

## Transcription: Excerpts, April 2, 2003 Council Meeting

### Re CITY ADMINISTRATOR POSITION

**Rowe** Okay, the next issue. I wanted to discuss the city administrator position. As we know, it's been two years or so since the last administrator was here. And for awhile after that, Fred came over and donated part of his time and Laura kind of helped to get things straightened around at city hall. And after awhile, went by the wayside. A year ago at our retreat we offered -- The reason Fred and Laura did that was to try to hold costs down<sup>1</sup> 'cause we was starting to get into a budget crunch due to the sales tax equalization and whatever else that we were not getting at that time. And a year ago at our council retreat we opted to still not do the city administrator because of budgets and, uh... But recently I've come up with an idea of how we can work an administrator that will -- it won't be cost-free but it will definitely be a lot cheaper than what any other ideas we've ever had. I've listened to a couple of suggestions from other people and trying to find a little bit of a plan here. And I even have a person in mind I'd like to see appointed. I guess I want to throw it out for discussion, but I would like to do it and I would -- Of course, I don't like the way the wheels of government turn so slow. I'd like to see things get done quickly. I guess we discussed it a little bit at our council retreat the other day. I guess if any of these councilmen have anything they'd like to say, I'd like to -- I'm open for input here.

**Criswell** Well, *[unintelligible; something about having a suggestion]*. They have to be really *[unintelligible]* --

**Rowe** I think where it is, I recommend that --  
*[simultaneous comments]*

**Raney** I had emailed back to the mrsc this morning early and got a response at 8 that I just got tonight before I came down. And there is some concern about this because of the issue of a concept called "incompatibility." So I provided a copy of this to the attorney just before the meeting. If we do this, it may require some changes in the job description, or some other things because we may be running into some trouble with that.

**Criswell** Well, it would, it would, it, a person's -- it just -- *[unintelligible]* the same person I'm thinking of, uh, it wouldn't require a job--a change in job description in there.

**Raney** You just can't have a job that we supervise as the administrator.

**Rowe** So what you're saying is the Administrator can't be anything but be an administrator?

**Raney** Well, I'm not sure it says that. And I think there's some ways around this, but we have to make sure that we do it correctly.

**Male** We start out by using the *[unintelligible]*?

**Graafstra** I don't think that -- As I understand the issue that's being discussed here, apparently the plan is, is that some existing appointive officer of the city would not also be appointed the city administrator. And The concern that's raised is, how does a city administrator act as the supervisor of the, of himself or herself in performing the other duties that the appointive officer had in whatever that other capacity is. And I certainly agree that -- especially in things like elective officer--offices -- is the principle of incompatibility of positions. In fact there's a specific section that deals with that. It's RCW 35A.12.030 as it relates to elective offices, and then employment within the city at the same time. I believe that the background of this is perhaps somebody who is a city planner also acting as the city administrator. I was looking through the code as this meeting went on to see if we, in fact, can create a position called the city planner within our city code. And through there are -- there's one or two references to the city planner, especially in the context of approval of a short plat at this point, I can't find any definition of a city planner in our code, and I can't see any chapter in our code that specifically creates that as an appointive office. Having said all of that, I nonetheless do concur with the information that mrsc provides, which seems that, regardless of what the position is, that obviously one person should not be supervising that person in a separate capacity. But I also agree with the conclusion of mrsc, which is you could roll the duties of a planner or other position in the city in the job definition of your city administrator or your chief administrative officer, however you want to title that person. And that probably does solve the problem. So there's more than one way to deal with this issue. It looks like it could be a problem, *[if]* that's the policy direction of that the mayor and the council choose to follow.

**Everett** Thom, I've got a question for you. The RCW says that the city administrator *can be* -- also serve as the city attorney. But that is the only stipulation it gives in whatever function the administrator *[unintelligible]*.

**Rowe** It says, "can serve" as the city administrator --

**Everett** It says, "serve."

**Rowe** -- and the attorney?

**Everett** Yeah. You can combine that office. The administrator and attorney can be combined.

*[simultaneous comments]*

**Rowe** According to our insurance administrator, he doesn't want that.

**Male** Right, right.

**Everett** And I'm -- the RCW's very clear that that's, that is...it doesn't say you can combine it with any other office. It just says you can combine it with that.

**Criswell** You know, it sounds to me like --

**Everett** I'm just, I'm just --

**Criswell** -- sounds to me like the way that's written, and if you don't have an ordinance saying you have a planner, that we could put the planning duties...onto the administrator, correct?

**Raney** I think so.

**Criswell** It would -- Yeah?

**Criswell** That would, that would simplify it.

**Rowe** I did talk to our insurance administrator about this and he was in favor--he just gave me a couple of suggestions of things that I needed to do to clean up some of the loose ends on it, but he was in favor of it. Or at least he indicated he was when I talked to him. Have you talked to him, Laura?

**Koenig** No. Not recently on this.

**Porter** There were some *[unintelligible]*, too, C. H.

**Graafstra** Right. I'm not aware of anything in the optional municipal code that addresses the issue of a city administrator and a city attorney.<sup>2</sup> The section 35A.12.020, talking about appointive officers says, "The appointive officers shall be those provided for by charter or ordinance, and shall include a city clerk and a chief law enforcement officer. The office of city clerk may be merged with that of a city treasurer at an appropriate time designated therefor. Provision shall be made for obtaining legal council for the city, either by appointment with a city attorney in a full-time or part-time basis or by reasonable contractual agent for such professional services. The authority *[unintelligible]* qualifications of all appointive officers shall be prescribed by charter or ordinance consistent with the provisions of this title and the amendments, and the compensation of appointive officers shall be prescribed by ordinance. I am unaware -- and you can see that I have *[unintelligible]* bring this down during the last discussion item -- I'm unaware of any other provision that addresses appointive officers in the optional municipal code, be it a combination of a city administrator-slash-city attorney or otherwise. Our code addresses the office of city administrator in combination with that position with a city attorney.

**Everett** Okay.

**Graafstra** But I'm unaware of the optional municipal code for the mayor-council form of government addressing that issue.

**Rowe** We have here in our own -- now, is this the, uh, city administrator....?

**Koenig** Yeah. That's the....*[trails off]*.

**Rowe** Here it says, "A combination of position." Now this is just the city, uh, *[unintelligible; someone bangs on a table or wall]*. This doesn't supercede any RCW or anything, but it's combination of position. *[apparently reading from text]* This combination of position. The office of City Administrator may be combined with any other appointed position of the city provided that where combined, the compensation shall be fixed by the council for the combined office, and shall not necessarily be the total of the compensation fixed for each office individually. In other words, he doesn't get paid two salaries. That would be difficult, but not necessarily for both salaries.

**Graafstra** I want to emphasize what I quoted a little while ago, 35A.12.020. You are a mayor-council form of government at this time. There is no requirement that you have a city administrator or a chief administrative officer, which was what they sort of call that position in Marysville at the present time. And you really are under the provision that I read, that you, as a council, get to determine by ordinance what appointive officers there are, with the requirements that you do have to have a city clerk, a chief law enforcement officer, a city treasurer, and you do have to provide for legal counsel in one fashion or another. Beyond that, it's your discussion as to how you wish to proceed.

**Rowe** Okay. So if I understand it, we could appoint a person, we might have to re-revise the job description a little bit, but he could be the city administrator and the city planner. If we go, get it in the right language.

**Graafstra** Bottom line answer to your question: Yes, we would have to do some tinkering with city code provisions, but you could achieve that, yes.

**Rowe** Okay. Well, that's kind of what I'd like to see done, because I think it's cost-effective -- it'd be the most cost-effective way to do it. I think that the, uh, the person we have would be very efficient in that job. So... *[trails off]*. How, how would we go about doing that? What would be the next step if we wanted to do it? I just...

**Graafstra** Well, *[unintelligible]* --

**Rowe** *[interrupting]* ...to appoint this guy and then the council would either vote or not vote?

**Graafstra** Well, you...it...it depends upon what you wanted to do, Mr. Mayor. If you wanted to deal -- Right now, to avoid the incompatibility of offices issue or a city administrator supervising him or herself, you would probably have to -- assuming it's the city planner as an example -- he would have to resign his position as city planner and you'd have to appoint him the city administrator that, if that's something you wanted to do immediately. And then if you wanted to add to the city administrator duties, we would have to amend by ordinance, Sultan Municipal code 2.10.030 to identify that the city administrator also serves as the city planner for the city, or has the duty to *[unintelligible]* the city planner.

**Porter** We would, you would need an ordinance drawn up to that effect, then, Thom?

**Graafstra** It...well, again, depending upon the choice you wanted to make, you would have to do some revisions to that section that I just identified.

**Porter** They resigned --

**Graafstra** 2.10.030.

**Rowe** Well, theoretically speaking, if I wanted to appoint Rick the city administrator, he'd have to resign his job, I would appoint him as administrator. If the council ratified that, then he could become the administrator and we could rework his job description for the next council meeting and bring that back to me and get it, an ordinance to that effect?

*[simultaneous comments]*

**Criswell** It seems you'd want that in-hand, wouldn't you, when you did all this?

**Rowe** Huh?

**Criswell** You'd probably want that ordinance in-hand at the time, wouldn't you?

**Rowe** Well, we have an ordinance for a city administrator.

**Criswell** Well, I know.

**Rowe** So what I'm saying is -- theoretically, if it was Rick -- he could theoretically keep doing what he's doing, and we'd have the ordinance written up by the next council meeting. That...?

**Graafstra** Well, no. You, you, if you follow the approach that I suggested that he resigned as the city planner, you would have a vacancy in that position. And so for example, if there were a short plat application that came in the meantime, you wouldn't have a city planner to act on that in the meantime. I, if I try to be careful here in that you could ask me the question, "Well, can he stay city planner in the meantime, and be city administrator at the same time?" and the problem with that is, of course, is the city administrator is also the supervisor of all of the other staff. And so you have that incompatibility in the position. I don't know that the incompatibility means that serving in those two capacities is unlawful and therefore his actions in the meantime are void. I don't know of any case that deals with that kind of issue in the state of Washington. My suggestion was an approach that, if you wanted to go there, you wouldn't even create the issue of the incompatibility of the offices for which you left open the argument that some actions taken on the capacity of the city planner were somehow void because there were incompatible offices or something like that. So if, if you want to take the risk of some challenge to actions taken, using as a for example the city planner position, because you have incompatible offices, and therefore his actions were unlawful, and therefore take the risk, assuming there was some planning application in the meantime that he had to act on, that somehow there could be a challenge on that basis, *[unintelligible]* you could appoint, again, as a "for example" Rick as the city administrator if that's the way you wanted to go, leave him in the position of city planner, and you take that risk until we could do some clean-up to make sure that we took that incompatibility out of the code. You could go that way.

**Rowe** How long would that take? Thirty minutes?

**Graafstra** How long would it -- Well, it's to take -- Assuming you acted tonight, it's going to take at least till the next council meeting before we can get an ordinance prepared to try and change the duties of the city administrator to act -- have the city administrator also act as a, the, the city planner. And you probably are going to have to change, uh, some, um, job descriptions, I think, that are also adopted by

ordinance. Have to do some tinkering there and have an ordinance that readopted those job descriptions.

*[simultaneous comments]*

**Criswell** Why can't we just have it all drawn up the way we do it?

**Graafstra** Pardon me?

**Criswell** Why can't you just go ahead and draw it up now. Leave him a planner. Don't even make him an administrator yet. Once you get this and you bring it to council with you, we can let him off that night and hire him the same night.

**Graafstra** That's a question --

**Criswell** There's no gap.

**Graafstra** -- Remember I premised all my remarks upon the, on the assumption, Rick, if you wanted to do this tonight. So if you don't want to, to do this appointment tonight, then, yes, by all means we can do these ordinance changes. If the *[unintelligible]* council wants to do --

**Criswell** *[interrupting]* But what I'm saying is, we, we've been this long, another couple of weeks doesn't matter.

**Porter** Thom, you said just a moment ago that we could take a chance and do this? Why take a chance? Why not make it clean and do it properly? I mean, no.... *[trails off]*.

**Graafstra** That's fine. I was just identifying for you your options. Do what you want. I was just trying to *[unintelligible]* your options and --*[simultaneous comments]*.

**Porter** -- the political situation here like it is, I wouldn't want to take a chance. I'd want it done clean, done right.

**Rowe** Well, why don't just --

**Criswell** Have the paper in hand when we do it.

**Rowe** How about if I direct Thom to draw up new job descriptions? Is that what it would be then?

**Graafstra** Well, you're probably going to direct staff, Laura, principally, to draw up some new job descriptions. And Laura and I could prepare two ordinances, one ordinance adopting the new job descriptions, and the second ordinance changing the language of SMC 2.10.030.

**Criswell** I have another question. If we terminate his job as planner, do we have to give him severance pay? Or do we need something in writing saying he'll waive that?

**Porter** We'll uh --

**Criswell** *[unintelligible]*? Look at that!

*[simultaneous comments and laughter]*

**Rowe** I think we could work with --

**male** Well, I mean, according to your contract, don't you get severance pay? If your job is -- *[unintelligible]* get severance pay?

**Cisar** Not under the current guide.

**Criswell** Oh. *[unintelligible]*.

**Everett** Thom? Is there any requirement to advertise the city administrator position as open or anything like that?

**Porter** I don't think so.

**Graafstra** I see nothing in our code that requires it since it's not an RCW-mandated position --

**Koenig** Thom? You need to check the personnel ordinance.

**Graafstra** Is there a personnel ordinance?

**Koenig** There's a personnel ordinance in there.

**Graafstra** You mean, "Personnel Policies"?

**Koenig** Yeah. I know our policies require -- the personnel policy requires that all job openings be posted first seven days in-house.

**Porter** Here is one thing, C. H., Mr. Mayor, that you didn't car of awhile ago. What are the reasons why we didn't bring another city administrator in? I think we'll all jumpy.

**Criswell** Gun-shy.

**Porter** Kinda gun-shy.

**Rowe** Yeah, me, too.

**Porter** And I think that's a fact.

**Criswell** Something else. Did we... ? I guess that's in executive session. *[unintelligible]*.

**Graafstra** Section 2.30.030, talking about recruitment. It says, "Available positions," which does not appear to be a defined term, "shall be publicized within the city offices, in the official newspaper, and in

accordance with the union contracts and with all affirmative -- with all prevailing affirmation action guidelines regarding recruitment. Public notice and position opening shall contain title, wage, job description, minimum qualifications and the closing date for applications." But I don't see a timeframe associated with that. That's what I -- it seems to say.

**Criswell** And...

**Koenig** Yeah, the union, the union contract --

**Criswell** That's union.

**Koenig** -- and the personnel policy manual. That are the ones that address the seven days' posting.

**Graafstra** Is that a union position?

**Koenig** That one's not a union position. That's where the seven days --

*[simultaneous comments]*

**Rowe** You need to post it for seven days in-house?

**Graafstra** If there's a personnel policy that covers the position of city administrator. I don't have those personnel policies with me.

*[simultaneous comments]*

**Male** Shouldn't we go so far as to put it in the paper also? And if it meets your *[unintelligible]*.

*[simultaneous comments]*

**Graafstra** -- look like under the section here that it needs to be published in an official newspaper, if it's an available position, as well. Yes?

**Porter** Well, haven't we already done that? Haven't we *[unintelligible]* in?

**Koenig** No. Not for the city administrator. We did for the --

*[simultaneous, inaudible comments]*

**Graafstra** I don't know. I have to look at the personnel policies. This section --

**Koenig** I can get my *[unintelligible -- simultaneous comments]*.

**Rowe** Okay. Well, I will direct Thom to, if this is kind of a consensus of the council,<sup>3</sup> I'll have Thom look at this and we'll see what we can get done by next council meeting.

**Porter** Let's do it right.<sup>4</sup>

**Rowe** Well, let's do it -- I agree with doing it right, then... *[trails off]*. Okay.

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### Notes:

<sup>1</sup> **The reason the position of city administrator was not filled** was NOT to hold costs down. The reason was it became clear to Mayor Rowe that any ethical administrator would, sooner or later, object to Rowe's scurrilous methods, and the result would be the same: either they would quit or be fired. Because of the political fall-out of Roy Bysegger's firing, and because Rowe needed tighter control of city hall, he decided not to fill that position, even though the \$60,000 amount had already been approved as a budget item for the year 2001. Any negative impacts from "sales tax equalization" or I-695 had already been factored into the budget. *[Source: 2001 in-depth budget prepared by Roy Bysegger/Colleen Hawkins.]*

<sup>2</sup> **SEE SULTAN MUNICIPAL CODE**, as follows:

#### **Section 2.10.040 Combination of position.**

A. In accordance with the provisions of RCW 35A.12.030 and 35.23.111, the mayor may appoint a person to the position of city administrator who is also the city attorney. In the event such positions are joined, the city attorney will provide legal advice to the various departments of the city at a level of his or her competence to do so and shall refer to outside counsel any and all matters that create a conflict of interest or which such person can not act upon as counsel due to ethical considerations or extent of training and experience. Such person shall not act as trial counsel for the city with respect to any criminal matter except those relating to the enforcement of building, zoning and similar code enforcement matters.

B. The mayor shall retain full supervision authority and responsibility over all department heads of the city but shall require such department heads to report to and through the city administrator; provided, however, that where the city administrator is also the city attorney, he or shall, to the extent provided above, act only as the city administrator with respect to matters not involving the enforcement of criminal laws of the state, county or city (police matters) but shall

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nevertheless have full managerial responsibility with respect to other matters relating to the police department involving personnel, budget, purchasing and similar administrative matters, C. The compensation shall be fixed by the council for the combined office and shall not necessarily be the total of the compensation fixed for each office individually. (Ord. 663-97; Ord. 643, 1996).

<sup>3</sup> "If this is kind of a consensus of the council..." *Mr. Mayor, how, when and who, and in what legal public meeting venue, will you canvass a quorum of council members for a "consensus"? (Especially considering Rob Criswell has no email?) The council was right in front of you. Why did you not obtain a consensus vote at this meeting in a public forum?*

<sup>4</sup> "Let's do it right"? "Doing it right" means a thoughtful and considered process that will: (1) review Sultan's future needs in a manager/staff leader, meaning, of course, after the vote on its change of government (who would be so precipitous as to hire someone before the votes have been counted?); (2) advertise widely in trade journals, professional and media venues; and (3) A selection (or, at the least, screening) committee comprised of councilmembers, citizens and CofC representatives.. Who in Sultan would not wish to select its next manager in a stable government/political environment, under the bright lights of public scrutiny, and with plenty of time in which to do so? "Let's do it right"????? Who, Mr. Porter, C. H. Rowe and Rob Criswell, do you think you're fooling?