

SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

November 23, 2004

The special meeting of the Des Moines City Council was called to order by Mayor Sheckler at 7:33 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember White.

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin (arrived at 7:57 p.m.), Gary Petersen, Dan Sherman (arrived at 8:25 p.m.), Maggie Steenrod and Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Assistant City Attorney Richard Brown, Community Development Director Judith Kilgore, Finance Director Paula Henderson and City Clerk Denis Staab.

Agenda Revision

Mayor Sheckler announced that since two Councilmembers will arrive late he will delay continuation of the Public Hearing until later and take up other items first.

DISCUSSION ITEMS

Draft Ordinance No. 04-229 [ASSIGNED ORDINANCE NO. 1352] Parking Tax - 2nd Reading

Assistant City Attorney Brown noted Council has been furnished with an updated version and distributed two more edits. He noted that in Section 3. Definitions for Short Stay metered parking and Extended term parking have been included, and under Section 8 Exemptions, motor vehicle or boat storage facilities has been expanded. He concluded by noting the only blank is in Section 4 where Council needs to determine the tax rates for short stay metered parking and extended term parking.

Upon questioning by City Attorney Marousek, Assistant City Attorney Brown noted that Section 8. Exemptions (3) that "fewer than 10 commercial parking spaces", was determined to be just enough for employees and patrons. He further advised that all exemptions are clarifications of what is not considered commercial parking rather than being arbitrary.

Mayor Sheckler stated that at this time he will take public comments regarding the issue.

Paul Kalchik, Highline Community College Student

Mr. Kalchik noted that Mt. Rainier High School and Highline Community College would contribute more than half of the income that is expected from a parking tax. He stated that a lot of the students attending the Community College live in apartments in Des Moines and could be double taxed. He requested that Council exempt educational institutions from this tax.

Josh Oakley, Highline Community College Student

Mr. Oakley stated that citizens should not be taxed for parking at their home which happens to be an apartment, or even a hotel. He informed Council that he has done research and the average age of a Highline College student is 24. He stated that most of the students are attending to get retrained due to the poor economy. He noted that only about 10% of students attending would truly benefit from all the roads as they actually live in Des Moines, and he does not feel this is

fair representation. He suggested that students should pay in closer proportion to the streets that they actually use, which is Highway 99.

Upon questioning, Assistant City Attorney Brown noted that in Section 3 (5) the words "or boat" near the end of the sentence should be deleted.

Upon questioning by Councilmember Steenrod, it was noted that there is short term parking at Redondo and it is anticipated to be installed at the Marina. Extended term parking is at Highline Community College and Mt. Rainier High School.

Upon questioning, City Manager Piasecki advised that the parking meters are planned to be put in at the Marina, the Beach Park and potentially some street parking at Redondo.

Assistant City Attorney Brown advised that a sunset provision could easily be added if Council so desires.

7:57 p.m. Councilmember Benjamin arrived

Upon questioning, City Manager Piasecki stated that revenue generated from this tax is restricted to be used for transportation purposes, such as street maintenance. He advised that if educational facilities were excluded, revenue figures would be cut in half if not a little bit more.

Councilmember Steenrod advised she would support the ordinance even without a sunset clause if the educational institutions were excluded. She stated that she has a problem with taxing students. She felt that the City should encourage a private parking facility, or even the City consider doing so.

Councilmember Benjamin expressed agreement with Councilmember Steenrod to eliminate a "student tax".

8:02 p.m. Executive Session

City Attorney Marousek announced that Council will go into an Executive Session for approximately 20 minutes to discuss with legal counsel representing the City litigation or potential litigation to which the City is, or is likely, to become a party and about which public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City.

At 8:20 p.m. City Manager Piasecki announced that the Executive Session will last approximately another 15 minutes.

[Ed Note: At 8:25 p.m. Councilmember Sherman joined the Executive Session.]

No formal action was taken.

Adjournment

At 8:35 p.m. the executive session ended and Council returned to an open meeting.

Continued Discussion - Draft Ordinance No. 04-229 Parking Tax - 2nd Reading

Mayor Sheckler questioned what the financial impact would be if educational facilities were eliminated. City Manager Piasecki noted that he does not have exact figures, but would anticipate \$20 to \$30 thousand revenue versus \$100,000. He advised that he would like to see the tax be 20% or 25%, then the revenue figures would be closer to \$40,000 to \$60,000. He advised that Council would need to list 'educational institutions' under the Exemptions section of the draft ordinance. He further noted that the terms "short term and extended" parking should be eliminated and everything taxed under one uniform rate and that would make the tax easier to administer.

Mayor Pro Tem Thomasson suggested that it be very clear about schools being exempted by using the terms 'primary, secondary, high school and advanced education'.

Upon questioning, City Manager Piasecki advised that he will present Council with a list of revised fees for filing appeals with the Hearing Examiner at a future meeting.

MOTION was made by Councilmember Sherman, seconded by Mayor Sheckler, to amend Section 4 to make short stay metered parking taxed at rate of 25% and extended term parking taxed at the rate of 5%.

A FRIENDLY AMENDMENT was made by Councilmember Steenrod to remove the words "educational institutions" from Section 3 (3) and add it to Section 8 Exemptions. This was accepted by the maker and seconder of the motion..

MOTION was made by Councilmember White, seconded by Councilmember Petersen to amend the extended term parking tax rate to 10%. Motion passed 6 to 1 with Councilmember Benjamin opposed.

VOTE ON MOTION: Motion passed unanimously.

MOTION was made by Councilmember Sherman, seconded by Councilmember White to approve Draft Ordinance No. 04-229 as edited and amended, relating to revenue and finance, imposing a new tax upon commercial parking, setting the tax rate, specifying administration and enforcement, prescribing penalties for delinquency and non-compliance, providing for appeal, adding a new chapter to Title 5 of the Des Moines Municipal Code, and establishing an effective date. Motion passed 5 to 2 with Councilmember Benjamin and Mayor Pro Tem Thomasson opposed.

CONTINUED PUBLIC HEARING

Draft Ordinance No. 04-234 and Draft Resolution No. 04-234 [ASSIGNED RESOLUTION NO. 981] - 2004 Comprehensive Plan Amendments - 1st Reading

Mayor Sheckler noted that this item is continued from November 18th and Council is still at the place of asking questions.

Mayor Pro Tem Thomasson questioned whether the proposed amendments were initiated by the Community Development Director and what is the procedure that was followed.

Community Development Director Kilgore advised that the amendments are done in consultation and approval of the City Manager. She noted that she did discuss with the City Manager the

larger raw policy issues such as changes to the conservation element, and how to clean up some of the language.

Mayor Pro Tem Thomasson questioned how a citizen would know what the full scope of the Comp Plan amendments are.

Community Development Director Kilgore replied that by reading the SEPA notice that was advertised on September 1st and requesting through her office, to review the land use file that is in front of Council tonight. Any property owner who wanted a zoning designation change would have had to submit the information by June 30th.

Upon further questioning, Community Development Director Kilgore advised that correspondence received by 1000 Friends of Washington was given to the Mayor. She noted that she is not proposing to look at the density issue just because that group brought it up. She did note that she is recommending to make changes to the map to just the single family designation. She noted that this issue was not contained in the September notice as she is not comfortable suggesting this change without Council direction, and this is also an issue that the City of Sea Tac brought up in their comp plan. She stated that it was not mentioned in SEPA because it is not a change in the designation, it is still single family, and is only intended to clean up the map. She noted however, the issue is contained in the current document under 2-04-09. She recommended that Council simply revise the map to one designation, as we currently do with commercial, and that would bring the City into compliance with GMA.

Upon questioning, City Attorney Marousek stated that if the Council perpetuates a Comprehensive Plan that is not in compliance with State Law, we have no basis to make any land use decisions. If the City Council passes the changes in the Comp Plan as recommended by the Community Development Director we will have the basis that is required by State law to make land use decisions. If our Comp Plan is inconsistent with State land use law (GMA) then regardless of what our Comp Plan says, it will not be a basis to deny any action that Council may wish to deny.

Mayor Pro Tem Thomasson commented that changing the designations of 3s and 6s is changing the designation, and we have not properly notified the citizens that are affected by those changes.

City Attorney Marousek advised that the notice was proper for the Comp Plan as there are no zoning changes being made.

Mayor Pro Tem Thomasson expressed the belief that Council is limited and bound by what was advertised as of September 1st and that is what Council's discussions are limited to. He felt that to go beyond that, goes beyond what was approved by the City Manager and what was contained in SEPA. He stated that the packet of information is lacking any statement as to why a policy is being proposed for change or why a strategy can be eliminated. He noted that he feels the door is being left opened for any and all rezone requests, and once someone applies for a rezone, they are vested with the Comp Plan that is in effect. He noted that it took ten years to develop the existing Comp Plan and Council understood its actions and what the consequences were and anything short of that is hap-hazard government.

Councilmembers White and Steenrod expressed the opinion that Council needs to move forward and adopt the Comp Plan before December 1st.

Councilmember Sherman advised that he wants to hear all of Mayor Pro Tem Thomasson's concerns. He noted that the City has been arrears since 2002 in not updating the Comp Plan, and he feels Council needs to take the time to review the changes to the Plan in a very thorough fashion. He stated that he is not prepared to adopt the Plan until he has heard all of Councilmember's concerns. He acknowledged that study and review may take up to six months and during that time the City will be out of compliance.

Councilmember White felt that Council should pass this now and after the first of the year form a committee to begin study and review.

Councilmember Steenrod advised that she has read every page of the document and although there are a few changes she would like to see, she does not feel there is anything earth shaking. She suggested an ad-hoc group be formed to study some of the issues so that by next summer further revisions can be made, but for now Council should move forward and adopt the existing document.

Councilmember Benjamin stated that he has 5 or 6 pages of concerns and questions regarding the Comp Plan. He advised that he learned that he is party to a law suit by a developer, and without speaking to his attorney, he feels he is not in a position to vote on this issue tonight and would like to see the discussion delayed to a later meeting. He announced that he will abstain from voting on the issue for this evening.

9:25 p.m. Mayor Sheckler announced a 10 minute break.

Mayor Pro Tem Thomasson advised that the Comprehensive Plan is a significant policy document of the City Council and it is the road map that staff uses. The Comp Plan does require Council's time and investment in serious conversation. He stated that he can support the resolution as opposed to the draft ordinance, therefore he proposes the following:

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, to continue this public hearing until the first meeting in February.

Mayor Pro Tem Thomasson felt this would give Council the ability to question some of the changes, allow for Council's editing and time to prepare other changes Council may wish to consider in the next calendar year.

Upon questioning by Councilmember Steenrod, City Attorney Marousek advised that if Council adopts the draft resolution, it will be a stop gap measure and we will be out of compliance, but it outlines how we will be working on the Comp Plan.

Councilmember Steenrod voiced the opinion that if Council is going to continually dissect everything that comes before it, then there is no need for a Planning Agency or other committees who are wasting their time and a lot of effort to hold public hearings to review items and offer their advice on items that Council is going to tear apart.

VOTE ON MOTION: Motion failed 3 to 3 with Councilmember Benjamin abstaining.

City Attorney Marousek strongly recommended that if the Council is not going to enact the Comprehensive Plan before December 1st, then Council should pass the draft resolution before December 1st. She further noted that the public hearing does not have to be closed to pass the resolution. She further advised that the Public Hearing is for gathering public comment and clarifying factual issues, however the kind of debate that Council is now having does not need to be held in the context of a Public Hearing. These kinds of debates can be continued after the Public Hearing is closed.

Mayor Sheckler noted that he will close the Public Hearing, but wishes it known that there is nothing in front of him, in either Council Rules or Robert's Rules of Order, that gives him the authority to do so.

Councilmember Sherman noted that the draft resolution gives a time line under which Council then needs to work and additionally it notifies the State that we are moving ahead and gives them a time line, which he feels they need from us.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Thomasson, to adopt Draft Resolution 04-234.

Mayor Pro Tem Thomasson advised that he does have questions that he wants to ask so that the answers are on the record, and to be able to do the appropriate findings to take the action that Council wants to enact.

Mayor Sheckler noted that passing the resolution will bring Council one step closer, but is not what he would suggest be done.

Upon questioning, Community Development Director Kilgore stated that the City must do a SEPA review and Public Notice again in March, because she anticipates that there is going to be a lot of work to address some of the new issues that were not addressed in the previous notification.

VOTE ON MOTION: Motion passed unanimously, with Councilmember Benjamin abstaining.

MOTION was made by Mayor Pro Tem Thomasson, seconded by Councilmember Sherman, that the Public Hearing be continued to a date to be determined and re-noticed. Motion passed 6 to 0 with Councilmember Benjamin abstaining.

DISCUSSION ITEMS

Draft Ordinance No. 04-217 Establishing B & O Tax - 1st Reading

City Manager Piasecki informed Council that the City Attorney has taken the two previous ordinances that Council was considering and merged them into one draft ordinance and that nothing substantial has changed.

City Attorney Marousek advised Council that a new section has been added titled "Referendum Required" as required by law. She further noted that the administrative section, reporting requirements and who pays the tax are all now contained within Title 3 of the City's code. She advised that no sections have been deleted or added from the first two draft ordinances other than the Referendum section.

Upon questioning, City Attorney Marousek stated that if a petition is filed, the tax would not go into effect until the issue is settled.

Finance Director Henderson noted that it is Council's discretion on whether to raise the threshold amount at which businesses would be taxed.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to adopt Draft Ordinance No. 04-217.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to amend page 30, Section 6(2) to raise the threshold figure to \$50,000 annually, ~~or equal to or less than, \$12,500 during a quarter if reporting on a quarterly basis.~~ [ED Note: Consensus to remove at City Attorney's advice.]

Upon questioning, City Attorney Marousek advised Council that they need to decide whether payments will be made on an annual basis or quarterly, but not both.

It was pointed out that the draft ordinance states that the B & O tax form must be filed quarterly, but the tax will not kick in until the business hits \$50,000.

Councilmember Petersen felt that the business that makes \$50,000 pays nothing, but the business that makes \$51,000 pays the tax on the whole amount and he does not feel that is fair.

Councilmember Sherman noted that this tax is based on State law, and the only way to make it more fair, would be through the State Legislature. The City cannot control what makes it fair, however, if the threshold is lower, then the fairness seems better.

10:29 **MOTION** was made by Councilmember Petersen, seconded by Councilmember Benjamin, to extend the meeting 10 minutes. Motion passed 5 to 2 with Councilmember White and Mayor Sheckler opposed.

VOTE ON AMENDMENT: Motion passed 4 to 3 with Councilmember Benjamin, Petersen and Steenrod opposed.

Mayor Pro Tem Thomasson noted that the draft ordinance needs to reference Title 5 where it speaks to who is required to file the tax.

Councilmember Steenrod referenced a memo from the Chamber of Commerce requesting input from the Consultants that are working on the City's economic development. The memo further suggested that Council take a closer look at adapting the ordinance to better fit the Des Moines business community and its economy. She further noted that she would like to hear from the City's economic advisors.

MOTION was made by Councilmember Sherman to add a sunset clause to 4 years. [ED Note: No second due to meeting time expiring.]

10:39 **MOTION** was made by Councilmember Benjamin, seconded by Councilmember Petersen, to extend the meeting another 10 minutes. Motion failed with a 3 to 4 vote, with Councilmembers Benjamin, Sherman and Petersen voting yes.

NEXT MEETING DATE - Study Session on December 2, 2004 at 7:00 p.m.

[ED Note: Subsequent to adjournment, Mayor Sheckler decided to call a special meeting on Monday, November 29th at 7:30 p.m.]

ADJOURNMENT

At 10:40 p.m. the meeting adjourned as time had expired.

Respectfully submitted,

Denis Staab
City Clerk