

**WALLA WALLA CITY COUNCIL**  
**Work Session Minutes**  
**April 11, 2022**

**1. CALL TO ORDER**

Mayor Scribner called the meeting to order at 4:00 p.m.

Present: Councilmembers Brian Casey, Rick Eskil (virtually), Ted Koehler, Steve Moss, Susan Nakonieczny, Gustavo Reyna, and Mayor Tom Scribner.

Absent: None

City staff in attendance: City Attorney Tim Donaldson, Deputy City Manager Elizabeth Chamberlain, Human Resources Director Pam Taylor, Police Chief Scott Bieber, Police Captain Chris Buttice, and City Clerk Kammy Hill.

Also present: Barbara Clark, Jack Jackson, and Timothy Kaufman-Osborn.

**2. ACTIVE AGENDA**

- A. Presentation by City Attorney Donaldson regarding a request for a tattoo policy, the Open Public Meetings Act, and disclosure of public records.

Staff reviewed the timeline around the issue of tattoos.

Ms. Clark outlined the history and reasons for their requests that the Council authorize the release of the memo(s) that the Council relied on to make the decision last year sometime between June 14<sup>th</sup> and 23<sup>rd</sup> to not consider a policy on tattoos; and to direct staff to prepare a proposed employee tattoo policy to be on the active agenda on May 11<sup>th</sup> at the latest, for open consideration by the council, input by the public, and a vote by the council.

Mr. Jackson offered a hypothetical comparison of the difference between the first amendment rights of a citizen versus those of public employees and asked the City Attorney to provide his legal citations and clarification to the public.

Mr. Kaufman-Osborn felt the City erred in not releasing the records identified as exempt under the attorney-client privilege and work product

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doctrines since the Mayor referred to the City Attorney's memorandum(s) in an open public meeting; and violated the Open Public Meetings Act because the decision not to implement a tattoo policy behind closed doors. An attorney has been hired to file legal action if the requested record(s) are not released.

City Attorney Donaldson reported the City Council had met in two Executive Sessions. The first was held after the City received notice from the Military Religious Freedom Foundation of their intent to file litigation if Officer Nat Small was not disciplined and discharged, and the second was held to look at the legal issues impacting the City.

There was no memo to the City Council. The document referred to is a file memo documenting the work done in researching the threat of litigation. It contains confidential information that cannot be redacted. The public records act does not require the creation of a record in response to a request, but a document has been created that contains the case citations used in the legal analysis regarding the constitutionality of a ban on tattoos.

City Attorney Donaldson provided an extensive review of:

- The facts and applicable cases surrounding the constitutionality of a tattoo policy.
- The existing policies of the police department regarding the covering of body art and off-duty speech.
- The hiring process for police officers. Approximately eighty percent of candidates do not qualify after testing, questioning, and background checks and it would be impossible for someone with a tattoo containing true hate speech to evade the screening process.
- A tattoo ban would not evaluate a candidate's fitness to serve and would be impossible to apply.

There was discussion on:

- Impossibility of evaluating constitutionality of hypothetical situations.
- Inability of the City to enforce a tattoo ban.
- Basis of the allegations of violations of the Open Public Meetings Act and Public Records Act.
- Importance of employee privacy and confidentiality.

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**3. ADJOURNMENT**

There being no further business, the meeting adjourned at 6:07 p.m.