

CITY OF RUSTON
REGULAR COUNCIL MEETING
Tuesday, July 3, 2018

MEETING CALLED TO ORDER

At 7:00PM Mayor Hopkins called the Regular Council Meeting to order. Councilmembers present were: Jim Hedrick, Lyle Hardin, Deb Kristovich, Lynn Syler and Bradley Huson. Following the flag salute, Mayor Hopkins called for approval of the agenda. Councilmember Hedrick moved to approve the Agenda, with a second from Councilmember Hardin, passed 5-0.

MINUTES

Councilmember Hedrick moved to approve the minutes for the Regular Council meeting of June 19, 2018, with a second from Councilmember Hardin, passed 5-0.

STAFF REPORT – Nothing at this time.

Mayor Hopkins welcomed Ruston Police Chief Nestor Bautista to Ruston. Chief Bautista comes to the City of Ruston with 25 years' experience with the Washington State Patrol and is excited to work with Chief Bautista going forward.

GENERAL PUBLIC COMMENTS – Nothing at this time.

BUSINESS –

Ruston Court Update – Judge Allen – Judge Allen thanked Mayor and Council for the opportunity to come before Council to present an update on the Ruston Court. Judge Allen introduced Judge Rebecca Robertson, President of the District of Municipal Court Judges Association and Judge David Larsen, Representative for Council of Independent Courts. Judge Larsen presented Ruston Municipal Court “Courts as a Community Asset”, see attached presentation. Mayor Hopkins took issue with Judge Larsen’s presentation explaining the City of Ruston was currently in the fact-finding phase with City of Fircrest. Mayor Hopkins noted he had been candid with all those involved and had spoken openly in public, exploring all options. Mayor Hopkins asked if Judge Larsen had had an opportunity to visit the Court, when it was in session, to understand the number of people the City was unable to accommodate, with people overflowing out onto the street and the lack of security this presented. Mayor Hopkins noted it would have been nice to have Judge Larsen’s talking points ahead of his presentation. Mayor Hopkins understood Judge Larsen from a cost standpoint and explained he had met with Councilmember Huson and an architect to explore the cost to remodel City Hall and the Court. It was projected the cost would be between three and five million dollars. The renovation would include a court holding area, metal detectors and other security measures, and expand the space to accommodate current court load. The three to five-million-dollar price tag goes a long way when we discuss the deficit the City would have. Judge Robertson came forward to offer any support her office could provide to navigate through the City’s issues, at no cost or low cost. Judge Larsen asked Mayor Hopkins to accept his apology for presenting with a sense of urgency. Judge Allen provided a current update on the Ruston Court. Court Clerk Cathy Fisher resigned to accept a Court Clerk position at the City of Pacific because she did not know what direction the Ruston Court was taking. It was difficult locating a replacement, due to the discussion surrounding the termination of the Ruston Court and moving it to the City of Fircrest, with no assurances the Clerk’s position would move with the Court.

Judge Allen secured five part time employees at this time, all who have either retired or are using their vacation time in supporting the Ruston Court the last month and a half. It is important that Mayor and Council understand the current position the Court was in. Judge Allen agreed with Mayor Hopkins and thanked the City Clerk and Utility Clerk for their back up support when the Court is not open. Judge Allen announced that she had found a Court Clerk, who had twenty-five years of experience with the Tacoma Municipal Courts. This Court Clerk left Tacoma Municipal Courts to pursue other interests a year ago and was willing to provide coverage the last twelve days in July. Judge Allen described what Court support looked like before Ruston's consideration to move the Court into the City of Fircrest and what that Court support looks like today. The lack of support has been critical to the current operations of the Court. Judge Allen was invited to attend the first transition meeting with the City of Fircrest and will work to transition the Court to Fircrest at the point Council approves this. Judge Allen has been City of Ruston's Prosecutor for ten years and Ruston's Judge for fifteen years and has given the City of Ruston one hundred ten percent. Judge Allen will give one hundred ten percent in a smooth transition if that is what is decided. Judge Allen agreed with Mayor Hopkins regarding security issues and the current caseloads.

Kevin Moser – Special Projects Update – Mr. Moser presented six special projects within the City of Ruston and the status of each one, see attached presentation.

Ordinance 1504 - The City has had more transient rentals in recent years with more planned or under construction. In order to provide the necessary services to respond to the increased tourism and visitors, the Mayor's office recommends adoption of a lodging tax. Chapter 67.28 RCW authorizes the City of Ruston to impose a lodging tax on all who charge to provide lodging. The lodging tax has two components. The first is a 2 percent tax that is charged by the City but does not increase the taxes paid on lodging. Rather, this money is paid by the State out of the State portion of sales tax. This is called the "transient rental tax." In addition, cities can charge up to an additional 2 percent which is on top of the established sales tax. This is limited based on what other taxes are on the books in the County. For example, in King County cities can only charge an addition one percent. In verifying with the Department of Revenue what the maximum additional lodging tax is allowed in Pierce County, the City learned that Pierce County is grandfathered in to a prior system and this results in there being no capacity for additional lodging taxes in Pierce County cities. Therefore, Ruston is limited in only charging the 2 percent transient rental tax that is recoupled from the State out of sales tax collections. The proposed new chapter 5.19 RMC establishes the tax as well as outlining the requirement for a specific fund, use of the funds, collection, and annual reporting. The new sections proposed are:

- 5.19.010 Imposition of tax.
- 5.19.020 Exceptions.
- 5.19.030 Credits.
- 5.19.040 Definitions.
- 5.19.050 Lodging tax fund.
- 5.19.060 Administration.
- 5.19.070 Adoption of rules.
- 5.19.080 Violator deemed principal.
- 5.19.090 Penalty.
- 5.19.100 Annual report.

The uses of these tax revenues are not unlimited but may only be used for “the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities or for other purposes as authorized in RCW Chapter 67.28.” RMC 5.19.050(b). Councilmember Hedrick moved to approve Ordinance 1504, with a second Councilmember Hardin, passed 5-0.

Renaming Winnifred Place – Discussion Only - The City Council has the authority to name streets and parking in Ruston. There has long been confusion about Winnifred Place which shares a close name to Winnifred Street. If the Council desires to rename Winnifred Place, the City staff will bring forward legislation to make this change. The people who live on Winnifred Place support making this change as it will make it easier for navigation and deliveries. No name for this street has been proposed. The Council can choose a name, sending the matter to the Planning Commission to generate possible names for Council consideration, or choose not to change the name of this street. Councilmember Huson spoke to the name change and would bring a suggestion for a street name before Council at a future meeting. Councilmember Hardin reminded Council about the recent N 54th and Park Avenue name change and the challenges it brought to the one resident that resides on Park Avenue.

CLAIMS/PAYROLL – Councilmember Hedrick moved to approve Claims and Payroll, with a second from Councilmember Hardin, passed 5-0.

MAYOR’S TIME – Mayor Hopkins provided an update on the parking garage permit and the comments between City of Ruston, Pierce County and City of Tacoma. There were issues with the unfinished parking garage. Should Pierce County and City of Tacoma continue down the path to approve the construction of the Public Market and ignore Ruston’s comments the City of Ruston will file an appeal and Mayor Hopkins will take the issue to the Tacoma City Manager. The City of Ruston believes there are ADA access issues between floors. The developer’s proposal is that access will be provided once the structure is built. City of Ruston would look at protection against liability from any civil rights claim and would provide the City’s position to insure completion as approved.

COUNCIL TIME –

Councilmember Hedrick – Had not gone through the entire thirteen-page letter to Pierce County as it relates to the certificate of occupancy of the parking garage. Councilmember Hedrick encouraged City Staff to document all concerns surrounding the parking garage and public market as public safety was first and foremost. Councilmember Hedrick reminded everyone about the greatest day of the year and was looking forward to seeing the kids and their bikes at the 4th of July Bicycle Parade. Councilmember Hedrick appreciated staff Kevin Moser and Ray Johnson and thanked Judge Allen for her service to the City of Ruston. Councilmember Hedrick also welcomed Ruston’s new Police Chief Bautista and his service to our community.

Councilmember Hardin – Commented on the parking garage permit and noted another issue was the standpipes, that deliver water in the event of a fire, were not in place at various levels of the parking garage. Filing an appeal would not stop permitting but would address the issue of public safety. Councilmember Hardin and Mrs. Hardin would be decorating their bikes and looked forward to the annual 4th of July Bicycle Parade.

Councilmember Kristovich – Nothing at this time.

Councilmember Syler – Nothing at this time.

Councilmember Huson – Read the letter and understood the City's concerns. Councilmember Huson did not believe Ruston could prevent Pierce County and City of Tacoma from moving forward in getting the project built as quickly as possible. The developer's incentive was revenue generation and paying City of Tacoma back, negating public safety. Councilmember Huson did want to keep people safe and his concern was liability. Councilmember Huson thanked the City Attorney and Mayor Hopkins for the great job they have done in documenting the issues and all the time they have spent on this project. Happy Independence Day.

MEETING AJOURNED -

At 8:16PM Councilmember Hedrick moved to adjourn, with a second from Councilmember Hardin, passed 5-0.

Mayor Bruce Hopkins

ATTEST:

Judy Grams

Ruston Municipal Court

"A Community Asset"



Judge David Larson

Why are we here?

- Set forth the issues that you need to consider as a council regarding the proposed interlocal agreement ("ILA") with Fircrest
 - Inform your judgment, not undermine your judgment

Courts as Community Assets

- What do municipal courts do for a community?
 - Your court has assisted in maintaining the health and welfare of Ruston for 57 years (25 years with Judge Allen)
 - Entire community benefits from the work of a committed and accountable judge
 - You need a judge committed to making your community the best it can be
 - Reform individual behavior and choices to prevent crimes or infractions from re-occurring
 - The closer justice is to your citizens the more effective it becomes
 - Direct accountability to the people of Ruston is key

Currently

- You set the operating budget of the court
 - Increase or decrease budget based upon Ruston's actual needs
- You control confirmation of the Mayor's nomination for judge every four years
- You control the facility costs of the court/city hall
 - Including decisions to incur expenses for improvements to the court/city hall

Under Interlocal Agreement

- Fircrest, not Ruston, determines:
 - Prosecutor and public defender contract costs
 - Note Paragraph B6: Fircrest decides compliance with public defense caseloads. Their decision may require additional compensation to be passed on to Ruston.
 - Compensation of judge, court staff, and police
 - Facility costs
- You can choose to appoint your own judge, but it will cost you more money if you disagree with the Fircrest City Council's choice of judge
 - Is this really a valid choice? Does it recognize your legal and moral obligations to Judge Allen?

Unknowns

- You do not know:
 - Contract price under D1
 - Additional cost of choosing your own judge under D1
 - Cost of security under D2
 - Cost for handling pending cases
 - ILA only includes new cases after September 1, 2018
 - How future costs will be determined or controlled
 - Paragraph D1 provides that *"The fee will be reviewed and adjusted on an annual basis."*

What we do know

- Contract price under D1
 - Fircrest originally wanted \$155,000 to handle 2,000 cases/year and \$80 for each case filing above 2,000 cases
 - Existing law dictates that Judge Allen be paid her \$27,000 salary through December 31, 2021
- There will be cases pending on September 1st
- Security under D3
 - Ruston currently pays \$4,650 per year with benefits for security
 - You need security 8 hours per day for 24 court days (192 hours)
 - Fircrest will charge by the hour for security and pays police officers between \$25.00 and \$35.50 per hour without benefits or incentives

Increased Security Costs



Increased Security Costs

- Projected security costs
 - Without benefits
 - \$25.00-\$35.50
 - With benefits (Assume 30% benefits)
 - 192 hours x \$32.50-\$46.00 = **\$6,240-\$8,832/year**

Range over \$4,650 current cost
\$1,590-\$4,182

Cost of Pending Cases



Cases Included in ILA

- ILA only includes filings after September 1, 2018
 - Paragraph B1 of the ILA provides that the contract price is based upon the Fircrest court handing, ***“...all City cases filed on September 1, 2018 or any date thereafter for the duration of this agreement...”***
 - Current ILA assumes 2,500 new filings per year
 - You are on track for 2,474 total filings for 2018

Cases Not Included in ILA

- There will likely be over 6,000 pending cases at the time of transfer
 - RCW 3.50.805 requires that you to terminate your court so there will be no way to adjudicate pending cases
 - No judge
 - No staff
 - No prosecutor
 - No public defender
 - No computer system

Net Effect

- Ruston's only choice would be to pay Fircrest to adjudicate pending cases
 - How is the cost going to be determined?
 - Pending cases represent the equivalent of 3 years of service under the original proposal of 2,000 cases per year at \$155,000/year
 - Cost likely not be \$465,000, but what will the cost be with the above perspective in mind?

Resolving Cost Disputes



Who decides Ruston's cost?

- Any unresolved disagreement on the ongoing cost to Ruston for court services will be decided by an arbitrator, not by you.
 - RCW 3.50.805(1)
 - RCW 39.34.180(3)

Ruston Budget vs. ILA



Current Ruston Budget

Court Support	\$121,873.00
Judge's Salary	27,000.00
Court Security	4,650.00
Prosecutor	34,000.00
Public Defense	<u>17,758.00</u>
TOTAL	\$205,281.00

Break Even Charge

- For Ruston to break even on existing budget
 - Fircrest would need to limit its charge to \$178,221.00

Ruston current budget	\$205,281.00
Minus Judge Allen's salary	<u>-27,000.00</u>
Net difference	\$178,281.00

Cost Requirements

Net cost without Judge Allen salary	\$178,281.00
First original bid with 2,000 filings	<u>155,000.00</u>
Net difference	\$ 23,281.00

- Fircrest originally wanted \$80.00 for every case filed over 2,000 filing threshold, so for an additional \$23,281

Fircrest would need to:

- Handle up to 500 additional filings per year
- Absorb up to \$4,185 in increased security costs
- Transition and then handle 6,000+ pending cases

Cost of 2,500 filings

- Fircrest's original bid for 2,000 case filings per year was \$155,000.00
 - This is an implied rate of \$77.50 per case
 - At that same rate Fircrest would need to charge **\$193,750** for 2,500 cases
 - Fircrest originally assumed an \$80.00 per case rate for cases above 2,000 so the \$77.50 is not unreasonable

Projected Ruston Budget

Projected ILA Cost	\$193,750.00
Judge Allen's Salary	27,000.00
Court Security	\$6,240.00-\$8,832.00
Handle pending cases	<u>Unknown</u>
TOTAL	\$226,990.00-\$229,582.00
Increased cost without pending cases	
<u>\$21,709.00 to \$24,301.00+</u>	

Filing Trends

Month	Filings for Month 2018/2017	Cumulative Filings 2018	Projected with Monthly Filings	Projected Cumulative Filings
January	146/90	146	1,752	1,752
February	161/60	307	1,932	1,842
March	194/180	501	2,328	2,004
April	269/204	770	3,228	2,310
May	261/229	1,031	3,132	2,474
March-May	724	X	X	2,896

Revenue Considerations



Caveats

- Courts and judges are not in the revenue business
 - Judges adjudicate cases filed by the city based upon their own sound judgment and discretion without regard to revenue
 - Revenue collections are complicated and multifaceted

Revenue Under the ILA

- Paragraph D4 of the ILA provides that the Fircrest court collects revenue for Ruston
 - Many finance departments "balance the budget" by viewing court revenue as an offset to court expenses
 - Under this model, less court revenue equals greater net expense for court services
 - Judges hate this model because it implies that we need to make a "profit"

However...

Rates of Collection

- Based up total revenue reports to AOC between 2013 and 2017
 - Fircrest averaged \$150.39/case in total revenue
 - Ruston averaged \$181.13/case in total revenue
 - \$30.74/case difference in total revenue reported to AOC
 - This does not represent the actual net revenue to the cities

2,000 cases x \$30.74/case = \$61,480

2,500 cases x \$30.74/case = \$76,850

Staffing Issues



Staffing Needs

- Fircrest's caseload will essentially double in size
 - Judge, staff, prosecutor, defense counsel staffing needs will increase
 - Costs will increase (passed on to Ruston?)
 - Ruston and Fircrest citizens will ultimately suffer

City	Judicial FTE Need	Actual FTE
Ruston	.48	.20
Fircrest	.53	.13
Combined	1.01	.33

Pro Tem Judges

- Paragraph B2 of the ILA provides that Ruston will appoint Fircrest's pro tem judges
- RCW 3.50.090 provides that only the presiding judge for the host court appoints pro tem judges (Judge Miller for Fircrest and Judge Allen for Ruston)
 - You will have no legal say on pro tem judges
 - BTW, Ruston code 1.03.040 is not valid under state law

Legal Considerations



I would be remiss if...

- I would be remiss if I did not bring forward the possible legal consequences of the ILA
 - The intent is to enlighten, not to threaten

Term of Office

- Judge Allen's term of office ends on December 31, 2021 and no sooner
 - The contract provision attempting to modify that term is invalid; you can't rewrite RCW 3.50.040 with a contract
 - At a minimum, current law supports the fact that Judge Allen is entitled to receive her \$27,000 salary through December 31, 2021
 - Her staff may be third party beneficiaries to the agreement and may also be entitled to compensation

Has there been a breach?

Paragraph 8 of the agreement between Ruston and Judge Allen provides:

"If the City converts from a Ruston Municipal Court to a contract for Court Services by another jurisdiction during the term, then the parties agree to negotiate in good faith for termination provisions and the procedure for transitioning to use of another Court system."

Breach of Agreement?

- Was Judge Allen included in discussions or given the opportunity to "negotiate in good faith"?
 - No alternatives to termination have been discussed with Judge Allen. Judge Allen has had no input on any "termination provisions" or "the procedure for transitioning to use of another Court system."
 - Judge Allen initially found out about the probability of imminent termination from one of her staff members
 - A key staff member took another job due to the certainty of commitment by the city to terminate the court unilaterally
 - Judge Allen had a hard time finding new staff for a court guaranteed to be terminated. She was forced to work extra hours to find part-time staff from other courts and retirees to keep the court open. By the way, Fircrest would not assist.

Tort Liability

- It is a tort for a third party to interfere with an existing contractual relationship between two parties
 - This tort also applies to government officials. Potential defendants include anyone who participated in perfecting the breach, including mayors, city managers, and councilmembers
 - Paragraph D1 of the ILA may be evidence of intent by Fircrest and anyone who ratifies the agreement to induce Ruston to breach its contract with Judge Allen

“In the event that Ruston does not appoint Fircrest’s judge, this fee shall be renegotiated with the expectation that this amount will be greater.”

City Council Vote Required

- See RCW 3.50.060 (Repeal 1.03.010)

“A city or town electing to establish a municipal court pursuant to this chapter may terminate such court by adoption of an appropriate ordinance.”
- Signing the ILA and/or adopting the ordinance repealing 1.03.010 could trigger potential litigation
 - \$90,000+ loss to Judge Allen

Successful Litigation

Is there such a thing?

- Cost of attorneys fees and the loss of community goodwill are very tangible costs to consider

Let's work together
to best serve the people of Ruston
by avoiding litigation!

Other Options



Other Options

- Keep your existing court
 - Address issues in another way
- Space sharing with another court
 - Tacoma Municipal
 - Pierce County District
 - Fircrest
- Space and staff sharing with another court
 - Same as above, but see...
 - Puyallup/Milton
 - Bonney Lake/Sumner
 - Kent/Maple Valley

Thank You

Special Projects Update 7.3.18

#1 49th West of Orchard



Note. Need one overhead drop removed, one HV line placed underground and a conduit extension. A new style street light will be installed.

Special Projects Update 7.3.18

#2 49th East of Baltimore Street



Note. Need two overhead drops to go underground. Need to underground a high voltage cable, and various other utilities. A new street light would then go here. May work with Baltimore street renovation.

Special Projects Update 7.3.18

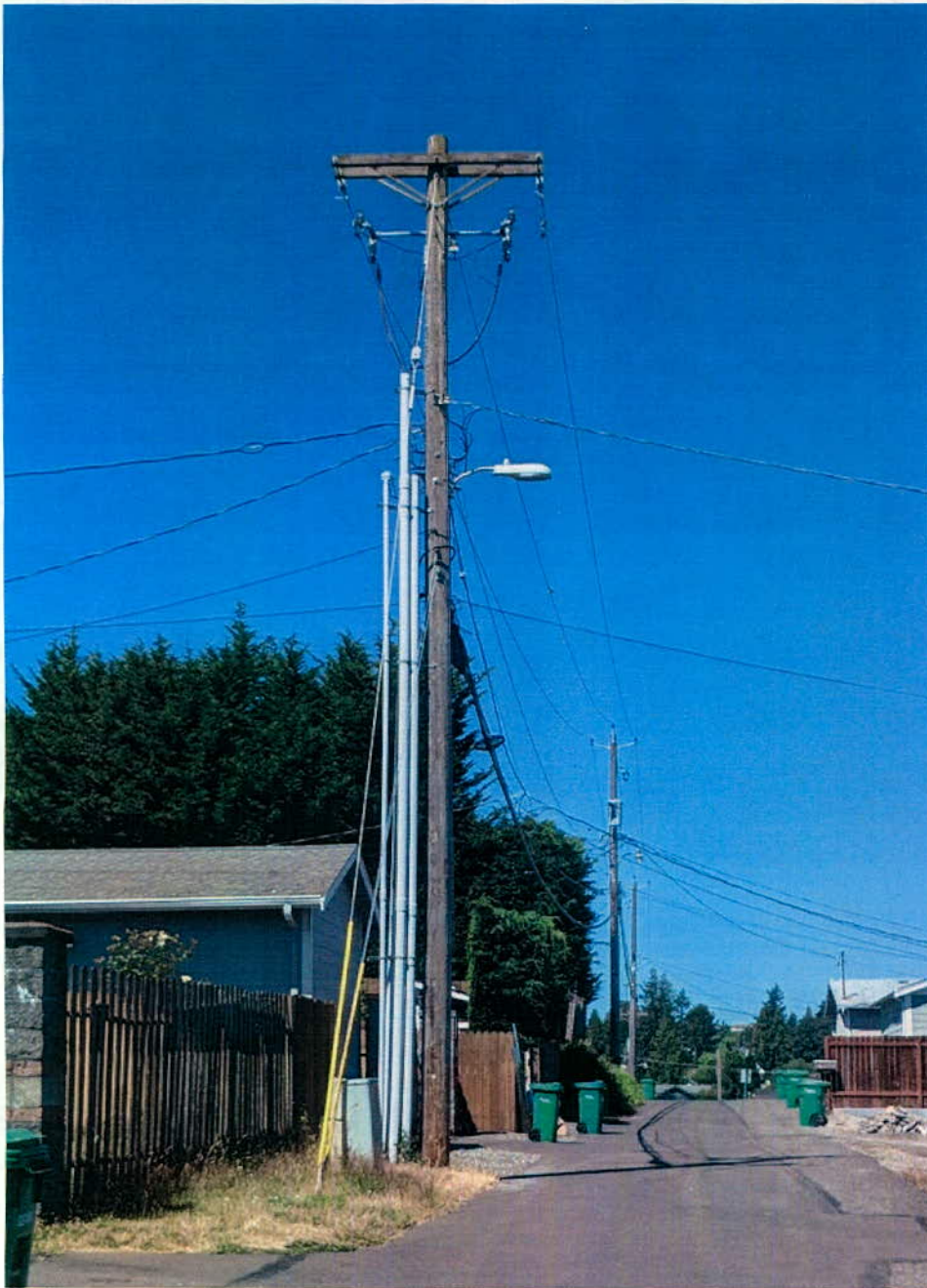
#3 49th and Baltimore St. NW Corner



Note: Need to remove 4 way stop light if possible. Under review. Then provide underground power to the corner and install a new street light.

Special Projects Update 7.3.18

#4 Rust Way Alley West of Baltimore



Note: Need to underground overhead drops and all other utilities. Good starting place as it's the end of the line.

Special Projects Update 7.3.18

#5 Orchard St., North of 49th



Note; Power fed from Tacoma power so coordination required. Cable and Telco would have to go underground.

Special Projects Update 7.3.18

#6. Orchard and Court St.



Special Projects Upc

