**PRELIMINARY**
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES March 25, 2004

The regular meeting of the Des Moines City Council was called to order at 7:37 p.m. by Mayor Sheckler in the City Council Chambers, 21630 11th Avenue South, #B.

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

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Scott Thomasson, Councilmembers Richard Benjamin, Gary Petersen, Dan Sherman, Maggie Steenrod and Susan White. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Parks & Recreation Director Patrice Thorell and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Lynne Voss, 20810 7th Place South

Ms. Voss noted her purpose in addressing the Council is to ask for reconsideration of the closure of South 212th Street. She stated that since the street washed out in January, vandalism and theft have increased, garbage and fire trucks now have to back all the way down 7th Place South to provide services, emergency response time has increased by 1 to 2 minutes, and everyone who lives south of 209th will be unable to leave their homes during inclement weather. She stated since there is only one way in and out, this is a concern to both the Police and Fire departments. She noted that alternate streets all have similar or greater steepness, less sight distance and a much higher accident history at their intersections with Des Moines Memorial Drive than South 212th. She felt that if liability and public safety were the reasons for closing South 212th, then other streets should be closed too. In conclusion she commented that Highline Water District has agreed to rebuild the road which eliminates most, if not all, costs to the City. She advised that she had received a letter from Washington Cities Insurance Authority which stated that liability insurance would not be an issue if the street was rebuilt to Code. She suggested the street be made one-way, either up or down, install signage and speed bumps.

Pam Joneli, 21024th Place South

Ms. Joneli read a letter into the record from attorney, Eric Stahlfeld to Lynne Voss, concerning his opinion on whether City Council followed proper procedures in passing an ordinance to close a portion of South 212th Street. In summary, Mr. Stahfeld's opinion was that the Council did not act properly in voting to close South 212th Street at the February 26, 2004 meeting.

George Petoff, 21035 7th Place South

Mr. Petoff stated that South 212th was a street not a convenience road as suggested by City staff. He noted that Fire Chief Polhamus, speaking for himself, thought the road should be open. Mr. Petoff noted that delaying the reconstruction of South 212th may lead to disaster that could be avoided with faster emergency response times. He advised that with the closure of the street, it added 2 and a half minutes to emergency response time to his home on the south end of 7th Place South.

Warren Elfstrom, 20801 7th Place South

Mr. Elstrom questioned the liability to the 35 or more families that rely on South 212th to be the shortest route for emergency services. He felt that, if asked, both the Fire and Police would say that 2 extra minutes can mean the difference in a life and death situation. He requested Council open South 212th Street.

BOARD & COMMITTEE REPORTS

Mt. Rainier High School

Councilmember White reported going to Mt. Rainier High School this week for the unveiling of the plans for the new school. It is expected to take about 2 years, but she felt it will be wonderful.

Masonic Retirement Home

Councilmember White advised that today she and Councilmember Sherman toured the Masonic Home regarding their construction project to add 45 duplexes and 177 apartments. She felt the project will be exceptional for the community as it will bring new activities and people into Des Moines, which is a positive thing. She suggested other Councilmembers take advantage of the tours.

Washington State Community Trade and Economic Development Office of Archaeology & Historic Preservation

Councilmember White reminded Council that she met with these State Officials on her recent trip to Washington, D.C. She felt that are some real opportunities to find funding to help with some of the structures at Des Moines Beach Park. She advised that along with Parks & Recreation Director Thorell and former Councilmember Carmen Scott, she met with the officials in Olympia yesterday. She noted that the State Officials will meet at the Beach Park on April 1st for a tour. She felt that this is a wonderful opportunity to help restore the Beach Park that would be a fabulous part of the City's economic development plan.

Masonic Retirement Home

Councilmember Sherman advised that the Masonic Retirement Home is changing their mission and their name. He announced that their new name is now "Landmark on the Sound". He advised that this is a $50 million improvement project.

New Des Moines Business

Councilmember Sherman reported visiting a new business in the City called "Dream Dinners". He advised that that both the owners of Dream Dinners and the manager of Landmark on the Sound commented that they found the City's Community Development, inspectors and Public Works Departments to be excellent and enjoyed working with the staff and found them to be very helpful.

South King County Area Transportation Board

Councilmember Sherman advised that he attended a Board meeting on Tuesday regarding projects for the Regional Transportation Investment District. The District is charged with taxing citizens of King, Pierce and Snohomish Counties to pay for transportation projects. He noted an assortment of taxes will be before the voters this November. However, due to reduced available funding (approximately $2.23 billion), SKCATB was charged with paring down the proposed projects in South King County. He reported being disappointed with the outcome of the meeting as the Board actually is looking at a list of projects that is even more expensive and the other two areas in King County feel they should not have to divide funds equally. He stated he will keep Council and citizens advised.

Activity Center - One Year Anniversary

Councilmember Steenrod noted that on April 1st the Senior Activity Center will be celebrating their first anniversary and all are invited to lunch.

Judson Park Retirement Home

Councilmember Steenrod advised that Judson Park, neighbor to the Masonic Home, has exciting plans in the works and will be adding up to 80 new units. She felt this is real stimulus to economic development in the area.

Emergency Preparedness

Councilmember Steenrod stated that on May 3rd there will be a workshop of elected officials at the SeaTac Marriott regarding emergency preparedness.

Economic Development Council of King County

Councilmember Steenrod advised that the Council has been working hard on to try to stimulate economic development for the entire region. She announced their new president is the former Mayor of Spokane.

South 212th Closure

In regards to the letter from the attorney to Lynne Voss regarding his opinion that the closure of South 212th at the February 26th Council meeting was illegal, Councilmember Steenrod advised that her attorney agrees. She questioned what is Des Moines' City Attorney advise on this matter.

City Manager Piasecki advised that the City Attorney is working on a response and that it is expected to be available next week.

South 212th Street

Councilmember Benjamin stated that historically the City was aware of the streets deterioration and had elected not to do anything about it. He noted that he has received numerous inquires as to why the City ignored the problem. He stated that people want to know if some new project is being planned and they are not being told about it. He questioned the promises that were made to the citizens of North Hill when they were annexed and promises that were made at last years elections. He further stated that people have questioned him on why the Mayor conducted an illegal meeting and why he ignored rules of procedure.

Mayor Sheckler cautioned Councilmember Benjamin that he is going beyond boundaries and advised that he will call for a recess if this continues.

Councilmember Benjamin stated that he has been asked if this could be grounds for a recall. He advised that the peoples voice will be heard.

Mayor Sheckler advised that Councilmember Benjamin may speak for the citizens, but he will not allow him to attack Councilmembers.

At 8:04 p.m. Mayor Sheckler called for a brief recess.

Mayor Sheckler informed Councilmember Benjamin he will allow him another five minutes.

Councilmember Benjamin expressed concern to see Administration turn off the video cameras in that he felt this is a form of censorship and that it raises questions about what is going on in Des Moines. He stated that Council participated in an illegal meeting that negated the correct solution for 212th. He voiced the opinion that the illegal meeting was designed to carry out the Administration's ulterior motives. He noted that to justify this illegal meeting, Administration and the City Attorney made an excuse about a dangling ordinance. Citizens expect more, and he believes they deserve more, from Administration. He advised that the City is to be governed by elected representatives, not the other way around. He stated that the rational in closing South 212th is that it has a grade of 22%, which is too dangerous, and in view of that he offered the following:

**MOTION** was made by Councilmember Benjamin, seconded by Councilmember Steenrod, to direct Administration to immediately close all portions of the following streets which exceed a 22.5% grade: 7th Place South, which has parts that exceed a 22.5% grade, with no sight distance at Des Moines Memorial Drive; South 208th Street which has parts that exceed a 25.3% grade; South 210th Street which has parts which exceed a 22.5% grade and 8th Street South which has parts that exceed a 33% grade; and all other streets within the City that has steep grades such as these.

Councilmember Sherman stated that he believes the motion is out of order.

Mayor Sheckler advised that he did grant Councilmember Benjamin an additional five minutes and that precedent has been set in the past where motions have been made under these type of circumstances and therefore he will allow the motion to stand.

Councilmember Thomasson stated in regards to holding an illegal meeting, that there is no question that the meeting was legal, it was a regular meeting. There may be a question of whether the action to pass the ordinance followed the rules or not, but the meeting was not illegal. With respect to the proposed motion and as to why South 212th was closed, he noted that Councilmember Benjamin is focusing on the grade issue and he felt that there were many concerns about the street. He felt that the primary concern was the width as it was not wide enough for 2 cars to pass. He also noted that the slopes of the street and the surrounding terrain make it much more difficult, if not impossible, to widen the street to an acceptable width. He informed Councilmember Benjamin that he missed the point on the cumulative things about the Street Code that made South 212th particularly troublesome. In regards to the insinuation of staff having a "hidden project", he felt this was in bad taste for a Councilmember to infer.

Councilmember Benjamin advised that he was not implying that he felt staff had a hidden agenda, but rather he was relaying what the citizens are asking. He stated that there is a real perception that there are ulterior motives for this property and people want to know why they cannot have the road back. He advised that when he ran for office he pledged to look out for everyone's interests and that is what he is trying to do.

Councilmember White noted that when the ordinance was passed, Council listened to all sides, and felt for Councilmember Benjamin to state there are ulterior motives, is very disruptive, and she is embarrassed by this behavior.

Councilmember Steenrod advised that she has issues with the process that was used to close South 212th. While she noted she does not agree with closing other roads, she felt South 212th should be opened. She expressed concern with emergency response time to the neighborhood with South 212th being closed. She advised that if the street were re-opened then Highline Water District would pay for the improvements. She noted that the closure of the street will require a dead-end and she questioned who is going to install the retaining wall, and how much will it cost the City.

City Manager Piasecki advised that staff is working with Highline Water District to put together a design for closure of the street. However, at this time, he does not have the exact costs involved.

Councilmember Steenrod felt this issue is not finished and the residents of the area will keep coming back until the street is opened. She stated that if the City has to spend money to make the Street a dead-end, she cannot see why the City can not spend money to make 212th a safe one-way street, or a wider street. She advised that she would like some costs estimates on these issues from staff.

Councilmember Sherman stated that legislation should not be determined by who screams the loudest, as that is not good policy making. He advised that he has heard no new information. The facts are the same, that the City will not be covered by insurance if the road is re-opened in its former condition. He noted that he is not willing to put the City's financial status at risk. He stated that he has not heard the residents say that there is no indemnity issue so they will produce an insurer, nor have they offered to tax themselves to indemnify the City. He also noted that in about 6 years Des Moines Memorial Drive will be widened which will increase the slope to such a degree that the road will be closed. He also stated the residents have not volunteered to create a local improvement district to improve the road for the next six years.

Councilmember Benjamin stated that he felt the City was negligent in not keeping South 212th Street in good repairs. He felt that the North Hill residents are being taxed enough and should not have to take on additional taxes to fix a road that the City should have already taken care of.

Councilmember Steenrod felt that these residents are not asking for millions of dollars, but asking for common sense safety.

<u>VOTE ON MOTION</u>: Motion failed 5 to 2 with Councilmembers Benjamin and Steenrod voting YES.

## PRESIDING OFFICER'S REPORT

### New Businesses - Grand Openings

Mayor Sheckler reported attending the grand openings of two new businesses in the City, Dream Dinners and Tan Cat. He recommended citizens check out these two unique new businesses.

ADMINISTRATION REPORTS

Economic Development

City Manager Piasecki advised that at the April 1st Council meeting, the Community Director will brief Council on all the new projects going on in town.

Chamber of Commerce Business Bazaar

City Manager Piasecki reported that the Chamber will be holding a business bazaar on Saturday at the Pacific Middle School gym. He encouraged everyone to attend to learn about local businesses.

King County Council Meeting

City Manager Piasecki advised that he and Councilmember White attended a King County Council meeting on Tuesday held at the City of SeaTac Council Chambers. The meeting concerned a variety of transportation related issues and projects that are going on around the County.

He noted that on April 26th, the County Council will hold another meeting at the Aquatic Center in Federal Way. He advised the topic will be concerning Economic Development.

Wescot Conveyor Belt Issue - Court of Appeals

City Manager Piasecki announced that the Court of Appeals has ruled in favor of City of Des Moines in not allowing Wescot to move forward in the permitting process for a conveyor belt system through Des Moines Beach Park. The Court also awarded reasonable attorney fees to the City. He felt that Des Moines City Attorney Marousek did a wonderful job in handling the City's position in this matter.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of ~~March 4~~ and March 11, 2004. [ED NOTE: The March 4, 2004 Minutes were removed by Councilmember Benjamin.]

2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #93471 through #93689 & electronic fund transfers in the total amount of $524,436.02

Payroll fund transfers in the total amount of $346,035.99

3. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which was made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows from January 9, 2003:

Claim checks #83682 through #83893 & electronic fund transfers in the total amount of $791,030.25

Payroll fund transfers in the total amount of $328,629.76

and from November 14, 2003:

Claim checks #91768 and #91769 in the total amount of $51,909.01

~~4. Draft Resolution No. 04-030 - Title: A Resolution of the City Council of the City of Des Moines, Washington, authorizing the Des Moines Rotary Club to conduct its 2005 Poverty Bay Wine and Music Festival at the Des Moines Marina and listing conditions under which such permission is granted.~~

~~MOTION is to approve Draft Resolution No. 04-030.~~ [ED NOTE: Item removed by Councilmember Steenrod.]

Councilmember Benjamin requested that Consent Item #1, Minutes of March 4, 2004, be removed from the Consent Calendar.

Councilmember Steenrod requested that Consent Item #4 be removed from the Consent Calendar.

Upon questioning by Councilmember Steenrod regarding Consent Item #3, Finance Director Henderson advised that the State Auditor recently discovered that these claims and payroll were not verbally read for approval on the appropriate consent calendars. She noted that both of these items were distributed to Councilmembers, but through clerical error, were not listed on the appropriate agendas for approval. She recommends that this oversight be corrected and the minutes of January 23 and November 20, 2003, will be so annotated by the City Clerk to note this correction.

**MOTION** was made by Mayor Pro Tem Thomasson, seconded by Councilmember Petersen and passed unanimously, to approve the Consent Calendar as amended.

REMOVED CONSENT CALENDAR ITEMS

Item #1 - Minutes of March 4, 2004

In regards to the March 4th Minutes, Councilmember Benjamin noted that after the motion on the top of page 4, he made a statement that this item be brought back on the regular agenda on March 25th, under old or new business, to be discussed.

City Clerk Staab advised that she will review the audio tape of the meeting and the minutes will be placed on the April 8th agenda for approval.

Item #4 - Draft Resolution No. 04-030 ***[ASSIGNED RESOLUTION NO. 967]*** Des Moines Rotary Wine & Seafood Festival

Councilmember Steenrod noted that she is in favor of this item, however she feels that this item should not be on the consent calendar for next year, when the Chamber of Commerce has not yet had approval for the Waterland Festival for this year. She requested this item be delayed until Council is through with Waterland.

**MOTION** was made by Councilmember Steenrod, seconded by Councilmember Benjamin, to move this item to the end of tonight's agenda.

Councilmember Steenrod noted that the Chamber has been trying to get the Waterland Festival on the Council agenda for a while. She stated that since the Wine Festival will not be held for 12 months, that procedurally, Council should handle the issues that will happen sooner first.

Councilmember Thomasson noted that Council Rules state that items removed from the Consent Calendar shall be dealt with prior to any other business. He felt that her motion to table this item to later in the meeting, so she can deal with a couple of other items first, is probably in order. He noted that the Mayor clearly can place items on the Agenda as he sees fit. He stated that the intent of his motion that was made on March 4th was carried out appropriately. He noted that there are 3 community events with different conditions and effects that are on the Agenda. He stated that in his mind, the Rotary event is the clearest because it is not asking for the City to spend any City funds, does not have unreasonable hours and has the least impact on the Marina and its facilities. Therefore, to him, the policy questions for this event are rather straight forward and he is ready to take action on it.

Councilmember Sherman questioned whether the delay of getting the Waterland issue on the Agenda was because the Chamber had previously pulled the item, versus any delay by Administration

Councilmember Steenrod expressed concern that since the Waterland item is the last item on the Agenda, Council may not get to it until the April study session. She noted that she wants assurance that Council is going to deal with this issue tonight.

VOTE ON MOTION: Motion failed 5 to 2, with Councilmembers Benjamin and Steenrod voting YES.

**MOTION** was made by Mayor Sheckler, seconded by Councilmember White, to approve Draft Resolution No. 04-030.

Mayor Sheckler read the draft resolution by title into the record.

Mayor Pro Tem Thomasson stated that he is still uncomfortable with the use of the City's Currents Newsletter. It was noted that a future Council agenda item would be discussion of the appropriate use of all City newsletters. He noted that Section 3 of the draft resolution gives the City Manager the discretion to grant permission.

City Manager Piasecki commented that he feels that events such as this, along with Waterland, the Fourth of July Fireworks, the Nibble of Des Moines and others, are appropriate items to put into the City Currents. So as long as there is room to fit it in, he would do so. He added that staff is working on an agenda item to put together a more comprehensive policy as to what items do, and what items do not, get into City Currents, Channel 21 and the City's Web site. He noted that should Council adopt a policy that this type of event is not appropriate, then he would not put it in the City Currents.

Councilmember Sherman expressed agreement with Mayor Pro Tem Thomasson. He noted that this is a first time event and that it makes sense to notify the public that an event is occurring and that there may be some restriction to the public's use of the Marina and that he would consider this a public notice. He felt it would make sense to have policies in place regarding the City advertising events, rather than leaving it up to the discretion of the City Manager.

Councilmember Benjamin voiced support for the concept of a wine festival. He noted however, that some Councilmembers were opposed to venues that served alcohol. He felt that it is important that each group be treated fairly. He stated that his concern with this event is, that there should be a cost analysis of what the Police Departments involvement will be. He stated that he hopes if the draft resolution passes, that it will not be the last stop before the next year, as far as approval from this Council.

City Manager Piasecki stated that his interpretation of the resolution is that it permits the Rotary Club to hold this event. He noted that Section 6(g) gives the City Manager the authorization to review and approve the festival grounds layout at least 90 days before the date of the festival. Therefore it would be his responsibility to be sure that the event is being conducted in a way that meets the requirements of the resolution. It is his understanding that there will be no cost to the City as Rotary will be responsible for all security, fences, and tents. There will be some Administrative oversight of the event similar to any other events being held on City property. He further pointed out that garbage and rest room facilities are also the responsibility of Rotary.

Councilmember Benjamin stated that he felt that the requirements for security should be standardized for all events. He felt that a policy should be established that is fair and equitable for all festivals.

City Manager Piasecki pointed out that the draft resolution does allow the Police Department to close the festival down if necessary, following any security issues.

Councilmember Benjamin questioned whether the security requirements are equal to what is required of Waterland. He stressed that security should be consistent in regards to all festivals.

City Manager Piasecki replied that the Police Department will assess the event and decide how many officers will be needed given the size of the event, the time of the day of the event and the number of people who will attend. He pointed out that Waterland is a much larger event and will require more police officers for the same level of security.

Councilmember Sherman stated that he believes the Rotary event is not being advertised as a family event in that it is not open to children and teenagers, but only to people 21 years old and older. This is very different from alcoholic activities at events that are advertised as family events. In regards to making the events equal, he feels that Waterland should be paying the City in full for the use of security that it provides, since Rotary is providing for full security for their event.

Councilmember Thomasson noted the following differences between the two events:
- Wine festival goes until 6 p.m., Waterland will go to midnight
- Wine festival is totally enclosed
- Wine festival is not advertised as a family event

He suggested that perhaps the Waterland beer garden should be in a tent and close at 6 p.m. if you want to treat the festivals the same. He noted that he has concluded the events are different and the conditions imposed can be different.

**MOTION** was made by Councilmember Steenrod, seconded by Councilmember Benjamin, to table this item until the April 8th meeting to allow Council to deal with Waterland first. Motion failed 4 to 3, with Councilmembers Benjamin, Petersen and Steenrod voting YES.

Councilmember White stated that is good to have events before Council well in advance. She noted that Waterland has traditionally struggled until the last moment due to changes. She felt it is time to move forward with this item.

VOTE ON MAIN MOTION: Motion passed 5 to 2 with Councilmembers Benjamin and Steenrod opposed.

Agenda Revision

Mayor Sheckler advised that after Council has a break, he will move New Business Item #2, Draft Resolution No. 03-316 - 2004 Waterland Festival, as the next item of business.

8:55 p.m. Mayor Sheckler called for a 10 minute break.

NEW BUSINESS

Draft Resolution No. 03-316 - 2004 Waterland Festival

City Manager Piasecki introduced Brenda Anders-Larson, Chairman of the Waterland Committee and Vickie Bergquist, Chamber of Commerce President, who proceeded, with the use of a Power Point presentation to brief Council on the plan for the 2004 Festival. It was noted that the Committee began meeting in September 2003 with City and community representatives. The Committee identified and addressed issues concerning impacts to condominium residents, Marina businesses, Marina facility and other City interests with the following results:

- No gate fee
- Event locations & layout to remain virtually the same
- Condense carnival to reclaim approximately 20-30 foot buffer around outer perimeter
- Hours of Operation, Wed-Thur: 11 a.m.-11 p.m., Fri-Sat: 11 a.m.-midnight, Sun: 11 a.m.-8 p.m. Staggered closing times: Stage closes 1 hour prior to festival close. Pub closes ½ hour prior to festival close.
- No fence enclosing festival. Fencing from Dock St. back to dirt bank to discourage fence jumping. Allow better access by emergency vehicles by moving fence back around corner of Cliff and Dock Streets.
- Security Budget to be increased to $12,000 and eliminating 30% payment from pub profit.
- $5 paid parking to continue. Condo owners issued 2 passes for each unit and Marina tenants issued 1 pass for each slip. Marina businesses to have designated spaces for employee parking.
- Waterland Pub is to remain in same location. Some food vendors to be moved. Extended hours on Friday & Saturday to help recoup lost admission fees. Close ½ hour prior to festival to help disperse crowd.
- Carnival employee lodging - No camping in vacant lots. No trailers on festival site.
- New events planned - Dragon Boat races, community fair to spotlight local businesses, non-profits, schools, churches & human service agencies. A Classic Thunderbirds Car Show on Saturday. Golf Tournament on Saturday. An RV Show Wednesday through Sunday.
- Traditional events - Fireworks on Wednesday night, Kids Day on Thursday, Arts & Crafts Friday-Sunday, Parade Sunday at 1 p.m., Main Stage Wednesday-Sunday, Food Court Wednesday-Sunday, Marketplace vendors Wednesday-Sunday, Pub Wednesday-Sunday and Carnival Wednesday-Sunday.
- Community Partner Events - Des Moines Parks and Recreation 3 on 3 Basketball Tournament and 5K run and Walk. Des Moines Rotary Hole in One, and Des Moines Sr. Activity Center & Judson Park Sr. Dance and BBQ.

Ms. Anders-Larson concluded the presentation by stating the ultimate goals of the Festival are to present the community with a festival they will look forward to attending, to enhance the sense of community and pride, to increase awareness of local businesses and non-profit organizations, and to improve communication between all organizations and businesses in the City, while having fun.

Upon questioning by Council regarding potential sales of RVs, City Manager Piasecki advised it is his opinion that if an RV is sold at Waterland, it should be coded with Des Moines and the City should receive the Sales Tax.

Upon questioning by Councilmember Steenrod whether security costs will be covered since there will be no admission charge, Ms. Anders-Larson noted with the increased new events there should be an increase in patrons to help off-set these costs.

Councilmember Steenrod commented on the wonderful design of the Waterland logo and questioned whether something similar could be developed for the Gateway planned for the Pacific Highway South project. City Manager Piasecki advised that he will forward the design idea to the Engineering staff, to forward to the design staff, to work some of the elements in, and bring it back to Council for review.

Ms. Bergquist introduced six of the Chamber of Commerce Board of Director members who were in attendance.

City Manager Piasecki noted that Council has two draft resolutions to look at. One was prepared by the Waterland Committee and the Chamber, the second one was prepared by the City and the City Attorney's office. He noted the following differences:

- In Section 1.1 of the Chamber's version, they deleted some language regarding liability issues for damage claims from prior years. In the City's version the language is re-inserted as it has been in past years.
- In Section 1.6(b) in both versions, the Chamber agrees to take whatever measures are necessary to prevent damage to the Marina facility and to be responsible for any damage may occur. The Chamber added the words "on the festival grounds".

  In regards to Section 1.6(b) City Manager Piasecki recommended that the following language be used: "reasonably related to the operation of the festival" rather than the festival grounds. He noted that this would cover anything related to the festival activities.

- Section 1.6(c) The Chamber included language that staff miss-read. City Manager recommended that the language that the Chamber proposed is okay.

City Manager Piasecki advised that there is the issue of a claim that came in to the City about a year and a half ago from a business located on the Marina floor concerning past years' Waterland Festivals. He noted that the City ended up, through its insurance carrier, defending the claim to a successful outcome. The question is now, the costs to our insurance carrier and how that relates to the language of previous years resolutions that say the Chamber shall defend and hold the City harmless for claims that arise from Waterland. He pointed out a letter from the entire Chamber Board contained in Council's packet, which specifically states that they will work diligently towards resolution of this issue, and that the Chamber will continue to work with the City to bring the matter to a satisfactory and timely conclusion. He stated that the City Attorney is taking a conservative approach and has asked the Chamber to resolve this issue to the City's satisfaction before authorizing the Waterland Festival. He acknowledged that insurance companies, at times, move slowly, therefore some additional language to be inserted into the City's resolution, at the Mayor's request would read as follows: "The Chamber of Commerce agrees that it will continue to work diligently towards resolution of the issue of payment for the defense costs of the Breakers Restaurant claim and further agrees that, before submitting a request to conduct the Waterland Festival in 2005 for the city's consideration, such resolution will be concluded to the satisfaction of the City." This language would be inserted right after Section 1.1 and become Section 1.2.

In regards to the City's version of the resolution, Section 6(j), it was agreed that the second sentence should be deleted, as Section 6(k) covers the issue.

In regards to the added language read by the City Manager, Ms. Bergquist informed Council that she polled the Chamber Board members and the majority do not agree to add this addendum of additional language. The reason is that the Board feels that the letter provided by the Chamber makes their intent very clear. She noted that the Board received the breakdown of costs on January 29th and by February 5th filed a claim with the Chamber's insurance company. She advised that the Chamber is working diligently to get the issue resolved and therefore it is unnecessary to add the addendum.

Councilmember Steenrod pointed out that the Summary from the Chamber for a proposed resolution for the 2004 Waterland Festival was dated December 2, 2003. She stated that the Chamber has had difficulty in getting this item on the Agenda. She called attention to a letter from the Chamber in Council's packet, dated March 17, 2004, that at a meeting with Mayor Sheckler on Feb. 27th, he expressed concerns before the Council would agree to approve the Waterland Festival. She stated that the Mayor has no more clout to give the Chamber an approval or not before it comes before Council, than any of the other Councilmembers. She questioned why the Chamber Board of Directors would need to review the Davis Amusement Contract.

Mayor Sheckler stated that the wording of the Chamber's letter is not his responsibility. However, he noted that any member of the Council can meet with anyone and talk about their views. If that is interpreted as needing his approval or disapproval, Mayor Sheckler said that was ridiculous, as everyone knows it takes all seven Councilmembers to make a decision.

**MOTION** was made by Councilmember Steenrod, seconded by Councilmember Benjamin, to adopt Draft Resolution No. 03-316 authorizing the Chamber of Commerce to conduct the 2004 Waterland Festival on City-owned property, and directing the City Manager to sign an agreement between the City and the Greater Des Moines Chamber of Commerce outlining the required terms and agreements for conducting the Waterland Festival.

Councilmember Steenrod noted this does not include the suggested additional language for a new Section 1.2. However, it does include deleting the second sentence in Section 6(j) and Section 6(b) to add the term "reasonably related to the operation of the Festival".

**MOTION** was made by Councilmember Sherman, seconded by Councilmember White, to amend the draft resolution to include the language "The Chamber of Commerce agrees that it will continue to work diligently towards resolution of the issue of payment for the defense costs of the Breakers Restaurant claim and further agrees that, before submitting a request to conduct the Waterland Festival in 2005 for the city's consideration, such resolution will be concluded to the satisfaction of the City." to be a new Section 1.2.

Councilmember Benjamin felt that this amendment is immaterial as the Chamber has stated in their letter that they will work diligently towards resolution of the issue.

Councilmember Sherman stated that this is not a business agreement. Council is determining what can be done in the City and is not negotiating.

Councilmember Thomasson recapped the history of the Marina businesses claim, noting that the claim was ignored by the Chamber and therefore the City's insurance carrier defended the claim on the City's behalf, spending legal fees on the order of $15,000. He advised that it is important in terms of controlling the City's insurance costs that this claim, which should have been handled by the Chamber's insurance, get properly processed. He noted it is Council's decision as to whether or not to approve next year's, or even this years Festival, pending the non-payment of these legal fees. He felt the proposed language is a compromise to get this years event approved and to allow more time to resolve the issue. He noted that the language to defend is only as good as the action taken on it. He stated that if this language is not inserted there may not be willingness to approve the Waterland Festival pending the outcome of the claim.

Mayor Sheckler expressed agreement with Mayor Pro Tem Thomasson's assessment of the issue. He further noted that last year he stated that further consideration for Waterland would have to include some language regarding this issue. He noted that he has made it clear to the Chamber that this is a concern of his and might be a concern of others. He advised that he will only approve the 2004 Waterland Festival if this language is included in the resolution.

Ms. Bergquist stated that she understood that Breaker's Restaurant was in arrears in the rent and that the City sued them and then the Restaurant counter-sued.

Assistant City Attorney Brown noted that was partially correct, however the counter-suit basically alleging damage by Waterland. He noted that the two issues were arbitrated separately.

City Manager Piasecki reiterated the point that these two issues were unrelated and totally separate.

Ms. Bergquist acknowledged that the President of the Chamber at that time not only ignored the lawsuit, but kept it from the rest of the Board members. She noted when the Board did find out they took action to remove the then President. The new President, Pat Murray, immediately took action and a break-down of the legal fees were received by the Chamber on January 29th of this year. The Board does want to get the issue resolved and have been working on it. She questioned why the language contained in the official letter from the Chamber is so different, that it is necessary to include additional language in the resolution, or prevent the Waterland Festival from moving forward.

Mayor Sheckler replied that rather than risk not having a Waterland this year, by insisting that these monies be paid, the language is included in the resolution so that it can be addressed for future Waterland Festivals and not hold up this years Waterland. He noted this is being offered not to hold up the process, but to offer the Chamber more time to resolve the issue.

Councilmember Steenrod offered the opinion that she would consider it very arbitrary and capricious of this Council to hold the Chamber of Commerce to a standard that the City itself will not uphold. She noted that the City is asking the Chamber to guarantee that they will pay legal fees to reimburse the City's legal fee expenditures, when this Council refuses to pay expenditure of legal fees expended on the behalf of Councilmembers. She felt everyone should be held to the same standards.

Mayor Pro Tem Thomasson stated that the resolution is the official document where the City states its terms and conditions, and the letter from the Chamber is not necessarily part of that long term record. He offered a compromise by limiting the language to the following: "The Chamber of Commerce agrees that it will continue to work diligently towards resolution of the issue of the payment for the defense costs of the Breakers Restaurant claim." He felt some language needs to be contained within the resolution to memorialize the City's position of expecting payment. This was NOT acceptable as a friendly amendment.

Councilmember Benjamin stated he believes the Chamber's letter addresses the City's concerns adequately.

Councilmember White noted that the City Attorney does not recommend the present resolution be adopted until this matter is resolved. She felt that Council is trying to work out language to allow Waterland to proceed this year.

Councilmember Petersen commented that he noted that the City is willing to work with the insurance companies involved and allow payments in a minimal amount, as long as the Chamber will continue to work diligently towards a resolution regarding such payment.

City Manager Piasecki confirmed that the City's insurance carrier is very willing to put together a very generous long term payment schedule, if necessary, without interest.

<u>VOTE ON MOTION</u>: Motion failed 3 to 4 with Councilmembers Sherman and White, and Mayor Sheckler voting yes.

**<u>MOTION</u>** was made by Mayor Sheckler, seconded by Councilmember Steenrod, to include the following language as a new Section 1.2: "The Chamber of Commerce agrees that it will continue to work diligently towards resolution of the issue of the payment for the defense costs of the Breakers Restaurant claim."

10:27 p.m. **<u>MOTION</u>** was made by Mayor Pro Tem Thomasson, seconded by Councilmember Petersen, to continue the meeting to 11 p.m. Motion failed: 4 voting yes, 3 opposed. [ED NOTE: This vote requires a super-majority approval.]

10:28 p.m. **<u>MOTION</u>** was made by Councilmember Steenrod, seconded by Councilmember Benjamin and passed unanimously, to extend the meeting for 10 minutes.

Councilmember Sherman stated he felt the situation is absurd as the Chamber owes the City $14,627. Council is approving something that says the Chamber is going to indemnify the City and this incident occurred two years ago and it is not resolved. He felt that the Chamber represents local businesses and that this is not a way to conduct business. He advised that he wants to approve the Waterland Festival, but cannot approve something that may cause harm to the City for which it would be liable. He felt that the Chamber should pay off their debt to demonstrate they truly are going to indemnify the City for any future events.

VOTE ON MOTION: Motion passed 6 to 1 with Councilmember Sherman opposed.

Councilmember Thomasson advised that he has had concerns in the past over the City's contributions to the Festival over the services provided. While he is okay with doing away with a percentage of the beer pub fees and increasing the fee paid to the City for security, he is not sure the security fee increased enough. He noted the City heavily subsidizes this community event and he is disappointed that the financial payment is not higher. He stated that he is inclined to approve the resolution for this year, but in the future would like to see a policy stating what the City will or will not underwrite community events for financially. He noted the City cannot afford to subsidize everything. This is a fund raising event for the Chamber, but should not increase the costs to the City.

City Manager Piasecki advised that new legislation is being prepared for Council's consideration in regards to special events and what triggers the City being reimbursed for its costs, while allowing the Council to declare any event a public event and not require the event sponsor to reimburse the City.

Councilmember Thomasson noted that he feels the parade is truly a community event, while the carnival is a revenue producer for the Chamber along with the beer pub.

Councilmember Benjamin stated that a majority of the community appreciates what the Chamber is doing and the spirit of volunteerism.

Councilmember Steenrod noted that in talking about the money that the City expends in indirect costs to support this function, to her is not an indirect cost, but a direct benefit to citizens and the community.

VOTE ON MAIN MOTION: Motion passed 6 to 1 with Councilmember Sherman opposed.

**MOTION** was made by Mayor Pro Tem Thomasson, seconded by Councilmember Steenrod, and passed unanimously, to move the item regarding the 4th of July Fireworks to the next regular meeting.

**MOTION** was made by Mayor Sheckler, seconded by Councilmember Steenrod to move the agenda items regarding the 6 Year Capital Improvement Plan and the General Employees Compensation Agreement to the next regular meeting. Motion passed unanimously.

Upon questioning, Harbormaster Dusenbury noted that the City's costs were around $25,000 to $30,000.

NEXT MEETING DATE

Mayor Sheckler announced the next meeting will be a study session on April 1, 2004.

ADJOURNMENT

At 10:38 p.m. **MOTION** was made by Mayor Pro Tem Thomasson, seconded by Councilmember Steenrod and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk