

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

May 8, 2003

The regular meeting of the Des Moines City Council was called to order at 7:35 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Mayor Pro Tem Benjamin.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Harbormaster Joe Dusenbury and City Clerk Denis Staab.

AGENDA REVISION

Mayor Steenrod announced that she will take comments from the public later in the meeting.

BOARD & COMMITTEE REPORTS

Park and Recreation Draft Master Plan

Councilmember Sheckler reported that he attended a meeting of the Ad Hoc Parks, Recreation and Sr. Services Master Plan Citizens Committee on April 30th to review the conceptual draft Plan for City Parks. He stated that he felt the Committee did a brilliant job even though the plan is massive. The purpose of the meeting was to prioritize projects to 3 or 4 main issues. He outlined those as follows:

1. Activity Center - to complete the project.
2. Steven J. Underwood Memorial Park - to complete the project.
3. Des Moines Beach Park - environmental/structural concerns. Prepare list of items that can be realized and review this at next meeting.
4. Midway Park - complete installation of lighting.

Councilmember Sheckler encouraged Councilmembers to meet with the Committee to discuss priorities that can be accomplished in a reasonable amount of time.

City Manager Evaluation Committee

Councilmember Thomasson reminded Councilmembers to get their evaluations to him so he can assemble the results and schedule a meeting soon.

Public Safety & Transportation Committee - Police Memorial Day

Mayor Pro Tem Benjamin encouraged everyone to attend the Des Moines Police Department observance on May 12th at the Police Department's Flag Plaza. The ceremony will be from 11 to 11:30 a.m.

Dollars for Scholars

Mayor Pro Tem Benjamin reported attending the fund raising event. He remarked that there was wide community support for the successful event.

Happy Birthday

Mayor Pro Tem Benjamin announced that it is Mayor Steenrod's birthday and he wished her a happy one.

Municipal Facilities Committee

Mayor Steenrod noted that the Committee will be meeting in the next few weeks to continue review of the Marina Master Plan.

ADMINISTRATION REPORTS

Mr. Mike Dannels - Request to Remove Gate Across Driveway

City Manager Piasecki advised Council that the City's review of Mr. Dannels' engineers report has been completed and a letter from the City's engineering department has been sent to Mr. Dannels regarding some issues staff had with the report.

Apology

City Manager Piasecki apologized for the tardiness in getting the agenda item regarding Draft Ordinance No. 03-116 to Council for their review.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the special and regular minutes of April 24, 2003.
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 #85082 through #85260 & electronic fund transfers in the total amount of \$618,058.94

Payroll fund transfers in the total amount of \$339,108.30

3. Motion is to recognize the week of May 11, 2003 through May 17, 2003 as *National Police Week* and May 15, 2003, as *Police Memorial Day* in Des Moines.

MOTION was made by Councilmember White, seconded by Councilmember Thomasson and passed unanimously, to approve the Consent Calendar as read.

OLD BUSINESS

Draft Resolution No. 03-088-B Waterland Festival for 2003

Mayor Steenrod distributed a sheet of options that the Chamber Board approved for consideration by Council. She noted the following for an alternative Resolution 03-088-C as follows:

- Sec. 1(6)(d) "There shall be no Waterland pub or other beer garden."
- Section 3 [add the following language] . . . "if the Chamber requests it."

MOTION was made by Mayor Steenrod, seconded by Councilmember Petersen, to approve Draft Resolution No. 03-088-B.

Councilmember Sheckler expressed concern over Section 1(1) and the Chamber accepting the responsibility to defend and hold the City harmless from any liability concern over Waterland. He referenced a pending claim regarding Waterland that the City had received. He proceeded to read excerpts of correspondence from the City's legal representative which indicated the Chambers failure to respond to requests to provide legal counsel to defend and hold the City harmless in this case. He advised that he cannot enter into a new agreement until this issue is resolved.

Upon questioning by Council, City Attorney Marousek responded that from a legal standpoint, she is comfortable with the language contained in the resolution to protect the City of Des Moines.

Councilmember White expressed concern that if the current claim is not resolved it could cost the City money it cannot afford during this time of a budget crunch. She also noted that she is still opposed to having a beer garden at the festival.

Councilmember Thomasson commented that it would appear that the Chamber of Commerce is not honoring last years resolution which permitted the Festival. He noted that Waterland has changed over the years and it might be interesting to see the last 10 to 15 years worth of Waterland resolutions. He stated that he does not believe there is a need for the beer garden in the middle of the Marina parking lot. He still questioned what the revenue and expenditures are for the Festival. He noted that it is the Chamber's issue on how to raise funds to run the Chamber. Therefore the choices of whether to have fireworks or a parade are the Chamber's decisions.

MOTION was made by Mayor Steenrod, and seconded, to amend the original motion to Draft Resolution No. 03-088-C, which changes Section 1(6)(d) "There shall be no Waterland pub or other beer garden, and Section 3 add the following "if the Chamber requests it."

Mayor Pro Tem Benjamin expressed concern that if there is no beer garden there will be no funding for a fireworks show.

Councilmember Sheckler again expressed concern regarding the Chamber's refusal to resolve the pending issue from last years Festival.

Assistant City Attorney Brown noted that the chamber is in breach of their obligation regarding last years Festival. However, he felt language can be inserted to this years resolution that would cover any concerns regarding holding the City harmless.

Mayor Steenrod advised that as of May 6th, the Chamber President was directed by the Board to contact legal counsel to defend the City.

8:25 p.m. Executive Session

At the Mayor's request, City Attorney Marousek announced that the City Council will convene in an Executive Session for approximate 15 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.

8:40 p.m. Assistant City Manager Loch announced that the Executive Session will last approximately another 5 minutes.

At 8:43 p.m. the Executive Session adjourned with no formal action taken.

8:52 p.m. Council reconvened into open session.

MOTION was made by Councilmember White, seconded by Councilmember Petersen and passed unanimously, to move further discussion on this item to later on the Agenda.

NEW BUSINESS

Draft Ordinance No. 03-116 Hearing Examiner Code & Civil Violation Ordinance Amendments - 1st Reading

City Attorney Marousek advised Council that the purpose of the ordinance is to improve the expertise and efficiency of City administrative land use hearings. She noted that since 1999, minor land use matters have been heard in Des Moines Municipal court as civil violations. The City's new Hearing Examiner strongly recommends that rather than holding those hearings in Municipal Court, land use hearings could be improved by using the Hearing Examiner. She cited the following in support of the draft ordinance: it would clear a time-consuming and contentious caseload from the Court dockets; make good use of the Hearing Examiner's specialized expertise; and it would bring our minor land use hearing process into compliance with the integrated land use hearing requirements of RCW and DMMC.

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember White, to suspend Council Rule 26(b) in order to enact Draft Ordinance No. 03-116 on first reading.

Councilmember Thomasson stated that since he received this agenda item late, he cannot support passing the ordinance this evening. He personally wishes to research the issues in more detail.

Councilmember Sheckler expressed agreement with Councilmember Thomasson.

VOTE ON MOTION: Motion failed unanimously.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to pass Draft Ordinance No. 03-116 on to a second reading to a date to be set by the Mayor and City Manager.

Councilmember Thomasson noted that the subject states "administrative land use hearings" but referencing page 3 of the draft ordinance where it shows the regulations that are governed, there are regulations contained within Title 5, Title 7, Title 12, Title 14, Title 15, Title 18 and Title 19. He stated that most of these regulations are not land use land regulations, but many other City business issues. He felt Council needs to review whether some of these issues should really be sent to the Hearing Examiner.

City Attorney Marousek advised that in the existing Code sections listed in Titles 5, 7, 12, 14, etc. most of them, at this time, go to the Hearing Examiner under specific provisions of each title. She noted that the Civil Violation process that Council passed in 1999, was in conflict with the specific provisions of the various subsections referred to in the draft ordinance. She agreed

that the title section of the draft ordinance may be a little confusing and the term administrative land use hearings is too general. She further advised that the attempt was to put all of the Administrative items back to the Hearing Examiner. She noted that items in the City's Code described as Civil Infractions will still go before the Judge, while Civil Violations or Civil Penalties they will go to the Hearing Examiner. She informed Council that the Hearing Examiner process is much speedier and more informal than going through the Court process.

Councilmember Thomasson requested that the City Attorney provide some examples for Council's review when this item comes back for consideration.

Upon questioning by Council, City Attorney Marousek noted that an appeal from a Civil Infraction would be made to Superior Court. She further noted that items that go before the Hearing Examiner are mostly land-use petition actions and they would be LUPA appeals under State law.

As the City Attorney stressed that time was of the essence regarding this item, Mayor Steenrod advised that she will place this item on the May 22, 2003 agenda.

VOTE ON MOTION: Motion passed unanimously.

Selection of City Delegate for 2003 AWC Annual Business Meeting

City Manager Piasecki noted the AWC annual business meeting will be June 20th. The City Council may choose up to three voting delegates to attend vote on behalf of the City.

Councilmembers Sheckler and White are already registered for the meeting and Mayor Steenrod stated her intent to also attend.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Petersen, to appoint Mayor Steenrod and Councilmembers Sheckler and White as the City's voting delegates. Motion passed unanimously.

Continued Discussion - Draft Resolution No. 03-088-B Waterland Festival 2003

City Attorney Marousek advised that a 2nd draft of Draft Resolution No. 03-008-B has been prepared for Council's consideration. She noted the following changes:

- Section 1(1) - Additional language: " and an authorized official of the Chamber of Commerce shall sign a written agreement, on behalf of the Chamber of Commerce, that approval of this Waterland Resolution for 2003 does not constitute a waiver of the Chamber's obligation to defend and hold the City of Des Moines harmless from any liability which may result or may have resulted from the conduct of the Waterland event or its activities in any prior year."
- Section 1(6) - to read: "An authorized official of the Chamber of Commerce shall execute a written agreement, on behalf of the Chamber of Commerce, acknowledging . . ." Striking the words "acknowledge in writing".

Upon questioning by Councilmember Thomasson why in Section 1(6)(j) the walking path will not be available during festival hours, Mayor Steenrod responded that she believed the problem was possible liability by erecting fencing behind the carnival grounds, on the gravel, to the west. She advised that the intent was to allow the through path during the morning hours when most people were walking.

Harbormaster Dusenbury felt that with the elimination of the beer pub, perhaps part of the launch deck could be fenced off to allow a walking path.

A FRIENDLY AMENDMENT was accepted to strike “prior to the festival opening each day. The walking path will not be available during festival hours for safety reasons.”, so Section 1(6)(j) will now read: “The Chamber of commerce shall provide for a walking path through or around the festival grounds.”

Carole Elrod, Chamber Executive Director, noted the Chamber has additional concerns in putting the fencing along the west side of the Marina. She advised that the fencing being open throughout the festival would increase foot traffic in the evening, which may incur additional secure issues. She also cited potential risk to pedestrians walking during the setting up or tearing down of the carnival. She further noted that the cost of that fencing will be significant, which would take away from something else.

Mayor Pro Tem pointed out that when pedestrians are going from the south side to the north side there is a stairway, that the Chamber is going to mark, so folks can go up to 6th Avenue and then come back down.

Councilmember Thomasson noted that if that stairway is marked then that would meet his needs for pedestrian access.

After further discussion, it was a consensus of the Council that if the festival is not broken down by a reasonable hour, then work should stop at a reasonable hour, until the next day. Also the Chamber and Council will need to begin this process earlier next year.

VOTE ON MOTION: Motion passed unanimously.

9:42 p.m. Mayor Steenrod called for a 7 minute break.

COMMENTS FROM THE PUBLIC

David Goretski, 21839 marine View Drive S

Mr. Goretski spoke to Council in support of the proposed Grandview Park Off-Leash Area for the south King County area. He noted that over 1,200 citizens have joined in support. He advised that 8 cities are involved with one time funding contributions based on the city's population, and requested support from Des Moines. He left written material to be distributed to Councilmembers regarding the proposal.

Jack Cunningham, Des Moines Resident Since 1967

Mr. Cunningham remarked that when he first came to the Des Moines the Waterland Festival was a nice little family/citizen unorganized pleasant day. He felt it has turned in to what he termed “Des Moines’ scuz ball meeting”. He felt it is unattractive, unhealthful and felt he spends more time talking to Police to remove people off the breach and private property than enjoying the festival. He requested Council take a good hard look at whether the Festival is beneficial.

Mr. Cunningham further stated that Council has an opportunity to appoint someone to fill a vacancy on the Council and that all the candidates are well intentioned people. He called

Council's attention to the fact that Des Moines' population is 18% minority and he expressed hope that the Council will give serious thought to appointing a minority to the Council to give full representation to that part of the population that is not presently represented.

Florence McMullin, 914 South 248th

Ms. McMullin expressed pleasure that the Council has resolved a lot of the issues regarding Waterland and thanked Council for working together.

Earline Byers, 22315 6th Avenue South

Ms. Byers informed Council about the first Waterland parade held in 1960 that ran south from South 216th to 227th, which was mostly children. She presented Council with a Waterland Survey that was taken of the condominium residents of The Mariner, Cliff House and South Shores. She suggested that the survey may help Council look for ideas for future Waterland Festivals and work together to address needs and concerns of residents and businesses, and then look at what would serve the visitors that come to Des Moines.

10:00 p.m. Executive Session

Mayor Steenrod announced that the Council will convene into an Executive Session. At the request of Mayor Steenrod, City Attorney Marousek announced that the purpose of the executive session is to evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public. The Council expects to reconvene in an open public meeting at 10:30 p.m. at which time an action may or may not be taken, depending on the results of discussion in Executive Session concerning the item on the agenda, which is narrowing the candidate field.

10:27 p.m. the Council reconvened in to open public session.

Determination of Finalists for Vacant, Unexpired Council Position #2

MOTION was made by Mayor Steenrod, seconded by Mayor Pro Tem Benjamin, to invite back the following Council applicants for a second interview on May 22, 2003: Bob Back, Edwina Martin-Arnold, Scott McCarty, Dan Sherman and Brenda Siegrist. Motion passed unanimously.

NEXT MEETING DATE

Regular Meeting May 22, 2003

ADJOURNMENT

At 10:29 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab, City Clerk

ACTION ITEMS FROM 5/8/03 COUNCIL MEETING

Draft Ordinance No. 03-116 Hearing Examiner Code & Civil Violation Ordinance Amendments

- City Attorney to prepare list of examples of Civil Violations versus Civil Infractions