

COTTAGE GROVE CITY COUNCIL
WORK SESSION MINUTES
MAY 9, 2022

CALL TO ORDER

Mayor Jeff Gowing called the meeting to order at 6:00 pm in the Council Chambers at City Hall.

ROLL CALL

City Recorder Mindy Roberts called the roll. The following were

PRESENT IN THE
COUNCIL CHAMBERS: Mayor Jeff Gowing and Councilors Candice Solesbee,
Chalice Savage, Mike Fleck, Greg Ervin and Kenneth Michael
Roberts

PRESENT VIA
GOTOMEETING:

COUNCIL ABSENT: Councilor Jon Stinnett

STAFF PRESENT IN
THE COUNCIL
CHAMBERS: City Manager Richard Meyers, Assistant to the City Manager Jake
Boone, City Recorder Mindy Roberts, Public Works &
Development Director Faye Stewart, Police Chief Scott Shepherd,
Finance Director Roberta Likens and City Planner Eric Mongan.

STAFF PRESENT
VIA GOTOMEETING

CITY ATTORNEY: Carrie Connelly

MEDIA PRESENT: Damien Sherwood, The Sentinel and Cameron Reiten, KNND

Mayor Gowing reminded members in the audience that there is no public comment taken at Work Sessions.

City Manager Richard Meyers presented to Council the RFP for the Hwy 99 Low Barrier Facility Operations that was assembled by Staff and the City Attorney. He said it was drawn up from a sample of Lane County's and other communities for similar services and has been adapted to fit Cottage Grove's Purchasing Ordinance and rules.

He recommended that Council start by going through the RFP, talking about the various parts and asking questions as they come up. He said most of the comments and questions will likely be in Sections 1 and 2, and that Sections 3 and 4 are mostly the technical language associated with the Purchasing Ordinance.

He explained that prior to Section 1 there is a page dealing with the advertisement of the RFP, where to turn them in and the associated specifics.

City Manager said Section 1 includes the Introduction, Background and Contract Requirements. He said the Introduction gives a basic outline as to what we are seeking, the Background gives information about the property and how it is being renovated and the Contract Requirements indicate that the Contractor must operate independently and all furnishings, equipment and materials belong to the City.

City Manager asked if there were any questions regarding Section 1.

Councilor Roberts said the RFP states over 33 shelters and asked what the final number is.

City Manager replied that the City would only be putting 33 shelters on the site.

Councilor Solesbee asked the City Attorney if she received her question regarding the definition of Low Barrier. She said that Council was told the City had to do a Low Barrier site and it includes allowing people who are intoxicated or on drugs. She said she doesn't see that in the definition she only sees the reference to religion.

Carrie Connelly said it is addressed in the Scope of Work on page 7. She said Section 2.6 describes that there will be few barriers to entrance but there can be requirements to remain.

Councilor Solesbee asked if that is what the actual law says.

City Attorney said there is no legal definition of Low Barrier.

Councilor Solesbee said she was told at the last Council meeting that Low Barrier meant that we would have to allow someone in that is using drugs and that we could not prohibit entrance, in order to be in compliance with Martin v Boise and House Bill 3115.

City Attorney said there seems to be a misunderstanding and that the law doesn't require you to do anything. She said if you want to be able to take measures in your Public Spaces then you would want to provide alternative sheltering.

Councilor Solesbee said she believes that she was told, that the City would not be in compliance with Martin v Boise if we do not do Low Barrier.

City Attorney said Martin v Boise does not require you do anything, what it says is you can't move people out of Public Spaces unless there is alternative shelter and House Bill 3115 requires you to take provisions out of City Code that are unconstitutional under the Eight Amendment. She said the policy question for Council is what kind of alternative shelter, if any, you want to provide so that you can manage your Public Space. She added that the policy decision made by some, not all of Council was to provide alternative shelter, and if you are going to provide alternative shelter then it needs to be Low Barrier as discussed in the RFP in order to give you the most options to manage the rest of your Public Spaces. She said there is no legal, statutory or

case law definition of Low Barrier, it is an interpretation of the case law and the Statue to give you the most options.

Councilor Solesbee said that is not the way that she heard it, the first or the second time.

Councilor Roberts said that is what he heard too.

City Attorney apologized.

Councilor Fleck said it does talk about some barriers. He said it is his understanding that this is our best path to not be sued if we want to limit people in our Public Spaces.

City Attorney said she wants to make it clear, because it has been understood that she said there was a definition, there is no definition.

Councilor Solesbee said she appreciates the comment because she was under the understanding that there was a definition, which is why she asked for a second opinion. She said she does not think this is a good solution for our city and there is no reason for people to get help. She addressed Councilor Fleck and referenced the conclusion in the Blake vs Grants Pass case. She asked for clarification about what it means in the RFP when it says they have to be independent contractors and not an agent of the City.

City Attorney said the City is in a better position liability wise to have an independent contractor who is independently insured to defend and indemnify and hold the City harmless.

Councilor Solesbee said it also means that the City would have less control if things are not going well, and we could not legally step in.

City Attorney said not if the scope of work is clearly established. She said what you cannot do with an independent contractor is directly control their employees.

Councilor Roberts asked if the City is liable if someone overdoses.

City Attorney said the City could always be named in a lawsuit, but if the City is named in a law suit for damage that occurred as a result of a liability of the independent contractor, then the independent contractor has to defend and indemnify the City.

Councilor Ervin asked for clarification regarding the definition of Low Barrier, specifically asked what the highest level of Low Barrier that the City Attorney could recommend and if some of the barriers that Council has discussed could work without putting the City at an unreasonable risk.

City Attorney said the RFP is based on Lane County's language and they consulted with experts in the area. She said she does not have a legal opinion other than her reliance on other interpretations as to what Low Barrier should be as defensible. She said the more entities that are using the same level of what constitutes Low Barrier, seems most defensible and when you

start testing out theories as to what might be against the law it could be a magnet for a challenge. She added that Low Barrier is not used in case law but we have examples of what does not constitute an alternative shelter.

Councilor Ervin asked if that is the religious reference and the objectively reasonable standard.

City Attorney said yes, and that the site is open regularly, located nearby, doesn't require religious service, doesn't eliminate family and pets and it takes those in need as they are.

Councilor Ervin said the objectively reasonable standard is ambiguous and asked the City Attorney if she should put some contours to it.

City Attorney said what we have to go by is the Legislature's direction for House Bill 3115, and they said objectively reasonable from the perspective of the homeless individual.

Councilor Ervin asked if the term homeless is defined in House Bill 3115.

City Attorney said it is not.

Councilor Ervin asked if it has to do with the state of the person as they are homeless, or their mental state as well.

City Attorney said in all other circumstances it would take mental, physical, and everything about that individual into account.

Councilor Ervin said he is trying to understand what the parameters are for objectively reasonable, before we make the RFP.

City Manager said Lane County and the City have used Low Barrier in the RFP because every barrier that you create could mean that the person can't be in the shelter, it makes the shelter not an alternative and they are then eligible to be in the Public places again. He said if you say in the Low Barrier things like you cannot come in intoxicated or under the influence of drugs you have now put those people eligible to be in the Public place.

Councilor Ervin asked if it is against the law to be publicly intoxicated.

City Manager said he does not think so, it would depend on what they are doing.

City Attorney said she is not aware of what the City code says on that point.

City Manager said you would have to be doing something that is creating a problem, and legally in the State of Oregon you can be in possession too.

Councilor Fleck asked since the RFP precludes the agency that he works for from applying if he still needs to declare a Potential Conflict.

City Attorney recommended always declaring and said there is no harm in doing so. She added that it is helpful to explain on the record why you were previously declaring Potential Conflicts of Interest and why under this RFP as it is written you do not believe the conflict exists any longer.

Councilor Fleck announced that he works for Community Sharing Program providing basic needs assistance for many people including the unhoused and operated the Warming Shelter and there is a Potential Conflict to apply for the RFP although, as it is written it precludes him from doing so and the agency has no intention of doing so.

City Attorney said that is not a Potential Conflict of interest and clarifies why Councilor Fleck can participate in the conversation and vote.

Councilor Fleck said that Community Sharing runs a program called Home Tenant Based Assistance which is to help people who are unhoused get back into housing. He said it is a HUD program and one of the expectations is that people are working on a self-sufficiency plan and if they are not, they can be taken out of the program. He said he expects Low Barrier to get people into a program, get help once they are in and working towards whatever their needs are. He said he shares some of the other Councilors concerns and he would not want to see people in housing if they are not working towards a program.

City Attorney suggested that Councilors look at Section 2.3 and talk about if the section needs to be clarified or list more resources as an expectation.

Councilor Fleck said as he is reading through the RFP it references what the contractor is expected to do, not what the client is expected to do.

City Attorney said that is correct, which makes sense for an RFP. She said it is not establishing rules for the facility, it is providing guidance for the scope of work.

Councilor Fleck said he has interacted with Carry It Forward and is supportive in the fact that they know what they are doing.

City Attorney said if there is nothing more to be added to Section 2.3, she asked Council to consider looking at Section 2.9 and provide feedback on any objective outcomes that they are hoping the service provider would achieve.

Councilor Ervin said it is his understanding that there is no requirement in the RFP that people in the facility will have to participate in any programs and asked Councilor Fleck if he thought there should be.

Councilor Fleck said the Performance Outcomes outlines the expectations and could be one of the reasons that the contract could be terminated.

Councilor Roberts asked how Councilors review the service provider.

Councilor Fleck said that Council will not be reviewing the service provider, it is an administrative function, and Council's role is policy. He said the framework in the RFP provides the expected outcome even though it does not address client expectations.

Councilor Solesbee said she likes to have everything in writing and if there are expectations in the RFP, she doesn't see them. She said it looks like they do not have to participate if they do not want to and we would do a warm hand off, which is a polite way of asking them to leave. She said we are creating this shelter to keep people out of our parks, but if they don't want to participate and make progress they we are going to ask them to leave. She added that there is a transition to permanent housing in less than 120 days whenever possible, however there is not specific limitation on length of stay. She said the RFP is confusing and vague and it leaves it up to City Staff and the organization to run it as they please and this is Council's one opportunity to outline what they truly want. She said she would never vote for a five year contract and it should be a trial period only.

City Manager said it is a three year contract.

Councilor Solesbee said it is three years with a two year extension.

City Manager said it can be renewed based on performance and it is not just automatically renewed.

Councilor Solesbee said three years is a long time.

City Attorney clarified that in Section 2.4, the last sentence says that permanent or long-term stays are not permitted and if Council wanted to define long term stay they could.

Councilor Solesbee said the RFP also says no specific limitation on length of stay and it is contradictory.

City Attorney said unless you define long-term stay. She added that the term of the contract is three years and Section 6.1 allows Termination for Convenience.

Councilor Ervin asked if there are any issues with them staying there for 30 days and having it be considered a home and they have renter's rights.

City Attorney said the Legislation regarding Transitional and Emergency Shelters provided by the City or other entities does not constitute a Landlord/Tenant relationship.

Councilor Ervin asked if Transitional Housing and Emergency Shelters have a definition.

City Attorney said they do not, there is not a lot of legislative guidance and the RFP is set up as an Emergency Shelter.

Councilor Ervin asked if stipulations are put on it, is it moved out of an Emergency Shelter category.

City Attorney said that the term Emergency Shelter is pretty broad.

Councilor Ervin asked if the Eugene Mission is considered an Emergency Shelter.

City Attorney said it preceded the legislation, was not set up pursuant to the legislation, and does not establish a Landlord/Tenant relationship.

Councilor Fleck said he likes the idea of having one year as a maximum length of stay.

Mayor Gowing asked if the contract has to be three years or could it be less.

City Manager said that you could do less, but a one year contract will not really give an opportunity to get things up and going.

Mayor Gowing suggested two years.

Councilor Fleck suggested two years to match the funding that was established.

Councilor Roberts clarified Councilor Fleck's suggestion.

Councilor Solesbee said she does not see the point of doing a longer contract if you can always extend after review. She said the issue is about more than funding, it is liability, if the plan is working and if we are seeing results and she does not see the reasoning behind a lot of the contract.

Councilor Savage asked if we are funding through 2023 and the service provider is to assist in finding funding after that, is the City responsible until 2023.

City Manager said the service provider would assist with helping to find additional funds.

City Attorney said it is a standard assumption in contracts, that by offering a longer period of time you are hopefully increasing the pool of respondents. She added if you shorten the term of the contract rather than allowing the opportunity to extend annually, once the contract ends it terminates and you cannot extend it without going out for another solicitation.

Councilor Solesbee asked if it could be a one year contract with a two year renewal after evaluation. She said it may not be standard but neither are homeless camps.

City Attorney replied to Councilor Solesbee by saying that what you are referencing is like what is written in the term of the contract in paragraph one and you would be reducing it to a one year term with four possible one year extensions.

Councilor Fleck informed Council that going through RFP's is not a quick process, and if we did a flat one year contract we would have to be doing another RFP before we have even had a chance to evaluate.

Councilor Ervin said he would like to hear from Councilor Savage and Stinnett and if their understanding of the Low Barrier requirement changed or if they are on board with how it is written.

Councilor Savage said her understanding of Low Barrier has not changed and is what she expected to see.

Mayor Gowing said he thinks all of the Councilors want the highest Low Barrier that we can get, so that we can move people to a better place instead of providing a retirement home for them.

Councilor Solesbee said she cannot support allowing drug use, she would like to see them getting into programs and she does not believe in not having background checks if there is a reason to do so.

Councilor Roberts asked if the concept doesn't work could Council cancel it.

City Attorney said yes, there is a thirty day termination provision in the contract.

Councilor Ervin said he would limit the amount of possessions that could be brought in, not allow stolen items, have age restrictions, mental health screenings and criminal background checks. He said he is not in support of a homeless shelter, but if the Council decides to do so, he wants to do the best he can with what is being decided on. He added that he would like to have a public notice inside each shelter with information as to who provided the shelter, why it is being provided, and the expectation of those using the shelter.

Mayor Gowing announced that there is about five minutes left in the Work Session and asked if Councilors would like to go right up to the 7:00 pm Council meeting or have a break in between.

Councilors indicated they would like to continue.

Councilor Fleck asked what standards would apply for background checks. He said he would imagine that many of the people unhoused would have some sort of a criminal history which could create a barrier and said he is in support of not allowing minors.

City Manager said we cannot allow minors.

Councilor Fleck said he likes Councilor Ervin's idea of posting a public notice but is not sure if it would be effective as far as motivating growth and could be considered a negative.

Councilor Ervin said the framework would be to describe why we are doing this.

Councilor Fleck asked what the ultimate goal is and said if we are going to have a message it should be a positive one.

City Manager said we could require contractors to provide a sample of Policy & Procedures that would include requiring cleanliness, limiting possessions, and protecting the existing City property and facility. He added that he likes the idea of having a statement and it could be added to the RFP in the introduction.

Councilor Ervin said he was trying to connect the giver to the receiver, and what he is hearing is that we are wanting to protect the recipient from the expectation of those who are paying for it.

City Manager said it is a good idea and it could be posted in the house and in the unit. He suggested that we get the language worked out and it can be separate from the proposal.

Councilor Solesbee said the RFP does not say background checks are expected and she would prefer it not be worded in the language that we cannot do them.

City Attorney read aloud Section 2.6 at the third bullet point and asked if it addressed Councilor Solesbee's concerns. She said it reads that you cannot deny entry based on criminal background or history unless a participant poses an imminent threat to themselves, staff or others. She asked Councilor Solesbee how the language would need to be changed.

City Manager said this language does not prohibit background checks it just says that you cannot use them to prohibit someone unless they are posing an imminent threat.

City Attorney asked Councilor Solesbee if that addresses her concern.

Councilor Solesbee said she doesn't know why it needs to be in there at all unless we are planning to deny someone access. She said if you are denying access it is most likely something substantial.

City Manager said that is why it is worded that way, so that it is clear that denial would be for something substantial.

Councilor Roberts said if someone has a record of violence and sex offenses we are going to be creating a social cocktail.

City Manager said that would be someone who poses an imminent threat to safety of staff and others and they would not be allowed in.

Councilor Ervin said the language is that background checks would not be done unless there was violence or something happening.

City Manager reread the sentence in the RFP to Council.

Councilor Ervin asked if the plan would be to run background checks.

City Manager said yes.

Councilor Fleck asked if sex offenders have to register.

Councilor Ervin asked if it be up to the discretion of the contractor if they want to run them or not.

City Manager said yes, we would need to look at how they are going to determine that in their policies.

Councilor Ervin asked if we could state it in the RFP that they will.

Councilor Solesbee said she is confused about the difference between a sex offender and a violent sex offender.

City Manager said there is a variety of classifications of sex offenders.

Councilor Solesbee said we need a much longer Work Session than an hour.

Councilor Roberts agreed.

Mayor Gowing asked if we could continue the conversation prior to the next meeting.

City Manager said we need to get the RFP started so that we can do the recruitment.

Councilor Solesbee said that is why we wanted this earlier and we were told that we couldn't.

City Manager said we could do it after the regular meeting or we could keep going.


Mayor Gowing asked if Council wants to continue with the Work Session or adjourn this meeting, have the regular meeting and come back.

City Manager said you would recess the meeting.

Councilors agreed to recess the meeting.

Mayor Gowing recessed the Work Session at 7:07 pm


Mindy Roberts, City Recorder


Jeffrey D. Gowing, Mayor