

The City Council for the City of Junction City, met for a work session at 6:30 p.m. on Tuesday, January 28, 2020, in the Council Chambers of City Hall, 680 Greenwood Street, Junction City, Oregon.

PRESENT: Mayor, Mark Crenshaw; Councilors Sandie Thomas, Robert Stott, Andrea Ceniga, Dale Rowe (via conference phone), and Bill DiMarco; **Absent:** Councilor John Gambee; City Administrator, Jason Knope; City Attorney, Carrie Connelly; Police Chief, Bob Morris; Public Works Director, Gary Kaping; Finance Director, Mike Crocker; and City Recorder, Kitty Vodrup.

1. Call to Order and Pledge of Allegiance

Mayor Crenshaw called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

2. PERS Reserve

Councilor DiMarco and Director Crocker reviewed that the Finance and Judiciary Committee had been discussing this topic and asked for Council review and direction on PERS Reserve options. Director Crocker reviewed some of the attachments to the AIS (Agenda Item Summary) and noted that he had presented this information to the Budget Committee in October of 2019. The idea behind PERS Reserves was to put away money that could be used to offset increasing PERS rates in the future.

Three options the Finance and Judiciary Committee had discussed:

1. External PERS Reserve Fund with the State
 - a. Oregon PERS received an appropriation of \$100 million from the state's General Fund to create the Employer Incentive Fund to encourage employers to establish side accounts with the state.
 - b. The City would need to put in a certain amount of money and then the state would match a portion of that contribution.
 - c. This would require a 20-year commitment to leave the money in this fund with the state and there were concerns about that money being tied up for that many years.
 - d. The available funds for the Employer Incentive Fund were limited from the state for the matching portion and were quickly used up by some of the bigger entities. So, the first round of matching funds was not available at this time, but this program could be made available again at some point in the future.
 - e. If the Council was interested in the Employer Incentive Fund option for the future, staff could be watching for when the matching fund program might be made available again.
2. Internal PERS Reserve Fund
 - a. Create the City's own internal reserve fund.
 - b. Could create an internal "rainy day" fund.
 - c. Could pull money out if needed and would have more flexibility on its use.
3. Do nothing. The City would still pay the PERS rates as they come up but would not put money away in any type of PERS Reserve fund at this time.

Discussion continued and included:

Senate Bill 1049 made some changes to PERS and would take some sting out of the rate increases that would go into effect in July of 2021, but there would still be a good sized increase.

Each year in December the City received an actuarial valuation report to show the City's net unfunded pension liability. As of December 31, 2018, that number was \$5.3 million and as of December 31, 2017 that number was \$4.4 million. These numbers were used as part of the calculation to determine what the City's rates would be for the next biennium.

It was noted that there were pros and cons for both external and internal accounts and there were a number of different options to fund those.

Councilor Rowe stated that saddling future Councils and citizens of Junction City with a 20-year debt was irresponsible. He thought the idea of having some sort of savings account made perfect sense and allowed the City to plan for the future.

Administrator Knope noted that the question for the Council was did they want the Finance and Judiciary Committee to spend more time working on external options or internal options or do

nothing at all. This would then go back to Committee to be able to put something together to bring to the Council.

Councilor DiMarco added that the Committee could put together the realities of where that money would come from to do a set aside fund and what pain that may or may not cause in the short term for departments. Funding options could be out of the ending fund balance and/or looking at whether departments would be expected to contribute now or in the future. In addition, they could look at how hard they would make it to get the money back out again, similar to something like the Revolving Loan Fund. He added that these discussions would not mean that doing nothing would not be an option; the City would still pay the rates but might not want to set money aside right now.

Mayor Crenshaw stated that he believed they had a consensus through nodding of heads to have Administrator Knope move in the direction of creating a reserve account. Mayor Crenshaw noted that he liked the idea of creating an internal reserve account and keeping an eye out for when the state might offer the incentive program again.

Senator James Manning stated that he was on the Ways and Means Committee and PERS was a huge animal that over time got them to this point. He expressed his agreement with the concept of having a rainy day account to offset any unforeseen rate hikes. It would be money that could be controlled internally, and he knew of a few school districts that were doing that. He continued that they were in the 2019 session and the unfunded actuarial liability was causing a lot of the pain that they were experiencing. In addition to the 100 million dollars in the incentive fund, the governor allocated 100% of one of the state taxes to go towards saving money to bring the unfunded actuary down to a certain point where it was no longer causing headaches for all the public employees.

4. Code Enforcement Discussion

Administrator Knope stated that he had Recorder Vodrup pull together some previous minutes from 2007 through 2015 that showed past Council conversations on code enforcement and referenced direction from previous Councils to have code enforcement be a complaint based process. Staff was looking for a consensus from the Council on if they wanted to continue moving forward with code enforcement being complaint based or if they would like to take a different approach and break out some safety related code enforcement issues that would be staff initiated.

Mayor Crenshaw asked if staff had a list of recommendations for things that would not necessarily be complaint driven.

Chief Morris responded that he did not have a list, but the Police Department did initiate a broad range of public safety related issues, such as a refrigerator in a yard where kids could get trapped, an open well, an abandoned house a child could go in, or other threats to community safety. He would like to amend the code to better address abandoned vehicles.

Mayor Crenshaw asked what the current policy was on code enforcement. Director Kaping responded that the current policy at Public Works was that they did not initiate code enforcement and only responded to formal citizen complaints that were tracked through the City Recorder's office.

Mayor Crenshaw asked if this had simply been direction or did the City actually have that written into policy or code that prevented a City employee from taking action on things they observed. Administrator Knope responded that there was Council direction in the minutes that code enforcement would be complaint based, but there was not something written as a policy. He added that there were some things in the code that were not necessarily complaint based, like an abandoned or dangerous building, which was under the purview of the building official and were under state code.

Administrator Knope continued that in the past, there were things like tall grass or low branches that were intended to be complaint based. Somewhere between 2008 and 2013, there was an uptick in proactive enforcement based on some trial programs with a City code enforcement officer that did not work as well as it should have. There was lack of clarity on enforcement, where the Police Department was trying to address tall grass and weeds, yet the code clearly stated this was something Public Works would handle. There was also a period of time that a City Planner was a little more proactive in looking at things like fence heights, which became a big discussion. Around 2013, the administrator at that time lumped code enforcement as more

of a blanket approach versus having that public safety piece be separate; it was not clear from the Council at that time what they considered public safety related issues versus things that were more of a public annoyance and this was not clearly defined in the City's code. The minutes during that time noted that there was supposed to be some work done by staff, but that did not happen. He thought the intent of that was to clarify some of the City's code to provide better definition of what was safety related versus not safety related and to come up with a better approach to code enforcement in general.

Administrator Knope noted that there were two issues: One was the way a code enforcement issue came to staff, whether through a citizen complaint or staff observation and then how did the City process that code enforcement and the timing around how long it took for some code enforcement abatement. Staff was currently working on code amendments to address the timing issue.

Director Kaping stated that at the next Public Works Committee meeting, he would be presenting some amendments to the code that he had been working with the City Attorney on that would include an appendix with specific time frames for when things could be extended and what that extension should be. An example would be tall grass and should the extension for abatement be 5, 10, or 20 days.

Councilor DiMarco stated that Administrator Knope summarized some of the history well. Councilor DiMarco continued that he had said in different meetings that he did not remember that the intention of the Council was to suspend staff initiation of safety related enforcement issues. He did remember, and it was in the minutes, that there was acknowledgment that there was a problem and that was why the Council got involved; there was in effect more of an idea of a moratorium on some of the over zealous code enforcement that was being done at that time and that there would be more work done that would come back to Council, but that did not occur.

Councilor DiMarco said that to answer the Mayor's original question, there had never been a change to the code or policy adoption by the Council to change code enforcement. There was just more of a temporary direction that was left open to interpretation. He thought they should nail this down so the Council could stay out of code enforcement and let staff do their job.

Councilor Thomas noted that it kind of came down to common sense; the City had ordinances and they should let staff enforce them.

Councilor DiMarco expressed his agreement and said that if the Council needed to clean up the code on what staff could, could not, or should not do, given past issues, then the Council was there to clean that up when staff brought that to them.

Director Kaping responded that in the course of going through this with the Public Works Committee, they could probably identify, at least on the Public Works side, which of those code violations were a public safety issue. They could weed those out and say that if it was a public safety issue, staff would not need a formal complaint and could just act on those. For other issues that were more of an annoyance, those could be complaint based.

Administrator Knope noted that in the fence example, like Councilor Thomas said, it was common sense and staff should enforce the ordinances; however, the whole fence issue came up because a staff member issued a code violation saying that per City Code, the fence had to fall within certain parameters. That started down a path where there was push back that snowballed over time and the Council at that point gave staff direction not to enforce pre-existing fences. He noted that it would be beneficial to review code enforcement issues like this, especially in the Building and Planning area versus the Police Department or Public Works side. There might be some specific issues that they could easily identify and have Council consider before the floodgates were loosened to start dealing with those.

Councilor DiMarco stated that for some of these issues, they may want to consider a mechanism that allowed somebody to rule on these gray areas. He brought up a past fence vision clearance example on a corner where a citizen had no other way to fence his yard and had a small child. That eventually came to Council for appeal and the City Attorney gave the Council guidance that allowed the Council just to rule on that and take responsibility of whether to hold to that specific interpretation in the code or not. There may be areas like this where an appellate function at the staff level might be needed. There could also be nuisance issues like

hedges at McDonalds that might be a regular nuisance issue but become a safety issue because of vision clearance.

Director Kaping stated that one of the things he had done was broken out each of the codes per department, whether it be for Public Works, the Police Department, or Building and Planning. That way as they were going through those codes they could identify who was responsible for that code violation.

Mayor Crenshaw noted that to contribute to the barometer of when action might be taken, he would like to use the words "immediate risk." As an example, he thought that something like tall grass would not impose an immediate risk. Administrator Knope responded that it depended on the person, and most times when receiving a tall grass complaint in the middle of summer, people wrote down that it was a fire hazard.

Director Kaping added that this could get muddy and gray because 99% of the time a tall grass complaint was listed as fire hazard but would that be true in the middle of winter, he did not know.

Administrator Knope added that the gray areas were problems and he hoped something could be written that was more black and white and would be clear to future Councils. If future Councils wanted to change that, that would be fine, but at least there would be something written for them to change.

Councilor DiMarco added that the code or policy should be clear enough that the Council rarely had to get involved and that would address the speed of enforcement issue that the audience has been concerned about. Administrator Knope responded that was correct.

Director Kaping stated that based on what he was hearing, he did not think the Public Works Committee would get this done in one night, but thought they could begin breaking those pieces off and identify which were an immediate risk or health hazard and those that staff would not address without a formal complaint.

Administrator Knope noted that he was hearing three different topics:

- The speed in which staff expediated what needed to be done, which Public Works was currently working on.
- There may need to be a piece from legal looking at the code to see what they could do and make some recommendations for some kind of an appellate procedure that was more expeditious than what there was today and did not necessarily involve the Council.
- Staff taking the existing code and creating a categorical list for the Council to come back and see if staff was on the right track and that would end up feeding into a written adopted policy by Council for how code enforcement worked. This would be more of Council's written direction to staff on how to proceed and that would become part of the public record and create that threshold and that bar.

Councilor DiMarco responded that then staff would not be living election to election. Administrator Knope responded that was correct.

Councilor Ceniga noted that she had performed code enforcement for the City in the past and thought immediate safety hazards could easily be identified by staff. She felt they had an obligation to act on immediate safety hazards to prevent something from happening so the City did not have to go through the legal process of we knew about it but did not do anything about it. She noted that in cases of tall dry grass in the summer, it could be an immediate risk as one cigarette could ignite a fire that would burn hot and fast, but in the winter, it might not be immediate. Fences could be an immediate risk if blocking visibility for someone making a safe turn. If City staff was out reading meters and noticed bad sidewalks but did not say anything and then someone tripped and was injured what would then happen.

Administrator Knope noted that Councilor Ceniga's statements were a perfect example of some code issues that staff faced. The tall grass example was that it might be an immediate risk in summer but not in winter, but the City's Code did not differentiate between summer and winter. So that was a great example of why staff was looking for a policy to reflect Council's direction and intent.

Councilor Ceniga stated that quite a few people that she was involved with who had tall grass were older citizens and/or those were not able to physically take care of their property. She was then able to get Senior and Disabled Services involved to offer assistance.

Director Kaping said the code specified that if there was a code enforcement violation, staff would send a 10-day notice to abate. If there was no response, staff would post a notice on their door, but Public Works staff did not speak directly to a person. Administrator Knope added that Councilor Ceniga's role in code enforcement was under that trial code enforcement program, which was not something the City had resources or funding for. Councilor Ceniga responded that was correct.

Councilor DiMarco stated that the Finance and Judiciary Committee had talked about previous Councils not addressing broken sidewalks from things like large trees that had been a problem for 40 or 50 years and then they suddenly became a code enforcement issue for the City; frequently those would be in front of elderly folk's homes who could not afford to take care of it. The Committee had identified that and put it on their list of things to explore, such as creating a fund that could help mitigate expenses for people.

Director Kaping noted that he did not like sending out letters that said you have to pay \$5,000 to fix a sidewalk, but that was what the code said needed to be done.

Councilor DiMarco responded that could be an area of the code that they could maybe come up with some creative solutions so that once again staff would be freed up to act. The prime issue was to free staff up from interpretation, but at the same time find some kind of mechanism for mitigation on some of these things.

Attorney Connelly said that she thought this would be a good time and opportunity to talk about a legal doctrine that underlies why Administrator Knope's suggestion was a good idea. She noted that she had talked in Council training about discretionary immunity, so if there were staff choices to not enforce certain provisions of the code that were based on Council directed cost savings measures, prioritizations, and safety considerations, staff and the City were protected from suit for negligence. For example, if action was not taken, because staff was following Council direction, the City would have a defense to that negligence for any harm that came from failing to fix a broken sidewalk. But if staff on their own tried to decide that something might or might not be harmful or we have seen it but there was not a complaint so they just left it and then something happened, staff would not really have that defense. So, it was really helpful for the Council to be the initial determiner. It could just be annually as part of the budget that the City has "this much" for sidewalk repairs. It could be down to the level of this kind of black and white policy that the City was going to mend sidewalks that were broken but to "this" extent or where staff saw whatever it was that was identified as a source of harm or potential source of harm. She wanted to have this as sort of a background for the Council to support staff's request and then it always was really ultimately the Council's initial purview to decide how much they were going to spend on this and how much did the City have available in resources to put towards enforcement efforts. The City could not fix everything and how did the City want to prioritize the enforcement violations that were coming in via complaint or that were witnessed by staff.

Attorney Connelly continued that she also wanted to add another couple considerations. They wanted to make sure that staff could avoid being drawn into citizen and neighbor disputes. Those really fueled a lot of complaints that were received, and they did not want staff to have to respond to those because they could be a waste of time and resources. So, the City would want to maintain that prosecutorial discretion that she talked about back in 2007, so that they could still make that evaluation and determine if this was a valuable use of staff resources. Deferred maintenance was the term that somebody was talking about when you just postpone fixes over time; ultimately there would be a lot of costs in deferred maintenance.

Mayor Crenshaw noted that one of his platforms was to inspire public participation and the current policy of being complaint driven and forcing citizens to actually get involved formally fell in line with that. He thought there was a lack of public education on how and where to go to formally complain. He thought they needed to look at some policies about how long it takes to bring an issue from open to closed.

Attorney Connelly responded that the Council's direction could be how to prioritize complaints that were received so you maintain the status quo, not stopping your complaint process, but that there was a little more direction on which ones do you respond to or how do you respond

to them. And she definitely agreed with Councilor DiMarco that there was never Council direction officially and the AIS in 2013 said that the majority of code enforcement was complaint based, but there were exceptions where code enforcement occurred without a complaint. They were typically nuisances, observed by City staff that were typically a threat to public safety. So that was never changed thereafter once it was summarized that way in these minutes.

Councilor DiMarco noted that he had a little bit to add to Attorney Connelly's comment about prosecutorial discretion and that may be something along with the appellate piece. It may benefit the City to formalize that, bringing more prominently into view to prevent that kind of public participation that could basically be weaponized via social media.

Chief Morris expressed his agreement with Councilor Ceniga and noted that while they did not have the staff or money to do any type of directed code enforcement, her concept of making contact with someone who had tall grass and assisting an elderly person epitomized community oriented policing, which was not restricted to just enforcing laws.

Mayor Crenshaw stated that the Public Works Department had already offered up a plan for identifying codes that the Council could give clear direction on. He continued that Administrator Knope had definitely echoed that he was looking for clear direction from the Council in perpetuity that a future Council could change if they wanted. He offered to the Council to stick to that plan and encouraged other departments to follow Public Work's lead on moving forward and identifying some of these issues or different sections in the code that they may needed to take action on more quickly. As far as the ancillary benefit that Councilor Ceniga and Chief Morris supported, that could be worked out internally. Chief Morris responded absolutely.

Mayor Crenshaw noted that when something was a neglect issue then obviously that might be a red flag for Public Works to pass that information along and maybe a well person check would be in order. Director Kaping responded sure.

Councilor DiMarco stated there was a way to get there, especially with community volunteers who worry about these sorts of things. They might be recruited to be part of a volunteer program, instead of just complaining about everything, or at least have the opportunity to participate in a volunteer program.

Mayor Crenshaw noted that a citizen approached him a couple of years ago that was looking for volunteer opportunities in the community and wanted to mow people's lawns who could not afford to have their lawns mowed.

Mayor Crenshaw asked if there was consensus on the direction just offered. He thought Administrator Knope already had a clear action plan in mind and if everyone understood that then they would give him the support to move forward.

Councilor Thomas noted that she was a little confused and said if there had not been anything like Councilor DiMarco said, did they still need to give more direction?

Mayor Crenshaw responded that the Council would provide direction on things coming out of Committee on whether to have the status quo of being complaint driven or changing that.

Administrator Knope stated that he would be more than happy to recap what he believed the direction was. His understanding was Director Kaping would continue his review of the code with the Public Works Committee to address a number of issues. Chief Morris would begin a review of his section of the code with the Public Safety Committee in that same light of things that needed to be changed or improved to help with timeliness of how we address things. Administrator Knope would take their lists and work them into a written policy for the Council to review that the Council could give direction on; then those things would be layered into creating a directional policy from Council to staff for staff to use on how to operate and maintain our code enforcement processes within the City. Once everyone was happy with it, it would then come back to Council for formal adoption and that would lock it in for the future, unless a future Council wanted to change it.

Councilor DiMarco noted that to Councilor Thomas' point, were they saying this perceived quasi-moratorium was still in force and everything was complaint based. He noted that he did not agree with staff's moratorium interpretation, so he was looking for could they release the department heads, all of whom he trusted in terms of common sense, to initiate code

enforcement on immediate safety concerns, knowing that some of these issues were being brought forward.

Administrator Knope responded that if it was the consensus of the Council to turn staff loose on what staff determined were safety related issues and to remove the perceived moratorium on such things, then that would be what staff would do starting tonight; however, it would not resolve the code enforcement issues until the rest of the work was done.

Councilor Rowe noted that he needed to leave the meeting, so discontinued participation.

Administrator Knope said that he would have staff continue to generate forms for tracking purposes if they initiated code enforcement (Justice for the Police Department and regular complaint process through City Hall for Public Works). He added that he would work closely with Chief Morris and Director Kaping on any staff initiated issues and would work with staff to create what needed to go to committees and filter up to Council.

Mayor Crenshaw asked Councilors Stott and Thomas what they thought.

Councilor Stott said they should let staff do what they needed to do. It sounded like there was never a moratorium on safety issues, so he would say just keep doing what staff was doing and if they saw something that needed to be taken care of to take care of it.

Councilor Thomas expressed her agreement and to just use common sense.

Mayor Crenshaw stated that there seemed to be a consensus that there did not need to be a formal complaint on safety related issues and staff could initiate those with documentation; on all other issues, those would be complaint driven. The other code enforcement work would proceed forward, as noted by Administrator Knope.

5. Adjournment

As there was no further business, the meeting was adjourned at 8:14 p.m.

ATTEST:

APPROVED:

Kitty Vodrup, City Recorder

Mark Crenshaw, Mayor