

CITY OF McMinnville  
MINUTES OF WORK SESSION  
of the McMinnville City Council  
Held at the Kent L. Taylor Civic Hall Council Chambers on Gormley Plaza  
McMinnville, Oregon

Wednesday, March 20, 2019 at 5:30 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Melissa Bisset

Councilors:	<u>Present</u>	<u>Absent</u>
	Adam Garvin	Remy Drabkin
	Zack Geary	Kellie Menke, Council President
	Sal Peralta	
	Wendy Stassens	

Also present were City Attorney David Koch, Finance Director Marcia Baragary, Fire Chief Leipfert, and Planning Director Heather Richards.

1. CALL TO ORDER: Mayor Hill called the meeting to order at 5:36 p.m.
2. UPDATE ON RESIDENTIAL SUPPORT FACILITY (CARE FACILITY) ORDINANCE

Chief Leipfert stated that in 2010 the fire service identified statewide that there were some significant challenges with care home facilities and that there was a large burden being placed on the fire service. There were statewide teleconferences with the care facility industry, Department of Health and Human Services (DHS) Office of Licensing and quality and the fire service. Throughout the process there was discussion on the best way to manage the impacts from care facilities on the fire service. Informational material was developed with the help of DHS and from 2011-2017 McMinnville Fire worked on providing education to care facility staff. The Fire Department found that there was significant turnover in the care facility industry and therefore a constant requirement for retraining. From 2017-2018 non-emergency calls continued to rise for care facilities and there were code enforcement challenges.

Chief Leipfert shared the following information:

- There are 15 care facilities in the McMinnville City limits.
- There are 1093 available beds creating an average of 151 calls per month.
- Three percent of the City’s population lives in care facilities.
- 35% - 38% of EMS calls in city are to care facilities.
- There are a large number of nonemergency use of the EMS system.
  - This includes: life assist, transport to hospital to facilitate an eviction, competent resident wishing for no transport but not allowed by care facilities.
- Staff routinely refer to corporate policy about requiring transportation.

Chief Leipfert stated that since the Ordinance related to care facilities passed, their calls have dropped by about 20 percent to approximately 120 calls per month. He stated that there has been a significant impact and since the fee was adopted for the nonemergency use of the EMS System there has not been any charges to care facilities.

Chief Leipfert provided examples of challenges faced in the last year with regards to prevention and code enforcement:

- There was a care facility with a non-permitted alarm system for 18 months.
- There was a care facility remodel with non-permitted alarm system and no smoke detectors in living quarters.
- There was a fire in the kitchen of a care facility where the staff left the facility without extinguishing the fire and they did not activate the alarm to warn residents.
- A resident was burned in a room smoking and it was not reported to the Fire Department.
- There was a fire in a laundry room at a care facility that also had numerous violations including a blocked open door allowing smoke to residences requiring resident evacuations. There was a second fire in the same facility laundry room with the same results for violations a year later.

Chief Leipfert stated that fire prevention is important because these facilities are a gathering place of the community's most vulnerable citizens and some of them have limited mobility. He stated that the City has a limited number of operations responders. Prevention works with engineering, enforcement, and education. He explained that there are a lot of additional hours that go into care facilities. Typically every two years an inspection is done. The City has found that this has not been frequent enough to ensure that the staff stays educated with regards to fire prevention and code enforcement. They have found that there are regularly code violations but the more they are able to work with staff and provide education, the more they are able to reduce the amount of violations and reduce the risk of those that live in the facilities. Because of the staff turnover and the lack of continuity within many of the care facilities, the prevention and education takes up more time and takes time away from the Fire Marshal to do other inspections. He explained that they want to improve the safety of the high hazard facilities and ensure that the residents are safe and the facilities are following the rules. Chief Leipfert reiterated that it takes more energy, time and effort and that the City does not have the operational resources to manage a fire evacuation at a care facility. He stated that it is the reason that fire prevention, engineering and enforcement are so important.

Nine months before the Ordinance passed the Fire Department Chiefs met with care facilities to explain the Ordinance. Four months before the passage of the Ordinance there was a joint meeting with the hospital, care facilities, and City Manager to explain the issues. Two months prior all care facilities were advised that the Ordinance would be on the City Council Agenda.

Mayor Hill asked about the reaction of the care facilities. Chief Leipfert shared that there were organizations that understood the challenges but disagreed with the fees. There were also facilities that were in denial and blaming external agencies for the decisions that they were making on sending people to the hospital and they did not accept responsibility for those issues.

Discussion ensued regarding the various types of facilities and their general calls in relation to their services.

Councilor Peralta asked about the 20 percent reduction in call volume after implementation of the Ordinance. He asked if this has been tracked by facility. Chief Leipfert stated that he has only been tracking total number of calls from facilities not by individual facilities but he is able to gather the information.

City Attorney Koch stated that there are several changes in the proposed Ordinance. Portions remaining in the Ordinance are: specialty business license required to operate a care facility, an annual inspection of all facilities, fees charged when care facility uses City's EMS system for nonemergency purposes and all fees set by Council Resolution.

Mr. Koch then reviewed the suggested additions to the Ordinance:

- New definitions related to care standards, resident safety, and facility oversight.
- Facilities required to cooperate with City inspections and investigations.
- Prompt notice to City required after change of facility ownership or operator.
- Facility staffing, orientation and training requirements.
- Requirement related to disaster, fire and life safety planning and drills.
- Requirement for prompt notice to City after disaster, fire or incident endangering resident safety.
- Requirement to provide certain support services to residents.
- Requirement to provide certain health monitoring and services to residents.
- Designation of resident rights that exceeds state requirements.
- Collection Charges, Interest and Penalties for delinquent payments.
- Classification system of infractions and designation of enforcement process.

Mr. Koch stated that the City has been listening to stakeholders such as the Oregon Health Care Organization, and receiving feedback from firefighters and paramedics and local care facility residents. There has been updated research on gaps in care facility regulatory oversight. Mr. Koch stated that there were areas of the Ordinance that needed to be clarified. The suggested changes are an attempt to be responsive to the feedback.

Mr. Koch stated that it is a national problem when it comes to how some of the care facilities are managed. He provided news articles that show consistent themes of neglect and abuse nationwide. He stated that the Ordinance aims to address code enforcement, engineering, and prevention to avert problems. He noted that other jurisdictions are dealing with 911 abuse and it has been documented in Oregon over the past decade. The State issued guidance in 2011. The City has spent the last eight years providing education. Local examples include code violations, poor disaster response such as fire evacuation and neglect. There's limited State and Federal resources for oversight and long-term care ombudsman lacks inspection or investigation authority. Mr. Koch stated that the City has a role to play locally. He explained that it is clear that the ombudsman does not conduct licensing or regulatory inspections, or investigations. Mr. Koch stated that the goal is prevention.

Councilor Peralta stated that he appreciates the staff taking a deep dive into the issue as he has seen that there is a lack of resources at the state level to ensure safety at the care facilities.

Chief Leipfert shared that on December 26, 2017 a fire occurred inside a care facility's commercial laundry room. The Fire was held to the room of origin however chocking open a self-closing devise on a fire rated door allowed smoke and heat to escape into the egress hall endangering the entire population of the facility. This resulted in four code violations plus training.

Chief Leipfert discussed how because of the number of staff versus the residents at care facilities sheltering in place has become the common practice. He stated that the Fire Department is responsible for ensuring that the evacuation plans and those processes are met and understood so the Fire Department has gone to facilities to explain that sheltering in place is not an allowable method to deal with fires in facilities unless there is no other option.

It was noted that there are additional skill sets that are provided through local Fire Marshal services.

Chief Leipfert provided additional examples of code violations. On June 20, 2018 one business had performed a Change of Occupancy from an I-2 Institutional to an R-2 Residential Facility. The business created dozen of residential apartments inside spaces that had no smoke alarm initiating devices placing resident as risk. This resulted in two code violations. No permit had been applied for.

On September 24, 2018 after receiving a compliant from fire responders about a large temporary propane tank blocking the exit door at the business, it was discovered that the main kitchen had suffered a catastrophic water leak causing the entire kitchen to be replaced. This replacement included structural supports for the floor and walls. There were no permits obtained for the demolition or replacement of the kitchen. The construction of the new kitchen created fire and life safety violations and jeopardized the safety of the residents.

Councilor Geary asked about the punishment for code violations. Chief Leipfert explained that it is typically education and there is a timeline to complete violation before a fee would be assessed.

Chief Leipfert stated that there was an assumption about what the State was inspecting and what the City was inspecting. The roles have now been clarified. The Ordinance gives the Fire Department the authority needed and the requirement for the facilities to follow the Fire Department's direction.

Mr. Koch stated that there are areas where the definitions are tailored to the area of regulatory oversight that the City has. After the original Ordinance passed, the City received a request for guidance and clarification from the Oregon Health Care Association.

Proposed amendments to the Ordinance included:

- Nonemergency medical care standards.

- Licensing review and approval process.
- Collection charges – what they are and when they are charged.
- Fire Marshal inspection process and requirements.
- Specific criteria for determining facility compliance.

Mr. Koch explained that different standards of care are discussed by type of facility.

Mr. Koch stated that the City has engaged directly with local care facilities regarding clarifications. Chief Leipfert has been meeting with local care facility management, staff, residents and community members and will continue to visit with facilities over the next few weeks.

New amendments to the Ordinance also included:

- Clarification of definition of Residential Support Facility.
- Focus on Skilled Nursing Facilities, Assisted Living Facilities, and Residential Care Facilities.
- Removal reference to Memory Care communities.

The Ordinance does not apply to:

- Facilities operating outside the City.
- Adult Foster Care Homes.
- Individual Living Communities.

Facilities are required to cooperate with City inspections and investigations. One new section would be added that includes the City authority to review records and conduct interviews with residents when investigating violations of the code. There would also be annual inspections and the ability to apply sanctions and conditions.

Chief Leipfert shared that a bystander reported that a patient caught on fire in a care facility. There was no report from the facility to the Fire Department. Oregon Fire Code requires the owner occupant to immediately report a fire event to the Fire Department. Chief Leipfert explained that staff was resistant to communicate with the Fire Investigator. He stated that the Ordinance will help address issues locally without having to go to the State to get assistance.

Another proposed amendment to the Ordinance would be that prompt notice to the City would be required before change of facility ownership/ operator, or facility closure. The Ordinance would require:

- 45 days advance notice of new owner/ operator.
- Application from new owner or operator.
- 90 days advance notice of closure.
- Copy of DHS approved Closure Plan.

The proposed revisions also included facility staffing, orientation and training requirements. There would be a requirement for a designated full-time facility administrator and notice of change if that person leaves or is gone for more than 14 days. It would require staff orientation training within 30 days of hire, and ongoing in-service training. The records of training would be

required and be kept available for inspection. At minimum the training would cover the disaster preparedness plan, responding to life-threatening emergencies, and resident plans relating to resident safety and accident prevention.

Chief Leipfert explained why training requirements should be added. He shared an incident from October 29, 2018 when a fire occurred inside the commercial kitchen during breakfast prep. He explained how the lack of training and emergency protocols were a problem. The Deputy Fire Marshal spent a significant amount of time providing fire and life safety training.

Another provisions in the revised Ordinance included:

- A requirement for a disaster preparedness plan that would be updated annually.
- Periodic disaster drills and fire drills would be required.
- A safety program to mitigate and eliminate hazards to residents.
- Instruction and training for residents.
- Prompt notice to City after the disaster, fire or incident engaging resident safety.

Discussion ensued regarding the amount of time required for the two person staff of Fire Marshals to provide education, training and enforce the requirements set forth in the Ordinance in the 15 facilities. He stated that it does take away from some of the other things they are doing so they have reprioritized and brought in other resources so that the Fire Marshal and Deputy Fire Marshal can focus on the higher life and safety hazards.

Councilor Stassens liked the approach and noted that they identified gaps in the system and hoped that it would be effective.

Mayor Hill commented on disaster planning and that requiring care facilities to have a disaster preparedness plan will require the care facilities to think strategically. The City and County can be additional help in the disaster planning area.

Councilor Peralta referred to a 2015 article in the Oregonian that reflected there was a lack of documentation related to complaints to DHS. He stated that 60 percent of the complaints that go through DHS are never filed formally so there is an uneven record of complaints through the system. He asked what the intersection is between the Code changes and the areas that DHS regulates. Mr. Koch stated that there are some but limited areas of overlap between what is seen on the fire, life and safety and prevention side and the emergency medical response side. He stated that where abuse there is or neglect of the resident there is a requirement to report to DHS. Chief Leipfert added that as a health care provider they are mandatory reporters.

Councilor Stassens asked about if other communities were looked at. Chief Leipfert responded that there are half a dozen agencies in the State that have something related to non-emergency use of the 911 system. He noted that they do not all provide ambulance services. The code enforcement side of the Ordinance is not in place in other Oregon jurisdictions; however, some other states have it.

Chief Leipfert stated that he recently briefed Oregon Fire Chiefs on the concept and they were very interested on both aspects and especially on the code enforcement side because they are

experiencing some of the same disconnects as McMinnville with regards to the regulatory authorities at the State.

Mr. Koch explained that the Ordinance was renamed from a care facility ordinance to a residential support facility ordinance because not all of the facilities are providing medical care to the level of a skilled nursing facility. The median cost of a residential support facility or assisted living facility is \$55,000 a year in Oregon. It's \$110,000 a year for a nursing facility in Oregon. Mr. Koch stated that some facilities do not provide enough direct care staff and supplement with the City's emergency responders. He explained that the Ordinance considers those support services already required of the facilities specifically related to issues of nonemergency support through the 911 system. He stated that all support services and nonemergency medical care is defined in the proposed Ordinance and is to be provided without calling 911.

The proposed Ordinance would require:

- Designation of a support services coordinator.
- Written policies related to monitoring resident medical conditions and providing 24-hour nonemergency medical care to residents, and coordination of on-and off-site services.

Additional resident's rights would be added in the proposed Ordinance:

- Expressly grants residents the right:
  - To receive support services from trained staff.
  - To be free from discrimination in receiving services.
  - To decline ambulance transport for nonemergency care.
  - To independently contact 911 for emergencies.
  - To report violations to the City.
- Prohibits retaliation and requires reasonable accommodations be made.
- Requires written notice of rights and alternatives.

Chief Leipfert stated that when he met with seniors he heard from some that if they called 911 in independent living they would be asked to leave independent living at that facility.

There would be updates regarding language regarding fees. The proposed changes would:

- Clarify the basis for calculating annual license fees.
- Clarify guidance on appropriate use of 911 emergency reporting system.
- Update process and guidance on when nonemergency care fee may be assessed.

There would also be a new section on the collection of charges, interest and penalties for delinquent payments. It will:

- Define when assessed fees and penalties are due and become delinquent.
- Specify the collection charge and interest rate for late payments.
- Add a penalty for nonpayment based on fraud or intent to evade requirements.

There would be a range of infraction levels ranging from \$50 - \$5,000. It will designate level of administrative infraction for noncompliance. The infraction levels and fines will align with citywide Code Enforcement program.

Mr. Koch stated that the administrative hearing and appeals process will be in a separate part of the Code. The proposed amendments would be on a future City Council agenda.

Councilor Stassens stated that she likes the idea of providing structure for proactive prevention. She applauded staff for being innovative and felt that this will make the life of residents safer.

Councilor Peralta asked that a component of reporting be built in so that the community could be informed that the Ordinance is working as intended.

Councilor Garvin asked if the fees structure would be 100 percent cost recovery. Mr. Koch responded that they are not proposing changes to the business fee or specialty license fee. He stated that it generates sufficient revenue that supports the enhanced fire and life safety and the work of the building official and emergency management staff to get into facilities and provide education. As violations are found the penalty structure will be intended to have cost recovery for the administrative hearing process and the enforcement. Those continuing to have violations that are not providing the standards of care that are required in the Ordinance will pay through fines and penalties. Councilor Garvin asked if there was Staff available to do the work. The fee structure as it currently allows for an additional administrative staff in the Fire Department so the Deputy Fire Marshal's time can be spent in the field. The position was built into the 18-19 Budget. He appreciated Staff listening to the feedback and bringing back a revised Ordinance.

Councilor Geary stated that it is evident that the safety of citizens is important.

Mayor Hill stated that seniors in the City can feel comfortable that the City is concerned about their safety and their health in the areas that the City can manage. He stated that it is the way McMinnville does things. There is a vision and looking to the future. Mayor Hill stated that the City needs to tell the story that it is about the care of the community's seniors and doing it well and within the parameters of the law.

### 3. ADJOURNMENT

Mayor Hill adjourned the meeting at 7:15 p.m.

s/s Melissa Bisset  
Melissa Bisset, City Recorder