

Council Statement on Efforts to Fill Fire Chief Position

Addendum from Councilor Stephen Jensen

Blog Post by Councilor Tonya Graham

Additional Background: In a comprehensive effort to evaluate innovative and fiscally more efficient operating structures for our municipal fire and ambulance service, the City Council voted unanimously to give direction to the Interim City Administrator on September 15, 2020, to pursue an Intergovernmental Agreement (IGA) with Jackson County Fire District #5 but not excluding exploring other options.

(From Sept 15 minutes.)

1. Fire Chief Recruitment Process

Hanks gave a Staff report and introduced Human Resources Director Tina Gray. Gray gave a brief Staff report.

Council discussed options.

Jensen/Rosenthal moved to recommend pursuing staff Option 3, authorizing staff to conduct a recruitment for a Limited Duration Appointment (1-3 year) of a Fire Chief to maintain continuity of leadership of the department. Jensen spoke in support of option number 3. Rosenthal agreed with Jensen. He spoke that this could open the doors towards partnerships with surrounding cities. Graham thanked staff. **Roll Call Vote: Rosenthal, Jensen, Seffinger, Slattery, Akins and Graham: YES. Motion passed unanimously.**

This course of action unfolded with a series of professional meetings between COA administrative staff, AF&R staff, Ashland Firefighters' Association, and eventually Fire District #3. The process was reviewed and affirmed with no serious dissent by City Council on November 2, including identification of the final candidate, Division Chief Devon Brown. Negotiations were concluded with mutual satisfaction; final contracts were drafted for presentation to the authorizing boards and councils and Ashland City Councilors were invited to interview Chief Brown via Zoom. The IGA contract was placed on the consent agenda for approval on the evening of November 17, 2020.

On November 17 at 1:00PM, a zoom meeting was scheduled with several City Councilors and the COA HR manager, Tina Gray. Councilor Akins and I were the two Councilors. One of the questions asked by Councilor Akins queried the amount of his current salary at District #1 in Klamath Falls and Chief Brown, visibly uncomfortable, answered. Such a question is specifically prohibited by Oregon's *Pay Equity Act* whether it is public information or not. To wit:

It is an unlawful practice ... for an employer or prospective employer to seek the salary history of an applicant [except to request] from a prospective employee written authorization to confirm prior compensation after the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

Councilor Akins subsequently posted this information (Mr. Brown's current salary) on Facebook with adjoining comments that were remarkably misleading.

(Posted on FB Nov 17) *"The current applicant makes \$120,00. My guess: he'd have been interested for less than \$225,000."*

In addition, the following comment was posted by Councilor Akins on the same day.

“So we have a rented fire chief. Two years we pay his compensation of \$225,000 and \$231,000 but he doesn’t work for us, he works for District Three in White City. The proposed person has three years experience and we are starting him at \$225,000. Doesn’t that seem high to you?”

Chief Brown, upon learning of this misleading social media traffic and the toxic atmosphere around this topic, withdrew his name from consideration shortly thereafter.

Not only are the above comments in possible violation of Oregon labor law, they directly and repeatedly misrepresent compensation for this position by comparing “fully loaded” budgeted compensation numbers on the one hand with actual personal gross salary numbers on the other. This misinformation is repeated several times as indicated in the above direct quotations from social media. Additional misinformation was offered claiming that this candidate has only “three years experience”, will be “a rented fire chief”, “...is FD3 the best partner in a merger’????”

These misrepresentations by Councilor Akins are a violation of **AMC Section 2.04.115**
“A Council member is free to express personal views on any issue in any forum as long as any statements he or she makes about the positions of the full City Council and the positions of other individual Council members are accurate and objective.

Another AMC rule was violated by these posts.

AMC Section 2.04.080 (C) ***“Individual Councilors should respect the separation between policymaking and administration. Councilors shall not pressure or direct City employees in a way that could contravene the will of the Council as a whole or limits the options of the council.***

To wit (from Councilor Akins):

The kicker is this person will not be our fire chief. They'll be paid by us, trained by us and then bounce over to fire district three after two years. Why can't the current administration wait until the new council and mayor are seated? Why don't we hire our own fire chief who will stay long term and bring stability to the City of Ashland fire department? Why are YOU being asked to spend roughly \$455,000 to train a fire administrator for another district north of Medford?...

No candidate search, no efforts to see if a woman, a person of color or someone with deeper experience could be found. Weird, right? Is it a good idea?

The actions of Councilor Akins in aggregate thwarted city staff members who were in the process of executing the will of the council with a professional candidate search and negotiation. They were forced into an embarrassing and possibly illegal position. Furthermore, such actions damaged the reputation and goodwill of our administrative staff, this council and our city as a whole. And these actions seriously jeopardize our emergency preparedness in the months to come....in direct contravention of the stated will of this City Council.

A third council rule has been repeatedly violated by Councilor Akins.

AMC Section 2.04.080(D) ***The Mayor and council members should strive not to criticize any person in a public meeting or in public electronic mail messages. The same expectation applies to City staff in the exercise of their official duties. Discussions and disagreements should focus on the content of the topic at hand. Nothing should limit a Councilor or staff person’s right to report wrongdoing.***

To wit: These are recent public posts from Councilor Akins.

“Yes, council was rude when I wanted discussion. That’s nothing new”

“I seek transparency rather than nepotism and buddy deals. Why do we hire our friends?”

“The notice is posted and writ large on city hall: the back room is closed for business”

“I hate to chime in any more on this due to the Union flogging but—if public safety was a top priority why did they cut the emergency preparedness person’s money and hours? Do only some fire jobs matter?”

It is not so much the criticism that is at issue here, but the false accusations of “nepotism” (*the practice among those with power or influence of favoring relatives or friends, especially by giving them jobs*) and “buddy deals”. In addition, suggesting that our city hall was the locus of “back room...business” is false and comes close to defamatory and as such is certainly a violation of the above council rule.

My intention at Tues, Dec 15 Business Mtg is to add directly to the proposed Council Statement through this motion.

I move to add the below paragraph to the end of the already offered statement proposed by staff.

Furthermore, members of the Ashland City Council, do unequivocally affirm in this statement that we are committed to abide by both the spirit and the letter of the council rules that guide our interactions, especially the rules stated in AMC Section 2.04.080 (C), AMC Section 2.04.080(D) and AMC Section 2.04.115.

In addition to the above important contextual information for this motion, I have included a thoughtful and wide-ranging blog post written by Councilor Graham examining the policy and emergency preparedness factors that surround this issue. See below.

Hiring Our Next Fire Chief

Blog post by Tonya Graham

The Gist

This plan to fill our vacant Fire Chief position was, and is, a good idea given our need for a strategic assessment of the department's operations.

The notion that decisions are being made behind closed doors at the City is nonsense. This issue was brought before Council for direction to staff twice before the final contract was brought forward for approval.

During those two meetings where we discussed this process for addressing the Fire Chief vacancy, none of the concerns expressed at the most recent meeting were brought forward.

Social media posts by Councilor Akins have derailed a necessary process putting the City's ability to protect its residents from fire and COVID-19 at risk.

Information in social media posts comparing the salary for this position to other salaries was untrue. It compared the "all in" costs (taxes and benefits) for our Fire Chief position with just the salary costs for a similar position. In addition, questioning the applicant's qualifications in that venue was inappropriate and ill-informed.

The posting on social media of the applicant's current salary was inappropriate and hurt someone who had only applied for a job. The comparison between his current salary and the "all in" costs of our position was inaccurate as well.

Our community's reputation with regional partners and potential future applicants has been damaged by those posts.

Because the applicant has withdrawn from the process, we are leaving Ashland Fire and Rescue short-staffed during this critical time between fire seasons - until we can get the position filled.

ACES' action alert included elements that were not true.

The Details

When former Fire Chief, Dave Shepherd, retired at the end of November, it created an unusual situation for the City of Ashland. The standard response would be to open up a full recruitment and selection process for a new Fire Chief. But we aren't in a standard situation.

Assessing our Fire and Ambulance Service

Ashland Fire and Rescue, which includes both fire and ambulance services, is the largest program in our General Fund. Given the constraints of our General Fund budget, we need to take a structural look at how the City is providing those services. That effort is underway with a contract Council recently approved for a financial assessment of the ambulance service in relation to the fire department. This will let us know to what extent, if any, we are subsidizing the ambulance service. Because Ashland Fire and Rescue operates as one seamless fire and ambulance department, calculating those numbers isn't as easy as one might think. Once we see what those numbers tell us, Council and staff will move forward with discussions about what changes that might mean for how we provide those services in Ashland.

One option, if we decide that keeping everything in-house isn't the best way to go, is to combine services in some fashion with one of the local fire districts. Whenever a merger like this is

developed, one of the “chiefs” (whether it’s a CEO, executive director, or in this case, a department head) loses their top position, even if they remain employed in the newly merged entity. This reality can create an incentive on the part of those top leaders to keep things the way they are – to not embrace a new structure that might produce benefit for the organization, but could easily mean a personal demotion in the new structure. This is important in terms of the larger assessment process we are engaged in.

Timing

System-level assessment and planning takes time and departmental leadership. When staff saw the transition coming from Chief Shepherd’s retirement, they rightly thought about how we might address this vacant position in a way that doesn’t create a disincentive to strategic planning for the department. What we needed was someone who would come into the department in its highest position and lead the department through this assessment process with the Mayor and Council. By having this person be on the payroll of District 3, but serving under contract with the City of Ashland, they would have a guaranteed position in District 3 no matter what the City of Ashland eventually decided about the structure of Ashland Fire and Rescue. If the City chose to keep all services in house and was pleased with this person’s performance, they would move over to our payroll. If the City chose to merge with a fire district, or were not satisfied with their performance, they would remain on the payroll of District 3. This level of structural assessment isn’t something that will be done by the time we are finalizing a budget in May/June of 2021. It will take longer than that – likely a year or more.

Cost

In spite of what has been said on social media, the cost was no more for this contract than it would be if this position stayed on our books for the next three years. I know because I specifically asked that question at one of our public meetings. The salary (\$130,000) and all in costs for that position are no different than what we would normally pay – and are in line with what it takes to recruit a fire chief who has the level of expertise and skill needed for a city of our size. Unfortunately, postings on social media misrepresented the comparison and claimed that the “all in” costs (including insurance, retirement, etc.) were the salary costs. This comparison error has created significant, unnecessary strife in the community.

Applicant

In this case, both District 3 and the City of Ashland had a specific applicant in mind who had been working in our region and had done a similar system-wide analysis with their current employer. In many ways, given the close working relationships in the fire and ambulance community in southern Oregon, it was like hiring from within. However, had we not been in the middle of a system-wide assessment of our services, I expect staff would have brought forward, and council would have supported, a standard hiring process that would have allowed us to cast the net wide and move forward with our diversity, equity, and inclusion goals. This was a necessary exception.

The notion that spread through social media and at least one organizational action alert that we would be “training” someone to be a fire chief and then sending them along to another district is pure nonsense. The applicant who was approached by us and Fire District 3 is well-known and respected in our region for his expertise in fire and ambulance systems and ability to assess and develop an effective plan when change is called for. I spent over an hour with him on Zoom and was very impressed with him professionally and personally. He was exactly what we needed.

The Whole Thing Goes Sideways

Unfortunately, this applicant will not be our new fire chief. The day of our Council meeting, he went on a Zoom call with a couple of other councilors. Councilor Akins asked him a question about his current salary and then proceeded to take that information out to social media and question his credentials. It was, in my mind, highly unethical. He was harmed professionally by

what she did and withdrew his application that day. I don't blame him. Interviews are a good way to determine whether the other party is someone you want to work with and/or for. I wouldn't want to work with someone who treated me like that – and clearly he doesn't either.

What this Means for Ashland

Right now the City Council has an emergency declaration that includes two emergencies: COVID-19 and the Alameda Fire. What do those two things have in common? Our community response to both sits heavily inside the walls of Ashland Fire and Rescue. Our firefighter/paramedics are dealing with calls for help from people who may have contracted the virus and the City is in the process of assessing our response to the Alameda Fire to continually improve our services. We have 7 months between fire seasons and both the fire department and individual residents have a lot of work to do between now and the start of the next fire season.

Now, because of this unethical behavior, we do not have the highest position in that department filled with the type of person who can lead us through these assessments and strategic planning processes. Our Interim Fire Chief is doing an excellent job, but he is doing the work of three people. It's not sustainable. Ashland Fire and Rescue needed the Council to move forward with this contract and this applicant so that it would have the capacity and expertise that the next couple of years calls for us to have. Now, it is in shambles.

It's also likely that when we do move forward with whatever process we will put together to fill that position, that high quality applicants will be hesitant to apply given what they know about how elected leaders in Ashland sometimes behave. Word gets around when there is a problem like this.

In the end, it will be the people of Ashland and those who work in our fire department who suffer – yes, those who risked their lives two months ago to save our community. With these actions, Councilor Akins has made it even more difficult for them to do their jobs.

A Word About ACES' Action Alert

Organizations form an important part of our civic conversation. I trust several organizations to alert me when something we both value is threatened. I have written my fair share of action alerts as well. What is necessary in this relationship is trust. The organization needs to convey truthful information so that their members can trust that information when they step forward to advocate for a position.

Unfortunately, ACES sent an action alert with statements that are simply untrue.

They said: "The problem is this person will not be our permanent fire chief. He will be paid by us, trained by us and then transfer over to fire district three after two years. Why are you being asked to spend roughly \$455,000 to train a fire administrator for another district north of Medford?"

We don't know whether this person will be our permanent fire chief and the original applicant certainly didn't need to be trained. If we continue to have an independent fire department, this person would be our permanent chief unless there was a performance issue, which was highly unlikely. He would be paid by us, but we wouldn't be training him. We would have benefited greatly from his expertise, experience, and systems perspective. And, as I mentioned above, the total cost for two years of this position is the same whether we hire a fire chief or move forward with this contract.

They then went on to say this:

"We should continue with Division Chief Ralph Sartain as Acting Fire Chief and wait until the upcoming biennial budget is developed and the fiscal and operational impacts can be assessed for our Fire Department before making this important hiring decision."

There isn't anything untrue about this opinion. It's just a bad idea. It's similar to the call earlier this fall to hold off on hiring a Finance Director until after a City Manager is hired in 2021. The City Manager is not likely to be on until June or possibly even later due to the time it takes to go through the process of hiring for a position of this importance. Our budget must be approved by the end of June. If you wonder whether the Council made the right decision in approving the hiring of a Finance Director, watch the study session of November 16 where we received our first financial update from our new Finance Director. She's fantastic – and we need her leadership to navigate the upcoming budget process.

The same is true for the fire department. We need that leadership position filled now so that we can do what needs to be done between fire seasons and complete the strategic planning that is needed – and so that we can continue to offer first rate fire and ambulance service in the meantime. According to the schedule ACES advocated for, we would be running short staffed throughout the winter and spring and bringing on the new fire chief after the 2021 fire season starts. Again, bad idea.

The Bigger Picture

The world doesn't stop spinning just because Ashland has initiated a change in its form of government. City Managers do not expect to walk into a new position with department head positions left vacant for upwards of a year waiting for their arrival as the new manager. They expect to walk into a system that is functioning with department leadership in place. Then they get to decide if that configuration is going to work for them – and take action if it isn't.

We are living in a time of disruption – and we need to get better at managing it. Sometimes, it's best to carry on as you have before. Other times call for creativity and innovation. This situation with our fire department is one that calls for creativity and innovation. Staff offered that in bringing forward a solution that would meet all of our needs over the next several years, stay within budget, and keep our options open for the structure of our fire department moving into the future.

It is also true that Council had two opportunities to express concerns or direct staff in another direction prior to the contract coming before the Council for approval. In neither of those discussions did Councilor Akins express concerns.

The best option has been derailed by inappropriate and ill-informed behavior by a sitting councilor. The end result is that more staff time will need to be used to create a solution that is not likely to be as good of a fit – all while they are dealing with a pandemic. We can – and must – do better than this.