaverton spent nearly $300,000 in outside attorney fees and $162,000 on search fees.

Mayor Leiken said Springfield was fortunate for years to be under the radar, but that changed when PeaceHealth came to Springfield. He asked about personal email accounts that were not associated with the City, but a message was sent to someone's public account.

Mr. Leahy said if there was City business on there, it was in the public domain. Their account would be pulled up and the judge would look through to determine which were City and which were personal. There was an issue in Springfield in the 1980's regarding a human rights issue and

emails had to be turned over. He thought at that time there was a standing request from the Register Guard for all Council emails. He asked if that was still in effect.

City Recorder Amy Sowa said the Register Guard did have a standing request for all emails sent from City staff to the full Mayor and Council.

Discussion was held regarding whether or not the emails (from the 1980's) were on City or personal accounts.

Mayor Leiken asked about phone records.

Mr. Grimaldi said phone calls were considered separate conversations.

Mayor Leiken said it was good to have this refresher and remind Council that email was public. He also reminded the Council that someone near you could have an IPhone and could videotape or record.

City Attorney Bill Van Vactor gave an Ethics Update. He reviewed the year and what could happen in 2009. He referred to a discussion he had with Council early in 2008 after the new laws were enacted and the confusion of some of those changes. The League of Oregon Cities (LOC) had been working over the past year to try to address the issues.

Mr. Van Vactor said mid-year, the Ethics Commission issued three opinions. A memo was drafted explaining those opinions and sent to Council by Mr. Van Vactor and the City Recorder.

He spoke regarding Opinion 08A-1003, which furthered the definition of gift when someone had a legislative or administrative interest in the City. This opinion related to all levels of government: State, local, special districts, etc. The initial reaction was that anyone with a legislative or administrative interest anywhere with regarding to any organization, was restricted from accepting gifts. He gave an example. The Ethics Commission did clarify that for routine employees without the ability to influence some decision, the gift limitations would not apply. It was also noted that the higher up the chain of command, the more the gift limitations would apply. Another area in the new law related to receiving gifts that had been received in the past in private business. The Ethics Commission clarified that and noted that most elected officials were private citizens with their own employment with traditions of gift exchanges and that had nothing to do with the municipal business. The Ethics Commission issued five guidelines for those instances. He reviewed those five guidelines.

Mr. Van Vactor spoke regarding Opinion 08A-1004, which dealt with discounts. He noted the discounts that were offered from phone companies to both public and private parties. It now needed to be established that any discounts were broadly offered to other Oregonians. The opinion also provided a comment regarding the $50 limitation over the calendar year, and recommended keeping track of gifts received throughout year.

He spoke regarding opinion 08A-1005, which clarified reimbursement from the City for expenses incurred as part of City business. Council passed a resolution to address this issue a couple of years ago. The key was that when the public official attended certain events that the City paid for, they were there in their official capacity as a representative of the City.

Mr. Van Vactor reported on SB30, which removed the requirement to list names of relatives and members of households on the Statement of Economic Interest (SEI). SB31 modified required contents of SEI, deleting the requirement to list income if less than $1000. SB32 provided that quarterly statements were not required to be filed if the public official or candidate for public office had not received expenses, honorarium or income for the applicable reporting period. That made sense, but could be a trap for the unwary. They still needed to keep track of their individual records. SB85 required public officials to include on quarterly reports expenses received for speaking before an organization as part of the scheduled program. If the elected official was part of the program, the $50 limit didn't apply. If this became law, the public official would be required to keep track of those expenses paid on the public official's behalf if it was over $50. It would also require the organization that covered those expenses to notify the public official of the expense. This bill seemed well intended, but he was not sure how it would actually work. SB85 also designated that certain information relating to Oregon Government Ethics Commission adjudicated processes remained confidential during the investigations stage. That was also well intended to protect the reputation of the public official. Currently, this occurred when a formal complaint was filed, but this bill would allow the Ethics Commission to do this on their own motion without a complaint. He discussed advantages and disadvantages in this bill.

Mr. Leahy asked if Council had any questions with anything.

Councilor Ralston asked about the Annual Chambers dinner and if it was an exclusion.

Mr. Van Vactor said the Chamber dinner would be considered a community event paid for by the City. If the public official was trying to comply in good faith, the Ethics Commission was great to work with.

Mr. Leahy said the Council members shouldn't underestimate the value of their presence at non-profit events. It meant a lot to the citizens and validated the event. It was part of their job and there was good value in them participating in these events.

Mayor Leiken said there was still a gray area when showing up at an event as a private business owner and people still referring to him as "Mayor".

Mr. Van Vactor said that was difficult, but citizens wanted average citizens as their representatives and decision makers. The guidelines in terms of gifts, was helpful in giving a framework.

Mayor Leiken said he declared a conflict of interest as a precaution in many instances when it may not have been necessary. He didn't want a negative air placed on the City. There were still plenty of gray areas, but he appreciated the effort that was put into this.

Mr. Van Vactor recognized the City Recorder for her assistance and record keeping related to ethics issues.

Ms. Leezer said she was invited periodically to the CEO breakfast at RiverBend Hospital. She had asked Jenny Ulum for a value of the breakfast so she could declare it, but was told she was being invited as the CEO of her business, AdPro.

Mr. Van Vactor said she was getting an invitation because of her business relationship, not in her governmental capacity.

Mr. Grimaldi asked how Councilor Leezer would report that, if she chose, since no value was given.

Mr. Van Vactor said she could estimate it the best she could. He felt it fit with the criteria. The CEO breakfast was clearly established, was a customary business practice and her business was set up well before she became involved in the breakfast. He encouraged all the Councilors to ask questions if they were unsure by contacting the State Ethics Commission and describing the facts to them. They had an obligation to respond within 30 days at the staff level, which was not binding. If they chose to go further, they could go to the Commission, who would have 60 days to respond and that would be binding.

Mayor Leiken said they could also go through the City Attorney's office if there was an issue. He appreciated being able to do that.

Councilor Pishioneri said he had called the Ethics Commission in the past and taken notes.

Councilor Pishioneri referred to the correspondence on the gaming ordinance. Discussion could be held on that during the public session.

ADJOURNMENT

The meeting was adjourned 6:53 pm.

Minutes Recorder – Amy Sowa

David Ralston

~~Sidney W. Leiken~~ David Ralston
~~Mayor~~ Council President

Attest:

Amy Sowa

Amy Sowa
City Recorder