

October 21, 2019
4:00 P.M.
Newport, Oregon

CITY COUNCIL WORK SESSION

The Newport City Council met in a work session on the above date and time in Conference Room A of the Newport City Hall. In attendance were Sawyer, Goebel, Jacobi, Hall, Allen, and Parker. Botello arrived at 4:25 P.M.

Also in attendance were the following members of the Public Arts Committee: Rickbone, Mayhew, Posner, Peterson, Van Wert, Webb, and Swanson. Also in attendance was Mona Linstromberg.

Staff in attendance was Peggy Hawker, City Recorder/Special Projects Director, and Gloria Tucker, Deputy City Recorder.

DISCUSSION ITEMS

Discussion Regarding Percent for the Arts Policy. Hawker reported that the Public Arts Committee has been working on a revision to Resolution No. 3589 which contains the Percent for the Arts Program. She stated that clarification of certain provisions of the Percent for the Arts Program are needed. She noted that the Percent for the Arts Program has been utilized for two projects - one was the construction of the Aquatic Center, which has been paid for two projects, and the other was for a renovation to the teen area of the Library.

Rickbone explained the initiatives and accomplishments of the Public Arts Committee, which included city-wide inventory of art, developing forms and procedures for public art proposals, the Bayfront mural brochure, Bayfront mural tours, 1% for the arts, Happiness Found commission, acceptance of public art donations, mural projects, and the Nye Beach sculpture brochure.

Sawyer asked if the committee has had discussions with owners of businesses on the Bayfront regarding the loss of murals and the possibility of putting murals on panels. Posner replied that is an ongoing discussion, and the problem is the wood with the mural has rotten away and has to be replaced. He noted most murals are on privately owned walls, but for the Hurbert sign, panels will be used. Sawyer suggested cycling the panels so that there could be different ones.

Hall suggested when the mural brochure is updated that a QR Code be used to provide additional information and exact coordinates of the murals.

Webb noted that some municipalities, such as Portland, have a percent for the arts higher than 1%. Allen asked how many cities in Oregon have a percent for the arts other than Portland, and if they are typically 1%. Rickbone said they would research that. Allen stated the Council had a discussion eight years ago about what was the appropriate percentage amount given the city's budgets.

Hall asked if there had been conversations with the owners of Ripley's Believe It or Not about murals, since that is undergoing renovation. Posner noted that is a private building. Hawker replied it is worth having a conversation with the owners.

Hawker reported that the practice in the application of the Percent for the Arts Program has focused on buildings, but the language seems to be broader than that interpretation. She stated that projects such as new lift stations, water plants, and other types of capital construction have not contributed one percent of eligible construction costs for the Percent of the Arts Program. She added that projects such as the seismic retrofit of the fire station, which was totally grant-funded, was also not assessed under this program. She noted that other projects that have been performed in the past included the lobby expansion at the PAC, construction of the restrooms at Agate Beach, and other similar type projects. She stated that it is important for Council to clarify the intention of how the Percent for the Arts Program should be assessed on the projects.

Hawker reported that it is important for Council to clarify the intent for future application of this program on projects. She stated that it is clear that a new facility such as the aquatic center is covered under this program, but that it is less clear whether a project such as the seismic retrofit of the fire station, which was 100% grant-funded, and had no change on the footprint of the building, should be assessed the percent. She added that while streets, curbs, and sidewalks are excluded, water mains, storm sewers, and sanitary sewers are not specifically excluded under this resolution. She stated that in practice, the Percent for the Arts Program has not been used for these types of projects.

Allen asked if the Big Creek dams qualified for the program. He noted the Big Creek dam project is estimated at \$75 million, and under this resolution only funds dedicated by the city qualify for the program. He stated, right now, that amount is \$25 million, and 1% would be \$250,000. Allen explained when the aquatic center went out for bid, calculations for 1% were based on the bond measure. He stated after the city went over that cost, the Public Arts Committee was asked if the percent should be increased as well. He said there was confusion about what the 1% was based on, the amount awarded when the project was initially assessed or the final project cost. Hawker agreed that was an issue with that project, and that's why the revised resolution clarifies the amount the percentage is based on as the awarded amount. Allen indicated he believed the language awarded value is accurate, but he would like to see more language beyond awarded value just to make the meaning clearer. Allen reported he was under the impression the highlighted portions of the resolution, the excluded category, were going to be taken out of the resolution. Hawker clarified the yellow portion is the revisions to be added. Jacobi clarified the money generated by the 1% program would not be tied to a project's building, but would go into a fund for public art throughout Newport.

Hawker reported that there are several questions that Council may want to address, related to the intent of this program. She stated that one question is whether the Percent for the Arts Program should specifically pertain to buildings and facilities or all types of construction projects. She noted that in the past, it has dealt with either new buildings or buildings that were being expanded. She added that the city has also had significant projects such as airport runway reconstruction projects, and the city is obviously looking replacement of the Big Creek Dams. She stated that under the terms of the existing resolution, it could be argued that those projects should include an additional one percent for the arts. She added that Council should clarify whether these projects are included or excluded from the Percent for the Arts Program. She noted that for buildings, it is clear that any expansions of buildings, or new buildings, should be included in this program. She stated that a couple of past projects that probably should have been included in the Percent for the Arts Program, were the PAC expansion and the restrooms at Agate Beach.

She noted that these oversights have arguably been mitigated by direct appropriation of funding for use by the Public Arts Committee. She added that it is important to also draw a line between maintenance and new construction, noting that if buildings, housing lift stations and booster stations, are deemed by Council to be projects that should contribute one percent to the program, then a determination needs to be made as to whether it is just the building cost that applies for one percent, or whether all the pumping equipment and other equipment in those facilities would also apply.

Hawker reported that in some cases, projects are grant-funded, and if the funding source does not allow for a portion of the cost to be allocated to public arts, a source of funding will need to be identified to make up that difference.

Hawker reported that it is beneficial for Council to review specific types of capital investments made by the City and provide direction to the Public Arts Committee, as to what specific types of capital improvement projects should be assessed the one percent additional fee. She stated that with this direction, the Public Arts Committee will be able to clean up the policy, and from an administrative standpoint, staff will be able to better administer this program moving forward.

Hawker reported that the Percent for the Arts Program is something that is paid in addition to construction costs through either taxpayer funding, rate payer funding, and if eligible, through grant funding. She stated that the primary question is for what type of capital improvements should the Percent for the Arts Program apply. The committees agreed to read the revisions sentence by sentence.

Sawyer read, "The Percent for Arts Program requires 1% of eligible construction costs of capital improvement projects paid by the city." The Council concurred with the sentence.

Sawyer read, "Eligible projects include those projects constructed with monies contributed by the city, and if a project utilized funds other than those contributed by the city, only the funds contributed by the city would be subject to the Percent for the Arts." The Council concurred with the sentence.

Sawyer read, "Specific examples of eligible projects include the construction, remodel, or retrofit of any public city-owned building, structure, park, or any portion thereof to be allocated for public art." Allen recommended removing the word public before city-owned. The Council concurred with the corrected sentence.

Sawyer read, "City staff providing oversight of the capital improvement project, is responsible for notifying the Public Arts Committee of eligible projects." Allen and Parker suggested adding the state component of percent for the arts. Webb clarified the Oregon Arts Commission handles the state's percent for the arts program. The Council concurred with the sentence.

Hawker read, "City staff serves as liaison between other city staff, artist(s), consultants, and the contractor." Goebel suggested contractor be made plural. Allen suggested including the Public Arts Committee before artist(s). The Council concurred with the corrected sentence.

Hawker read, "City-owned building, structure, park, or any portion thereof is defined as the construction or remodel of any city-owned building, including the construction of buildings associated with utilities such as pump stations, restrooms, utility buildings, or any external or internal construction funded with public monies, and requiring a building permit." Allen suggested changing the sentence to, "City-owned building, structure, park, or any portion thereof is defined as the construction, remodel, or retrofit of any city-owned

building, including the construction of city-owned buildings associated with utilities such as pump stations, restrooms, utility buildings, or any external or internal construction project funded with monies contributed by the city, and requiring a building permit.” Allen then suggested asking Derrick Tokos or Joseph Lease about the requirements of a building permit and if that requirement would exclude projects.

Hawker read, “The following categories of projects are excluded from the Percent for Arts Program: 1. Street construction and repair, inclusive of right-of-way improvements, such as curbs, sidewalks, alleys, bicycle paths, walking paths, and related traffic control facilities and landscaping.” The Council concurred with the sentence.

Hawker read, “2. Maintenance projects.” Allen suggested adding examples or asking Tim Gross what Public Works considers maintenance projects. Webb suggested relying on the definitions of construction, remodel, or retrofit. Hawker suggested changing the sentence to, “2. Maintenance projects other than construction, remodel, or retrofit.” The Council concurred with the corrected sentence.

Hawker read, “3. Real estate purchases.” Allen suggested adding real estate to Section E. Hawker stated she would add real estate purchases after contingencies in Section E. Allen suggested deleting number three from Section D. The Council concurred with the deletion in Section D and change of section E.

Hawker read, “The exemptions do not preclude the city from proposing and including funding for art in a project.” Allen suggested changing exemptions to exclusions. The Council concurred with the corrected sentence.

Hawker read, “City departments are encouraged to include art in exempt projects.” Allen suggested changing exempt to excluded. The Council concurred with the corrected sentence.

Hawker pointed out the change in Section E with the addition of final actual awarded value. Allen suggested that language be consistent with the language used when awarding a bid. Hawker suggested taking out final and actual. The Council concurred with Hawker’s suggestion.

Goebel clarified the current resolution will be replaced with a percent for the arts policy and a general arts policy.

Hall asked Rickbone if information on the murals is online. Hawker replied some information is in the art inventory, but not online.

Legal Services Discussion. Hawker reported that Steve Rich, resigned his position as City Attorney effective October 11 due to health issues.

Hawker reported that in the past, the city has utilized contractual attorney services, as well as, having staff attorneys. She stated that for many years, on a contractual basis, the city utilized Chris Minor and his law firm for legal services. She added that the city then hired Gary Firestone as a staff attorney, followed by Penelope McCarthy. She noted that after Penelope’s departure, Council contracted with Speer Hoyt for legal services. She added that in 2013, Council made a change and contracted with Rob Connell for attorney services, with Rob terminating his services with the City in 2014. She stated that on July 21, 2014, Council adopted Resolution No. 3687, establishing hiring standards, criteria, policy directives, and a timeline for the recruitment and hiring of a City Attorney. She noted that the City Attorney is one of three positions that is hired directly by Council.

Hawker reported that City Attorney services can be provided in several ways. She stated that there may be a case to hire a staff attorney on a part-time basis. She stated

that this might provide the direct functions of reviewing contracts, ordinances, and other documents prepared by staff, but would not allow for participation in all activities and meetings, and would limit the time to deal with policy work.

Hawker reported that on October 7, the department heads discussed what they wanted to see in the next City Attorney. She stated that there was a very strong desire to have a full-time staff attorney providing the same sort of role that Steve played. She noted that the easy access and availability of Steve is something that, as an organization, is missing at this point. She added that while Speer Hoyt has done an excellent job of filling in on a temporary basis, the process of dealing remotely with firms that are charging the city for every conversation limits the interaction possible with this type of firm, versus having someone on staff. She stated that having someone attend department head meetings, Council meetings, and be available for committee and other types of meetings, is very valuable. She noted that it is very handy while having a meeting with some legal implications, to have legal counsel sitting at the table.

Hawker reported that a desired quality that would be of great benefit to the city is having a City Attorney who had the capabilities and aptitude to help with policy development. She stated that this is an area that, as an organization, the city struggles with. Hawker reported that in the recruitment process, this may be something Council wants to add as a desirable skill. She stated that she believes that Council needs to be flexible in its expectations, since the pool of candidates to serve as City Attorney may be somewhat limited. She added that it is important not to exclude a candidate that would be great in many ways, but not have that particular skillset to serve as City Attorney.

Hawker reported that it would be good for Council to discuss the next steps in proceeding with this effort. She stated that it would be appropriate for staff to bring a resolution reflecting those wishes to Council for consideration at the November 4 meeting. She added that due to the holidays, the recruitment process could be started this month, but it is unlikely that interviews would occur until after the first of the year, either for a staff position, or for retaining contractual services. She noted that Council should discuss whether the position would be advertised as a staff attorney position, a request for proposals for a municipal legal firm, or accepting both applications and RFPs for this position. She stated that it is the City Manager's opinion that the Council may want to advertise for a staff attorney first, and if that effort is unsuccessful, perhaps broadening the search process to include contractual legal services. She noted that once direction is given, staff will develop the appropriate resolution and the appropriate job advertisement and/or request for proposals for filling this position. Hawker reported that in the short run, the city is being well served by Speer Hoyt.

Jacobi asked for the financial comparison between part-time and full-time. Allen replied based on Rich's salary and benefits, a full-time city attorney would cost approximately \$180,000 a year. He noted with someone less than full-time in-house, then the salary could be prorated. He stated the last time the city sought bids; the cost of typical municipal legal services was \$200 per hour. Goebel indicated it's really unfair to compare the two because people don't use the other attorney as much as in-house. He stated it's a whole different service when hiring outside. Sawyer noted sometimes the firms will have three or four attorneys working that same hour, making the cost go up dramatically. He added Steve has used Speer Hoyt on certain occasions where he felt he needed to subcontract. Hawker said that would not change if a city attorney was hired, because there

are going to be situations where an in-house attorney doesn't feel comfortable dealing with an issue.

Hawker reported that City Attorney services can be provided in several ways. She stated that Council could consider a contractual relationship with a law firm such as Speer Hoyt, which is a multi-disciplinary firm that provides a variety of legal expertise focusing on municipal government. She noted that the pros of contracting with this type of firm is that there is a high level of expertise within the firm covering a wide range of legal issues that City Attorneys must deal with. She added that these range from land-use issues to contracting, to labor issues, and regulatory matters. She stated that the challenge in working with this type of firm is that they are not physically located in the city organization, so casual conversations leading to the development of a response to an issue requiring legal review, typically do not occur, and when they do, the city is paying a significant hourly rate for that consultation. She added that there is a tendency to proceed further ahead before consulting with the legal experts, which then can create a situation where work is completed that has to be re-done in order to adequately address a situation. She stated that there is also not the same specific investment of the individual attorneys since they are serving many cities at the same time.

Hawker reported that the pros of having a full-time staff attorney is that that attorney is involved with projects from the ground up, and there is regular consultation back and forth between department heads and the City Attorney in the development of recommendations for Council review, and when that end product must be reviewed by the City Attorney, the City Attorney is very familiar with the work since they have played a role in the issue since the beginning. She added that from a timing standpoint, a staff City Attorney can respond to things much quicker than a legal firm that serves many municipal clients.

Hawker reported that a staff City Attorney provides additional depth to the City Manager's Office. She stated that since Steve has been gone, the issues that the City Manager has had to deal with are substantially higher than issues that Steve was handling directly with Department Heads, and these are often very simple mundane issues.

Hawker reported that having a staff attorney typically allows for the attorney to be present at Council meetings and to directly answer questions, and deal with issues that Councilors may have. She stated that with contractual attorneys, the attorney would not attend a Council meeting unless the city wants to pay for this, and the ability for individual Council members to have direct discussions with the contract attorney is limited, due to the potential cost that can occur by not having control over the way that elected officials can contact legal services directly. She stated that this can sometimes cause the contractual services to be more aligned with administration than with the elected officials.

Hawker reported that on the con side, the skillset of a City Attorney is going to be limited in some areas, and will require the use of outside counsel for specific things that are beyond their expertise. She stated that on a positive note, these contacts are being controlled and managed by the City Attorney, instead of having all the department heads, and potentially elected officials, involved in a process to determine who has access to legal services.

Hawker reported that from a capacity standpoint, it would be very desirable to have a City Attorney that is versed in municipal law that would also have the capability of supplementing administrative work and actually developing policies and procedures in conjunction with staff. She stated that Gary Firestone was one of these types of attorneys

who could actually generate policies, and provide the legal review that is outlined in the job description that was used when Steve was hired.

Hall asked what other cities the size of Newport do; what is the demand and availability of city attorneys for this position; is there someone who would want a part-time position; and how easy would it be to retain someone. Allen replied Lincoln City has a full-time in-house attorney; Toledo has an attorney on a contract basis; Depoe Bay and Waldport have a law firm; Yachats uses Speer Hoyt; Siletz has a small law firm; and Lincoln County has Wayne Belmont. He noted the last recruitment had an RFP that was open-ended enough so that the city didn't leave anyone out.

Sawyer emphasized the need to have a city attorney with municipal experience. He added an in-house city attorney is important to him because of their presence at City Council meetings. He noted firms like Speer Hoyt will come to Council meetings, but they charge travel expenses. Hall asked for clarification on what opening up the RFP means. Allen replied opening up means the city will accept any applications for in-house, full-time, part-time, and/or contract services. Goebel indicated he believes it is important having an in-house attorney. He noted that doing the math of \$200 per hour, an outside attorney would offer 3.5 hours a day for the same amount as a full-time in-house attorney.

Hall asked what's the job board market like for city attorneys, online listservs for example. Allen replied there are a number, such as Oregon State Bar, League of Oregon Cities, Association of Oregon Counties, and law schools. Allen noted even though the city posted in all those places last time, the city didn't get a lot of applicants. Jacobi stated that having an in-house attorney that can attend meetings may save a costly mistake at some point. Sawyer noted having an in-house attorney and out-of-house attorneys like Speer Hoyt for heaving lifting gives the city the best of both worlds. Allen stated he would follow the consensus of the Council.

Hall suggested posting the position to see what happens, and extending the application period through at least January. Allen explained if Council wants to conduct interviews and make initial selections in executive session, then there has to be an agenda item in November with a proposed resolution that outlines the job qualifications and policy issues and allows the public to comment on it. He indicated if someone wants to apply but doesn't want to let their employer know, this process allows the applications to be submitted and interviews to be held in executive session. He noted once the public has the opportunity to comment on the resolution, the Council can adopt it, and then use executive session until the Council makes a final decision. Botello noted a lot of attorneys wouldn't apply if it wasn't confidential.

Jacobi asked what kind of comments the public would have. Allen explained under state law, whenever Council hires a city officer, the public has to be allowed the opportunity to comment if Council wants to use executive session as part of the process. He added the public probably won't comment, but it's like a box to be checked off for using executive session. Hall asked if the resolution would be revised and updated before the next meeting. Hawker explained if the Council decides to move forward, she would put together a new resolution with an updated timeline. She added there would be no way anybody would be hired before January or February.

Goebel clarified last year's resolution can be used as a guideline. Allen reported if in executive session, the Council has three finalists and wants to make a decision, the Council has to go into open session. He noted the Council could also say in executive session that they like one person contingent upon working out the details of the contract,

then set up a subgroup to work out the details, bring the agreement before the Council in open session, and then make the decision based on the agreement. Hawker asked if the Council wanted to move forward on hiring an attorney. The Council gave its consensus to move forward.

City Manager Evaluation Date. Allen suggested moving the evaluation date to December 2 so that the whole Council could participate. He added the evaluation forms would be due by November 18. Jacobi asked how the evaluation process works. Allen replied a Councilor fills out the form and sends the forms to the Mayor and Council President. He explained the Mayor and Council President compile and average out the scores, and then distribute the forms in executive session. He reported the Council communicates back and forth with the City Manager in executive session, and then Council works out general themes or objectives Council would like him to work through for the upcoming year. Allen noted what is discussed in executive session is confidential, but the actual evaluation forms are a public record. He noted after the executive session, the Mayor and Council President put together a narrative that outlines the Council's general discussion and some of the things the Council wants to move forward on. He stated that narrative is part of the open session agenda item at the following meeting along with the average scores. He added even though Council doesn't solicit comments from the public as part of the evaluation forms, the public can comment on the agenda item in open session. Hawker clarified people have the opportunity to comment on the City Manager at every meeting. Goebel clarified the evaluation will be different next year. Allen replied if the Council wants to, they can have a verbal evaluation next year. Hall asked if she could create an online version of the evaluation form so that the Council could open it more easily. The Council gave its consensus for Hall to create an online evaluation form.

ADJOURNMENT

Having no further business, the meeting adjourned at 5:45 P.M.

Gloria Tucker, Deputy City Recorder

Dean H. Sawyer, Mayor