

The City Council for the City of Junction City, met in regular session and for a work session at 6:30 p.m. on Tuesday, March 23, 2021, in a virtual meeting format via internet and phone.

PRESENT: Mayor, Beverly Ficek; Councilors Sandie Thomas, Ken Wells, Andrea Ceniga, John Gambee, Karen Leach, and Sidney Washburne; City Administrator, Jason Knope; City Attorney, Carrie Connelly; and City Recorder, Kitty Vodrup.

REGULAR SESSION

1. Call to Order and Pledge of Allegiance

Mayor Ficek opened the meeting at 6:30 p.m., led the pledge of allegiance, and took roll call.

2. Council Committee Appointments

Mayor Ficek made the following updated Council Committee appointments:

Public Works Committee

Councilor Sid Washburne – Chair
Councilor John Gambee
Councilor Sandie Thomas

Community Services Committee

Councilor Sid Washburne - Chair
Councilor Andrea Ceniga
Councilor Karen Leach

Finance and Judiciary Committee

Councilor John Gambee – Chair
Councilor Ken Wells
Councilor Sandie Thomas

Community Development Committee

Councilor Andrea Ceniga - Chair
Councilor Ken Wells
Councilor Karen Leach

Public Safety Committee

Councilor John Gambee – Chair
Councilor Ken Wells
Councilor Sid Washburne

3. Adjournment of Work Session

Regular session was adjourned at 6:33 p.m.

WORK SESSION

1. Call to Order

Mayor Ficek called the Work Session to order at 6:33 p.m.

2. Council Orientation Session Two

Attorney Connelly presented the second Council Orientation and provided a Power Point printout in the packets. The session included:

Review Individual Councilor Authority

- Being an elected official was a privilege, honor, and responsibility, but alone a Councilor had no authority to act on behalf of the City, without prior authorization.
- Only the whole Council in a public meeting with a quorum and with a majority of Councilors had the authority to take action on matters before the Council.
- No one Councilor had the authority to place an item on the agenda, as something might be a priority for one Councilor but might not be a priority for the Council as a whole.
- There would be a slide devoted to why was it that individual Councilors were treated like citizens for purposes of public records requests. It had a lot to do with what they had just talked about, making sure that the broad Council believed that something was a priority and that staff time was not diverted to one Councilor’s whims.
- No one Councilor had the ability to direct the City Administrator. The Council acted as a whole and just because one Councilor might have certain priorities was not something that City resources and staff time should be spent on researching to further one Councilor’s agenda.
- City operations were delegated to the City Administrator and it was only through setting broad policy and City goals and then directing the City Administrator as a body that the Council had any control over City operations; otherwise, day to day operations had already been delegated to the City Administrator by the voters.

Councilor Thomas stated that when she submitted a public records request, it was usually not for something that she was interested in, but something that she had been asked by a citizen who had a question.

Attorney Connelly responded that it was common that elected officials would be approached by constituents, but it was really important to let them know that a Councilor alone had no authority and that an issue would need to be raised with the Council as a whole. She continued that if the citizen were asking for a public record, they had the same right that an individual Councilor did to request public records. Public comments to the Council during meetings sometimes were addressed on the spot by staff and other times individuals would then know who on staff to set up a meeting with to talk through an issue later. If it required Council action, then that could be an agenda item that the Council could act on as a whole. Attorney Connelly asked if that addressed Councilor Thomas' comment.

Councilor Thomas responded that she was just stating that she did not go in and say she wanted a public records request necessarily for her information, but it was always for citizens. Attorney Connelly responded that she wanted the Council to feel comfortable with these additional tools rather than feeling like they needed to make a public records request for a citizen, and the Councilor could invite a citizen to do it themselves and invite them to a meeting and make it clear that a Councilor alone had no individual authority. She added that the Councilors may have questions as they move through time, and they could circle back with her, the Mayor, and staff, and Attorney Connelly could address case by case situations if the Councilor felt really stuck or uncomfortable. The goal was to make the Councilors comfortable with the role they were carrying.

Public Meetings

- Government decisions had to be arrived at openly. All Council, subcommittee, and advisory committees must be conducted in public and at a public meeting unless they were specifically exempted.
- Attorney General's Public Records and Meetings Manual provided the guidance, as outlined in ORS 192 on public meetings. It was available online and in a searchable format.
- If the Council followed the City Attorney's advice on a reason to go into Executive Session and it turned out that was wrong, following the Attorney's advice protected the Councilors individually.
- Meetings that were subject to public law were all meetings of a governing body of a public body for which a quorum was required in order to make a decision or to deliberate toward a decision on any matter. This included all Council and Committee meetings, as long as there was a quorum. She noted that a quorum of the Council Committees was two, so two Councilors on the same Committee could not discuss Committee business outside of a meeting.
- She cautioned against quorums of the Council or a Committee meeting outside a public meeting and talking about City matters. This could constitute an unlawful public meeting and examples included:
 - Hanging around after an in person meeting and talking about City business matters with a quorum of either the Council or Committee present.
 - Attending a community event like Function 4 Junction or the Scandinavian Festival and a quorum of the Council or Committee was present. Even if the conversation with completely unrelated to City business, there was still an appearance of impropriety and she warned the Council against that because they would not want the citizens to think that City business was being conducted outside of a public forum.
- When City matters were front and center in a Councilor's mind and they wanted to talk about them, it was important to stop, look around, and make sure there was not a quorum of the Council or Committee outside of a public meeting.

Junction City Meetings

- Council meetings were set by (Junction City Municipal Code) JCMC 2.05:
 - Regular Meetings – 6:30 p.m. on the 2nd and/or 4th Tuesday each month.
 - Special Meetings – Required 48 hours' notice. (State law only required 24 hours' notice for a special meeting; the Council could amend the City's code to match the state's 24 hour notice, but in the meantime, the City needed to follow the 48 hour notice rule).
 - Emergency Meetings – Less than 24 hours' notice.

Quorum

- A quorum of the Council was 4 Councilors plus the Mayor or 4 Councilors including the Council President.
- Example: If a quorum of the Council were at the Scandinavian Festival and they were not talking about City business, that would not be an unlawful public meeting, but would give the appearance of impropriety.

Meetings Subject to Law

- Any meeting where a quorum of the Council or Committee was present to decide or deliberate on City matters.
- These days, City matters were often discussed on social media, emails, instant messaging or text messages and the Council needed to be careful to not have a quorum discussing City business in these forums and having an unlawful public meeting.
- Examples of Unlawful Public Meetings:
 - Four Councilors and the Mayor or four Councilors including the Council President discussing City business on a text or email stream.
 - An email between the Mayor and staff that was then forwarded to one Councilor and then forwarded to another Councilor and then forwarded to another Councilor, etc. There would be a string of emails that bind the Mayor and four Councilors with a serial discussion. Do not reply to all.
 - The exception to this was the Handy Case in Lane County where a serial discussion occurred on what date and time to have a meeting. That was found to be purely administrative, so it was not found to be a violation of the public meetings law, but they got very close.
 - Attorney Connelly stated that she did not want the Council to even try to evaluate if something was administrative or not administrative, but to be able to see and to avoid all serial discussions.

Requirements of a Public Meeting

- Notice - Must be posted to inform the public of the time and place of the meetings, as well as a list of the general subjects that would be discussed.
- Space/Location - The meeting had to be held within the boundaries of the City, and the location needed to be ADA accessible.
- Public Attendance - Most people thought that public meetings were for public participation, but that was not the case. The public element of public meetings was that the public was invited to attend, and they needed to be able to hear how and what decisions were being made. The public did not have a legal right for public participation, except in very limited circumstances.
- Voting – A majority of a quorum or a majority of those present were needed to pass Council actions; in a case where the Mayor and 4 Councilors made a quorum, three Councilors could decide an issue during a meeting. Charter exceptions to that included that a majority of the Council was needed to fill Council vacancies, to appoint a City Administrator, and to adopt an ordinance at a single meeting.
- Minutes – Minutes or recordings needed to be made of all lawful public meetings. Recorder Vodrup did a good job of capturing all necessary requirements for minutes, including members present, motions, proposals, resolutions, etc. and summarizing the substance of Council discussion.

Executive Sessions

- Limited discussions, the subject of which could not be shared outside of the Executive Session.
- No members of the public could attend.
- No final decisions could be made in Executive Session, so the Council could not vote; however, the Council could reach a consensus or a general understanding. Then after coming out of Executive Session, the Council could take action through a vote or consensus.
- The media must be allowed to attend, except for certain collective bargaining meetings.

Councilor Thomas asked about bloggers being media and if the Council could decide which media to allow. Attorney Connelly responded that the City could adopt a policy that provided parameters on what constituted news media. She noted that the lines between a blogger and recognized news media were very gray and some bloggers could qualify as news media.

Executive Sessions (Continued)

- News Media– Assuming that news media were in the room during an executive session, it was important to instruct them not to report on the substance of the Executive Session. A script that included that language was read to announce the purpose of the Executive Session at the beginning of the Executive Session.
- If the conversation strayed outside of the identified exemption during the Executive Session, media would be allowed to report on the entire discussion during the Executive Session, so it was very important to stay within those narrow bounds.
- Examples of things the Council could not go into Executive Session for:
 - To discuss general employment. The Council could discuss hiring an executive, if the position had been advertised, procedures for hiring had been adopted, and the public had an opportunity to comment. The Council could hold performance evaluations in Executive Session, unless the person who was being evaluated requested that it be in open session. Compensation could not be held in Executive Session.
 - To discuss items with legal counsel. You could go into Executive Session to discuss current litigation or litigation likely to be filed. The Council could discuss with the attorney an exempt public record, which tended to be a letter that legal counsel had written which was protected by the attorney/client privilege and analyzed a matter for the Council.

Public Meetings Practical Tips of things to Do

- Set a realistic agenda. The Council agenda forecaster helped prioritize and schedule agenda items, so there were not too many things on one agenda.
- Review packet materials in advance and come prepared to meetings. If a Councilor had questions about something in the packet, this was a time Councilors were encouraged to contact staff to have questions answered before the meeting.
- Keep the meeting formal.
- Know the Council rules. Attorney Connelly noted that the Council could develop more defined Council rules on protocol, and she would be happy to work with the Council on that.
- Public participation did not mean public conversation. A member of the public could make a comment under Public Comment, but that did not mean that they had the right to quiz individual Councilors or staff or expect a back and forth discourse at that moment.
- Work Sessions were great to use to have more in depth discussions on items. Administrator Knope made really good use of work sessions to set up topics in advance so the Council was educated and informed before taking a vote on a matter.
- Always restate the vote and note if staff must follow up.
- Get comfortable having discussions in public. The whole point of public meetings was so the public knew why a Councilor was voting a particular way, so a Councilor should explain the rationale behind the vote.

Councilor Wells stated that it would be helpful to examine the Council rules to see if they wanted them to be more detailed. Attorney Connelly noted that it was her recommendation to have more detailed Council rules and she would leave it to staff and the Council to discuss whether that was something the whole Council was interested in.

Public Meetings – Practical Tips of Things not to Do

- Do not reply all to emails, especially when City business or information was shared.
- Avoid conversations in person or via email between Councilors where views of City business were being shared.
- Avoid sharing firm opinions or views on items the Council would need to vote on. It was important for a Councilor not to commit themselves or the Council on a particular matter until the Council had an opportunity to vet it or staff had an opportunity to bring the Council all relevant information. This was important so the Councilor was not making up their mind based on erroneous or incomplete information.

Virtual Meetings

- Use headphones to ensure privacy during Executive Session.
- Ensure that no one was talking or whispering to a Councilor, especially during a public hearing and as noted below:

- Especially in a quasi- judicial hearing, anybody sitting in the room talking in a Councilor's ear constituted an ex parte contact that would need to be disclosed publicly.
- The basis for a decision must be public and recorded in the minutes and a vote needed to be based on the public conversation and not a private conversation held in a Councilor's home while a Councilor were muted.

Social Media

- Councilors sometimes believed it was their elected duty to share their opinion over social media, but Attorney Connelly cautioned the Council against that. This was problematic because first of all, they could be creating an unlawful public meeting if a quorum or more of Councilors weighed in. Also, individual Councilors responding on City business could be acting outside the scope of their authority.
- It was best to avoid social media or instead just use that as a forum to say, "I understand you have a city concern, that sounded like a matter for the Council as a whole. I invite you to come and our next meeting was blank time and date or here's a form or a link to a form so you could submit a citizen comment." There were a lot of formal ways a Councilor could encourage people to participate in Council decisions without holding an unlawful public meeting on social media.
- Councilor's should not post comments that imply a Council position or determination that had not yet been made or adopted.
- Raising controversial issues on social media could flood staff and meetings with concerned citizens wanting to vet non-agenda items, which could waste a lot of time and money. It was important to have these matters discussed and deliberated in a formal process in a public meeting, and not ad hoc on social media.
- Op Eds could result in unfair labor practices litigation. Example: City Councilor in Lebanon identified that she was against a labor settlement that her City was undertaking. She identified that she was writing in her own personal capacity, but they still lost an unfair labor practice litigation and the City was sued successfully because of her personal opinion; that was problematic on a number of levels and certainly not something that an elected official wanted to subject their taxpayer dollars to.
- Soliciting input regarding public employees may subject the City to discrimination liability. Example: One Councilor solicited input regarding a public employee prior to a performance evaluation, so any responses received that were then acted upon could be deemed City discrimination; the input was not appropriate and if the employee was of a protected class, that would be a discrimination suit right there.
- A lot of Councilors wanted to promote a particular commercial or private interest and that was an unfair platform, using both the elected officials position as well as social media to promote a private interest over the interest of other similar private interests in town. So that could also result in litigations for the City as well as for a Councilor personally.
- Public employee political commentary was prohibited. If the City was putting a measure on the ballot, nobody could instruct City employees to promote or take any action to promote or oppose political measures. The Council could take a position and say the City had a measure and drum up support, but the Council could not ask staff to print out handouts, labels, or anything.
- If a Councilor was acting in their official capacity, the City would defend their speech. If a Councilor was acting in a personal capacity and the City or Councilor got sued for discrimination, the Councilor would have to defend themselves on their own dime. It was important to stay within your Councilor authority, remembering that an individual Councilor did not have the authority to speak on behalf of the City.
- Security breaches could happen if a Councilor responded on social media to a question and shared sensitive information with the public, such as the location of infrastructure, confidential information, operational safety plans, criminal investigations, etc. It was important to let staff do their job and if the Councilor had an item that they wanted to share information about, they should send it to staff and ask staff to address it or make sure that it went up through the proper chain of command.

Public Records

- Information on public records could be found in the Attorney General's Public Records and Meetings Manual and in ORS 192.
- A public record was any writing that contained public business information that was prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

- Electronic information and emails were public records.
- The City had no obligation under the public records law to create a record.
- Requests for public records had to be for existing records and not just general City information.
- Oregon law favored disclosure and was not a confidentiality law. If the City had a record, it must disclose the record, unless it was exempt.
- Even when a record was exempt, it was often subject to public interest balancing tests.

Social Media and Public Records

- Individual Councilor Facebook posts could constitute a public record.
- Attorney Connelly's advice was not to post on social media, but if a Councilor was to post on social media about City business, to copy those pages and forward them to Recorder Vodrup and then the Councilor would not have to keep track of them for public records purposes.
- A new tactic by numerous citizens in other cities was to ask for Facebook posts because the citizen had read a Councilor comment. If the comment had been deleted, the individual Councilor could have to spend a lot time and money to recoup those posts that they or somebody else took down.
- Attorney Connelly recommended that the City have an electronic communication policy that governed what Councilors should post, what they should print, and what they should forward to the City Recorder. She could provide draft policies for staff or Council consideration.

Records Custodian and Councilor Social Media/Email

- The City Recorder was the records custodian for the City.
- The Council must ensure that the City Recorder received all public records.
- Attorney Connelly recommended that Councilors use City email accounts, if those were available over using private email, as City emails would be archived and were so much easier to be accessed and produced if a public records request were received.
- If private Councilor emails or Facebook were used for City business and then deleted, it could be costly to have a forensic consultant recover and sift through deleted items on their hard drive or Facebook page. If a citizen had proof that a public record was created by a Councilor that no longer existed, they could ask the court to seize the Councilor's personal devices and search them.

Councilor Thomas asked if it would be a good idea for each of the Council members to have a City email address. Attorney Connelly responded that she thought that would be helpful, but would leave that to staff to talk about the pros and cons.

Timelines

- Since January 1, 2018, the City had five days in which to acknowledge a public records request and an additional ten days to provide the documents or a projected timeline.
- The City had a public records policy that specified the fees for staff time and material costs to process a records request.

Councilor Access to Records

- This touched on Agenda Item 4, "Why Council Members had to fill out public records request forms."
- Councilor access to public records was no greater than an individual member of the public unless delegated authority was given to a Councilor or something was requested by the full Council in a public meeting.
- As Administrator Knope mentioned at the last meeting, a Councilor could ask for information such as how many patrol cars or public works vehicles the City had, and staff could just give them that answer.
- If there were records that related to a Committee that a Councilor was seated on and requested by the Committee or Council as a whole, staff would always bend over backwards to try and answer those requests.
- Attorney Connelly noted that staff would always try their best to be helpful, but it was important for her to put some brakes on the kinds of requests that could come in, especially to satisfy personal curiosity, like a Councilor was just wondering or a constituent asked a Councilor so they thought they would research this topic. She noted that if it was not a current Council issue and the Council was not looking into it, a Councilor could submit an individual public records request but devoting significant staff

time to something to satisfy personal curiosity was not a good use of time and resources; staff time was valuable.

- Individual Councilor requests were subject to public records fees, like an individual citizen.
- Attorney Connelly stated that they wanted the Council to be prepared for public meetings, so if a Councilor did not understand something in the packet, they could call staff to ask questions or get more background information on an item and staff could forward some background memos or information, but that would not be a public records request.

Councilor Ceniga asked how the City would know if a Councilor was submitting a public records request on behalf of themselves or others. Attorney Connelly responded that if a Councilor submitted a public records request, it would be treated like a public records request. Attorney Connelly noted that what she was distinguishing that from was a when Councilor called staff and said they were a City Councilor and wanted all the financial records for the past 20 years. That was something that an individual Councilor was not entitled to, but an individual Councilor was entitled to submit a public records request for that exact information and staff would process and charge the Councilor accordingly.

Councilor Ceniga asked for clarification on how an item got on an agenda. Administrator Knope responded that the agenda item request form was a process that was approved by Council, so it was set in the process that an individual could complete a request form and then that would go to the full Council to make a decision.

Attorney Connelly added that a great example of that was last meeting where there had been individual Councilors who had submitted agenda item request forms and the Council had them before them and based on a group discussion, two of the items were handled during that meeting and did not need to be agenda items; one request was what they were discussing right now, so it became an agenda item for a work session.

Public Records Exemptions

- Public records had some exemptions for disclosure and there were some balancing tests
- Examples of records that were exempt: litigation, personnel discipline, security information, personal privacy, personal information, and confidential information.

Attorney Connelly noted that there were 15 additional slides in this presentation that covered public contracting and land use. She included those as resource material and would be happy to provide training on these topics, at a future date.

Mayor Ficek thanked Attorney Connelly for the interesting and educational information.

3. Proper Communication between the City Administrator and Council

Councilor Wells, who had requested this item, stated that after tonight's presentation, he thought the idea of reviewing Council rules would be great information for the new Councilors and could help resolve this issue. He continued that communication was a big thing and they could individually as Councilors sit down with the City Administrator to get answers to questions. He added that he thought they made a good start with what they learned tonight.

Administrator Knope noted that in the past, he had sent out updates to the Council via email and asked if the Council would be interested in that. He added that he could start with sending out updates every two weeks and then could get Council feedback at a future Council meeting on if this was effective.

The Council consensus was in favor of having Administrator Knope begin sending out bi-weekly email updates to the Council.

4. Why Council Members have to fill out Public Records Request Forms

Mayor Ficek stated that hopefully this question was answered through Attorney Connelly's presentation tonight.

Councilors Thomas and Leach responded that Attorney Connelly explained it well.

Councilor Wells noted that when someone wanted to submit a general City records request, they would do that through Recorder Vodrup, but if requesting a police record, they would request directly through the Police Department.

Councilor Ceniga asked for confirmation that the Police Department records request would be for things like records on criminal activity or something an officer responded to; however, a request a document of how many cars a department had, would go through the general City records process. Administrator Knope responded that was correct, and the Police Department records would basically be anything coming out of the CAD system, but anything operational like cars would go through the normal records request process.

5. Discussion on Public Meetings being Held in Person

Administrator Knope stated that he had Recorder Vodrup reach out to the Governor's office, Lane County, OSHA, and CIS meeting on meeting in person for public meetings and basically what everyone was saying was that nothing in place today changed Executive Order 20-16. The advice that Attorney Connelly provided last time still stood; however, the Council could choose to go back into meeting in person, but there were some things that the City would have to do for that to occur. He noted that keeping in mind that the City doing that would be against the Governor's Executive Order, the City would have to make provisions for staff to be able to attend virtually and for any Councilor who did not feel comfortable to be able to attend virtually as well. Executive Order 20-66 specified that as long as the City used its own facilities for meetings, the rules would be less restrictive than using the school gym, for example, where there would be a lot more rules the City would have to follow. He added that if this was something the Council wanted to do, regardless of legal counsel advice, staff could put together some options for the Council to look at, which could involve using the Community Center or the Council Chambers in some form or fashion.

In response to a question on the public attending meetings in person, Administrator Knope stated that one of his concerns was that space considerations would only allow so many people in a particular location and what if there was only room for two members of the public, but there were three or more members of the public who wanted to come in. It was noted that keeping meetings virtually for the public might be a better solution.

Attorney Connelly stated that Councilor Thomas had forwarded some questions and answers from LOC (League of Oregon Cities) today, and one of the questions was does the executive order require cities to hold public meetings electronically or virtually, and the answer was to the extent that the City could hold the public meeting electronically or virtually, then yes the City was required to do so.

Attorney Connelly continued that as she had pointed out in prior advice and overview, it was the Council's choice, and the policy maker was going to need to decide that they could no longer hold public meetings electronically or virtually. If the Council thought they could make that finding and Council determination, the other agencies were not going to argue with the determination and the Council would not face an enforcement action. If there was a policy choice or determination that Junction City was not able to hold public meetings electronically or virtually, then the City would need to jump through the hoops that Administrator Knope was referring to on the complicated web of social distancing, OHA requirements, and OSHA requirements (if employees were present). If the Council went down that road, her recommendation, like Administrator Knope had said, would not make in person attendance mandatory for everybody and to avoid the OSHA requirements have staff continue to appear virtually.

The Council consensus was to have Administrator Knope bring back options for meeting in person to the next Council meeting.

6. Adjournment of Work Session

The Work Session was adjourned at 8:14 p.m.

ATTEST:

APPROVED:

Kitty Vodrup, City Recorder

Beverly A. Ficek, Mayor