

**COTTAGE GROVE CITY COUNCIL
WORK SESSION MINUTES
April 11, 2011**

CALL TO ORDER

Mayor Gary Williams called the meeting to order at 6:04 pm in the Council Chambers at City Hall.

ROLL CALL

COUNCIL PRESENT: Mayor Gary Williams, City Councilors Mike Fleck, Jeff Gowing, Jake Boone, Heather Murphy, Garland Burback and Victoria Doyle

STAFF PRESENT: City Manager Richard Meyers, City Attorney Sean Kelly and City Recorder Trudy Borrevik

City Manager, Richard Meyers, said staff was looking for Council to provide direction on how they wanted to proceed with the evaluation of the Municipal Judge. He provided Council with a handout which provided information from the Cottage Grove Charter about the Municipal Judge position. He said the Charter provided limited information about the Judge's responsibilities and duties and it mentioned nothing about what the term of the Municipal Judge was. He said there wasn't a lot of guidelines for the Council. He asked Council, based on what was in the Charter, if they wanted to evaluate the Judge.

Councilor Fleck asked why Judge Brissenden wasn't in attendance at the meeting.

Richard said Council wasn't talking about Judge Brissenden this evening.

Councilor Fleck said the Judge was the expert on court and why wouldn't they have his input. He said Council wasn't talking about performance but were talking about the court and he would think that having the executive officer for court would be the one to look at the goals and moving forward with the court procedures.

Richard said the reason he wasn't present, was because the Council wasn't discussing the evaluation. They were talking about the process and did they want to do one and what steps and time lines were they going to set out in order to do that. He said they would then invite the Judge to have input in the process.

Councilor Fleck said it wasn't the process he had envisioned and he thought it should have been done with the Judge present.

Councilor Burback asked what happened to the last Judge and how was he terminated and if the

Charter was reviewed at that time.

Richard said yes the Charter was reviewed and there had been an interview and evaluation with the Judge.

Councilor Burback said the biggest issue to him was giving the Judge direction as to what Council wanted to have happen.

Councilor Boone said he was in favor of putting together some kind of ongoing system to review a Judge.

Councilor Doyle said she wasn't sure about the review process but did think there needed to be specific guidelines. She said whether or not they reviewed the existing Judge or future Judge, there should be guidelines that Council set forth. To her it seemed more beneficial for Council to sit down and say what they wanted to have the Judge do and then present them to the Judge and then give him/her a specific amount of time to have it implemented. She said she didn't know about reviewing the person per se but more or less looking at reviewing the specific job. She said it was hard to review someone without guidelines.

Councilor Murphy asked Richard if there were other cities that had their Judge on a contractual basis rather than as an employee.

Richard said there were both. Some cities had contracts with their Judges and some were employees.

Councilor Murphy said if the Judge was an employee, she was up for an annual review, it was only fair, but if it were a contractual basis it was a different type of evaluation in her opinion.

Councilor Gowing said he thought the Council needed to have some type of process to evaluate the Judge.

Councilor Fleck said the sub-committee was trying to come up with clear and measurable goals and there were areas of law that had a lot of ambiguity. He provided some hypothetical situations regarding time.

Richard said tonight was to set up the process, how were they going to get to the guidelines. He said there were two kinds of processes to look at. One was a simple employee evaluation form and he provided the form for Council to review. He said the Charter stated that "And in no such combination shall the Municipal Judge be subject in his judicial functions to supervision by any other officer." He explained that this meant that no one could tell the Judge how to rule and it was something the Council couldn't evaluate.

Richard said the other process was what did Council want Court to be. He said once they determined that, they could look at how and what they wanted to evaluate. He said this process would be harder and more involved and detailed. He asked Council to think about what their role was in the process and what responsibilities they had.

City Attorney, Sean Kelly, said they had to decide what they wanted the Judge to do. Did they

want him to walk in and sit on the bench and make the rulings and be available for warrants. Or did they want him to be more of a department head and submit his budget and supervise employees and do a lot more active participation.

Richard asked Council what information they needed about general court operations and the City's court operation, and what questions they needed to ask in order to proceed. He asked if they wanted to do an evaluation using the current form and changing if needed, or did they want to take a little more time and set up guidelines for the court first before doing an evaluation.

Councilor Doyle said for her there were simple things the Judge and Court should do such as starting on time, the Judge being aware of what the cases were and the Judge needing to be prepared ahead of time and not reading the cases at the time of court. She said they were simple and basic guidelines and maybe that should be how they started with the process. She said there was no reason to review someone when they didn't know what they wanted from them, the expectations needed be there ahead of time.

Councilor Fleck said he would like to see semi-annual updates from the Judge regarding the court's case load and other information as the Council determined. He said he and the sub-committee appointed to review the Judge evaluation form, had come up with some changes to the evaluation form and they were going to come up with another form that could be submitted periodically for updates of what was going on in the Court but it didn't happen.

Councilor Burback said he thought Council should attend some Court sessions to view how it was run.

Sean explained that there were a lot of things that both he and Judge did that happened outside the courtroom. He provided information on his preparation for Court and provided a brief outline of the court process when someone appeared in Court on a first appearance on a criminal charge.

Councilor Murphy said she did attend Court one time for a trial that ended up pleading out, and without Sean and the police officer that was in attendance explaining what was going on, she would have been lost. She asked if the Judge was benefitted with the City.

Richard said he only received salary, no other benefits.

Councilor Murphy asked how it would work if Council were to look at a contractual situation which outlined what they wanted a Judge to do for Cottage Grove's Municipal Court, which would require meeting with the Council on an annual basis. She said it would be different than an employee evaluation, they would evaluate the contract annually or bi-annually or whatever, but they would still have all the supporting staff as staff members of the City.

Sean said he thought it was an interesting question if they were evaluating the whole court process, because there would be a lot of things to evaluate. He said the City was a violations bureau which involved another level of training for support staff but allowed for a more expedient court system by allowing court staff to negotiate down certain citations, which made

things more efficient. He said it was hard to evaluate one without the other. He said it was simple to evaluate the Judge if they were going to just look at what he did on the bench and that was it, as opposed to looking at the process and how everything fit together.

Richard said in a contractual relationship versus an at will employee, you didn't have to have a reason to terminate the Judge. They could put that into a contract as well that at anytime they could terminate the contract.

Councilor Murphy said she was trying to determine whether or not that was simpler.

Richard let Council know some issues that they could and could not evaluate the Judge's position on that Council would need to determine if the Judge was following in his running of the Court.

Discussion was held on having a contract for the Judge position versus having him/her as an at will employee.

Councilor Gowing said Council had been discussing the issue for awhile now and they needed to focus on the task at hand and determine the process for evaluating the Judge and/or Court. He said they should all be writing down what they wanted the Court to look like and maybe consider bringing in an outside person to assist the Council with determining the process.

Sean said he knew of people who helped with practice management for law offices but didn't know if they could help with the Court process.

Councilor Gowing said he thought one thing that should be the list of guidelines was if the Judge was compatible with the City operation and did they work well with other departments.

Councilor Fleck said he wasn't opposed to having someone talk to the Council in helping them determine a process or guidelines regarding the Judge position. He asked if in the Charter where it talked about the City Manager and Judge positions and if one was a contract employee and one was an at will employee, if that adhered to the Charter or if they needed to do a Charter amendment. He said he didn't know if he would be in favor of having the Judge's position as a contract employee. He said in the sub-committee's discussions, it had come up as to who was evaluating the court clerk whose position was .75 FTE court and .25 FTE finance. He questioned whether one of the Judge's responsibilities should be to do an annual evaluation of the court clerk.

Richard said what was typically done for employee evaluations was the direct supervisor did the evaluation but may ask for input from those who interacted with the employee.

Councilor Doyle asked about the process if someone wanted to terminate the Judge.

Mayor Williams said it would have to be an agenda item at a formal council meeting.

Sean said it would be an executive session.

Richard said it couldn't be an executive session because the vote had to be in public. It needed to be on the agenda as there needed to be notice and it was required in the rules and procedures.

Councilor Doyle clarified that for an at will employee there didn't need to be an evaluation, there was nothing in the Charter that required one and that if Council felt there were enough reasons for termination, they should be able to call a vote.

Richard said yes, they could do that at any council meeting and didn't have to state a reason why they were voting to terminate. He said if they had a contract, basically it would be the same process to terminate, it would take a majority vote of the Council and could be done at anytime. He said the difference would be the contract could have everything spelled out as far as the job expectations.

Councilor Murphy said in that case, it would be poor management and would set the Council up for a bad scenario and whoever the employee, it was disrespectful and was disrespectful in the face of the public. She said she wasn't on Council when the previous Judge was terminated but had heard it wasn't handled very well. She didn't think they wanted to set up themselves up as not being professional. They had all established there was a lot they didn't know, there wasn't a lot of guidance and they needed to set those things up.

Richard said the piece that needed to be remembered as a Council when thinking about at will employees was they could be terminated just because they may not fit in, they didn't have to have a reason to terminate an at will employee.

Mayor Williams said he was a Councilor when the previous Judge was terminated and if any of the Councilors wanted to discuss the situation with him, he would more than happy to discuss with him. He said rarely a week went by that somewhere in the State a municipality was terminating a Fire Chief or Police Chief or City Manager, it happened.

Richard asked Council to write down several short sentences on that they felt Court should be, what their vision of Court was. He said they could write down that court should be efficiently operated and handled fairly and equitable for all, but was that useful. He asked them if there were more specific things that they wanted to write down. He said Councilor Doyle had mentioned efficient was starting on time and asked if that was what was meant efficient, fairly and equitably.

Councilor Fleck said he didn't feel comfortable with coming up with something off the top of his head.

Richard said if they couldn't do it right now, what did they need to be able to do that. He said that would be first step that they needed to go through, what did staff need to arrange for them so that they could get comfortable in starting the process, what did they need to do to get there.

Councilor Fleck said he thought they needed to have someone come and talk to Council who understood Courts.

Councilor Burback said he thought they needed to have someone from the State come and talk to them to provide information and the process for evaluating someone because he didn't feel comfortable doing that.

Mayor Williams said the League of Oregon Cities and Lane Council of Governments might have some resources available to assist Council.

Richard said Sean had some people that he knew who knew court a little bit more and they could get into the specifics more. He asked Council if that was the first step in the process, getting someone to come and talk to Council who had more expertise with Courts.

Councilor Gowing said he thought so.

Richard asked when they wanted that to happen and the consensus was soon, within the next month or so.

Councilor Doyle asked if there were any pressing issues that needed to be taken care of.

Richard said it had been three years since the last evaluation but it was something they needed to get done, they shouldn't wait another two years or longer.

Sean said Martin in his office had sat on the Lane County Judicial Advisory Committee for several years and might have someone he could recommend to talk to the Council. He also said that Dee Crocker had worked with law offices for thirty years with setting up and practice management systems and might be able to assist the Council. He said there was also the Oregon State Bar Judicial Administration Committee which might have some insight.

Councilor Gowing said they needed to set aside the Judge right now, that the meeting had been set up to figure out the evaluation not to discuss the Judge.

Richard said staff would talk to those that Sean suggested to see who would be available and they would come back to council with dates they would be available to meet with council, probably sometime in early May. He said Council should be thinking about what questions they wanted this person to answer, what kind of information did they want them to bring to help them understand.

Councilor Gowing said they needed to get it done soon. He said he would be on a week's vacation every month from now through July and with summer coming up other people would be on vacation as well.

Richard said there were also budget meetings coming up in mid May.

Discussion was held and consensus was that Council would like someone to evaluate the current court system and to talk about what courts did.

Sean said he heard what they were saying and he thought it was important that they took into

consideration what their community had been doing for years. He cautioned them that someone who came to discuss what a court should be and how it should look and function might have a different view from what the current court system had been doing for years and he didn't know if that was what they were looking for.

Councilor Boone said it seemed that if all the guidance they had was what was in the charter, they were in a position of effectively creating the process from scratch. He said it could be complicated and time consuming, and asked if Council wanted to do it as a group or if they wanted to appoint a sub-committee.

Sean said they could start from scratch, their only guidance was that nobody else could tell the Judge what to do on judicial matters.

Discussion was held on whether or not the process should be with the entire Council participating or a sub-committee being appointed.

Mayor said he would prefer that the whole council be there.

Richard said some other thoughts for Council to consider was when and if they did break into a sub-committee, when was that going to happen in the process and timeline. Also to consider when they would look at the Alaska process that Councilor Boone had found, was it something that would be a part of the discussion with a third party.

Jake explained briefly the Alaska process he had found and how their evaluation process worked.

Sean said in the past for the Judge's evaluation, surveys had been sent to attorneys, substitute prosecutors and police officers but they had never gotten a good response.

Richard said if staff could find a third person to talk to Council about what a typical court involved and then they could look at the Alaska process and then decide the next step of either proceeding as the entire Council or as a sub-committee. He said they would then have to decide what they wanted to evaluate and that might mean bringing in the Judge and asking him what did he feel needed to be evaluated.

Councilor Fleck said he agreed with the Mayor, that the whole council needed to be involved in the process.

Sean said he thought it was valuable to get the input from those who worked closely with the court and Judge, such as the police officers and himself or other department heads.

Richard said another thing to think about when moving through the process, was once they came up with a process, were they going to adopt the process through an ordinance or by a resolution that could be changed a little bit because it may be something that did change as council's change.

Councilor Fleck asked if there just couldn't be a job description. He said he thought it was key if the job description mirrored the evaluation form.

Richard said likely the job description would be adopted by resolution and so those were things for Council to think about.

Mayor said there had to be the ability to make adjustments.

Sean said he thought what they would find is that there would be different tasks that would need to be supervised by different departments in different fashions and an organizational structure that may be a little different than what it was now.

There being no further business, Mayor Williams adjourned the meeting of the City Council at 7:21pm.

Trudy Borrevik, City Recorder

Gary Williams, Mayor