PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES July 17, 2003

The regular meeting of the Des Moines City Council was called to order at 7:39 p.m. by Mayor Steenrod 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 Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman and Susan White. Absent: Councilmember Scott Thomasson (vacation). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Finance Director Paula Henderson, Parks & Recreation Director Patrice Thorell and City Clerk Denis Staab.

> **MOTION** was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin and passed unanimously, to excuse Councilmember Thomasson.

COMMENTS FROM THE PUBLIC

Rick Edwards, 909 South 278th

> Mr. Edwards spoke about the bad economy citing budget cuts effecting school programs as an example. He stated that there must be accountability of how government is using taxes. He stated that the process for his gate issue has become excessive in staff time expended and dollars spent, when common sense and good judgment should prevail. He noted that the City has hired outside counsel at $200-$300 an hour. He suggested that common sense and good judgment should prevail.

Ethel Bell, 24833 13th Avenue South

> Ms. Bell addressed Council as a representative of Des Moines Senior Activity Center, requesting that the Council free up the funds raised by senior citizens in April and May to purchase a divider wall for the center as recommended under Old Business Item 1 on this evenings agenda. She stated that while seniors are pleased with the new facility, the divider wall will help to reduce the noise level for multiple programs that use the building at the same time. She presented the Clerk with a petition signed by users of the Senior Activity Center lunch program requesting that the funds be released.

Roger Snyder, 23438 26th Avenue South

> Mr. Snyder thanked Council for providing a place for seniors to meet and socialize. As a member of the group who meet to play bridge at the activity center, Mr. Snyder advised that the noise level at the new Senior Center is really high. He noted that money was donated by the bridge players to help pay for a sliding partition to cut down the noise. He requested Council approve and release the funds to install the partition. He presented the Clerk with a petition signed by the Des Moines duplicate bridge players.

<u>Denny Burham, 26826 15th Avenue South</u>

Mr. Burham complained about the terrible quality of the video broadcasts of Council meetings on the City's government cable channel. He also noted that the audio is bad. He advised that lots of citizens are unable to attend Council meetings in person. He requested that the City upgrade the quality so citizens can see the Councilmembers and understand what is being said.

<u>V. Staab Bergin, 21628 28th Avenue South</u>

Ms. Bergin addressed Council about the crime level in her neighborhood, dirty streets, graffiti on electrical boxes, cars parked illegally in bike lanes, prostitution and illegal use of fireworks. She also complained about drinking at the Des Moines Marina.

<u>BOARD & COMMITTEE REPORTS</u>

<u>Public Safety and Transportation Committee</u>

Mayor Pro Tem Benjamin announced that in regards to the Marine View Drive pedestrian issues the following treatments will be conducted:

- Stencils will be painted on the sidewalk encouraging pedestrians to make themselves more visible to traffic. The stencils have an outline of life-size footprints that read "Stand Here to be Seen"
- Small education signs will be posted on the curb near the crosswalk to give pedestrians tips on how to most effectively and safely cross the road.

He further advised that a pedestrian study will be done along the Street during good-weather conditions during July August.

<u>Mason's Des Moines Lodge #245 Fishing Trip</u>

Mayor Pro Tem Benjamin reported attending the recent fishing trip where 96 year old Cleo McCord pulled in a 41 pound King Salmon.

<u>Response to Comments From the Public at the June 26th Council Meeting</u>

In response to Mr. Ed Pina's comments at the June 26, 2003 Council meeting, Mayor Pro Tem Benjamin read into the record "The Supreme court of the State of Washington, In the Matter of the Recall Charges Against City of Des Moines Mayor Donald Wasson, Councilmember Richard Benjamin, Councilmember Gary Peterson and Councilmember Maggie Steenrod, En Banc". [ED NOTE: Complete text attached to these minutes.]

<u>Follow-up on Citizen Requests</u>

In response to Councilmember Sherman's request for status on recent citizen requests, City Manager Piasecki noted the following:

- *Fish Scale & Board to Record Biggest Catch of the Day at the Marina* - Has been purchased, but not yet installed.
- *Waterland Music Stage Turned to Project toward Water, Away From Residences* - Have not met with Chamber yet, will be meeting with Director tomorrow.
- *Gates on Private Streets* - Issue was scheduled for July 31st Council meeting, however the City Attorney has advised Council should take no action until current court case is settled.

<u>Municipal Facilities Committee</u>

Mayor Steenrod announced that the Committee will be meeting on Tuesday at 3 p.m. and will be discussing the Marina Master Plan.

PRESIDING OFFICER'S REPORT

Council Video Recordings

Mayor Steenrod noted that the poor audio/visual quality of the Council meetings is not the fault of the City's Video Operator, but the darkness of the Council Chambers and the poor acoustics. She advised that it is a Council priority to remedy the situation as soon as funds are available.

Waterland Festival

Mayor Steenrod reminded everyone that the Waterland Festival begins next week and there will be no Council meeting on Thursday, July 24th.

ADMINISTRATION REPORTS

Steven J. Underwood Memorial Park

City Manager Piasecki invited everyone to attend the dedication and grand opening ceremonies of the Park on Friday, July 25th at 5 p.m.

Comcast Cable TV Franchise

City Manager Piasecki advised that the Draft Comcast Cable TV Franchise that Council will be hold a public hearing on later this month, provides for funds to upgrade the City's government channel, including upgrades for the video taping of Council meetings.

Des Moines Memorial Drive - Flag Triangle

City Manager Piasecki noted that numerous complaints have been received regarding the need to paint the Flag pole. He stated that some funds have been found to allow painting of the Flag pole by the end of summer, and next year the plan is to install proper new night lighting.

10th Avenue South Culvert Project

City Manager Piasecki reported that the project is underway and that 10th Avenue South will be blocked to traffic. He stated that the project should be completed by October or early November.

Grass Fire - Parkside Park

City Manager Piasecki stated that a fire at the Park burned about 1,000 square feet of grass. He noted that the actual cause has not been determined.

CONSENT CALENDAR was read by City Clerk Staab.

~~1. Motion is to approve the minutes from the special and regular meetings of June 26 and the special meeting of July 7, 2003~~. [ED NOTE: Item removed by Mayor Steenrod.]

2. Motion is to purchase a permanent slope easement of 9,157 square feet from Robert G. and Anna M. Bjorneby in the amount of $14,021.00 plus closing costs and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.

~~3. Motion is to enter into an agreement with the City of Kent for their participation in the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign said agreement substantially in the form as submitted.~~ [ED NOTE: Item removed by Councilmember Sherman.]

4. Motion is to confirm Mayor Steenrod's appointment of Debbie Hickman to a vacant position on the Des Moines' Human Services Advisory Board, term to expire December 31, 2003.

5. ~~Motion is to approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of $58,422, plus a budget of $6,000 for architectural renderings, plus a contingency of $2,920, for a total authorization of $67,342 and authorize the City Manager to sign the agreement substantially in the form as submitted.~~ [ED NOTE: Item removed by Mayor Pro Tem Benjamin.]

6. Draft Ordinance No. 03-193 ***[ASSIGNED ORDINANCE NO. 1325]*** - Title: An Ordinance of the City of Des Moines, Washington related to monetary penalties for civil infractions, and amending DMMC 1.24.190.

TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 03-193.

Councilmember Sherman requested that Consent Item #3 be removed.

Mayor Pro Tem Benjamin requested that Consent Item #5 be removed.

Mayor Steenrod requested that Consent Item #1 be removed.

Councilmember Petersen noted that he is recusing himself from voting on Consent Item #2.

In reference to Item #6, Mayor Steenrod advised that due to increased assessments by the State, the City must increase its portion of the penalties for non-traffic violations, or the State will receive all of the revenue and the City will receive nothing.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to approve the remaining items on the Consent Calendar as read.

Executive Session

At 8:20 p.m. Mayor Steenrod announced that the City Council will convene into an Executive Session for approximately 15 minutes to discuss real estate matters, about which public knowledge might have an adverse impact on price to the detriment of the City.

At 8:40 p.m. City Manager Piasecki announced that the Executive Session will last approximately 5 minutes more.

No formal Action was taken.

At 8:46 p.m. Council reconvened into open session.

REMOVED CONSENT ITEMS

Item # 3. Interagency Agreement with City of Kent for Pacific Highway South Joint Use Stormwater Facility

Councilmember Sherman questioned page 3, Item 5 of the agreement as to whether the City would have any say should Kent elected to contract or transfer maintenance responsibilities.

Public Works Director Heydon suggested language be added to the agreement to ensure that Des Moines would have the opportunity to review and approve of any procurement process or bidding that would be involved in such action on Kent's part.

Mayor Steenrod expressed concern over visibility of the pond from the road.

Public Works Director Heydon stated that the grade is quite steep with natural vegetation and that the pond will not be visible to traffic on Kent-Des Moines Road.

Assistant City Engineer Andrews further advised that since this area is a wetland, it will be planted with natural plantings and carefully monitored and maintained. She also advised that this is the best site to place the pond.

City Manager Piasecki assured the Council that it is Des Moines responsibility to ensure the integrity of the wetland area is maintained.

Mayor Pro Tem Benjamin stated that he has toured the City's detention/retention pond sites and is confident that City staff has chosen the right place, as it is a natural setting and very low lying.

City Manager Piasecki noted that staff will prepare language to address the concerns raised by Councilmember Sherman and bring the item back to Council for final approval.

MOTION was made by councilmember Sherman, seconded by Councilmember White, to place the item on the Consent Calendar for the July 31, 2003 meeting. Motion passed unanimously.

Item #5. Consulting & Preliminary Design Services for the Dry Stack Boat Storage Project in the Marina

Mayor Pro Tem Benjamin advised that he objects to this project stating that the dry stack storage will create noise and pollution to the neighboring condominiums and that he feels that there is better uses that this valuable land could be used for.

Mayor Steenrod reminded Council that the decision to move forward with the dry stack boat storage project will be made after Council has the opportunity to review the preliminary designs.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of $58,422, plus a budget of $6,000 for architectural renderings, plus a contingency of $2,920, for a total authorization of $67,342 and authorize the City Manager to sign the agreement substantially in the form as submitted. Motion passed 5 to 1 with Mayor Pro Tem Benjamin voting NO.

Item #1. Minutes from the special and regular meetings of June 26 and the special meeting of July 7, 2003

Mayor Steenrod advised that she had some notes from the regular meetings of June 26th and July 7th that she felt should be included in the minutes.

City Manager Piasecki suggested that the Mayor contact the City Clerk regarding the changes and that the minutes will be placed on the July 31, 2003 meeting consent calendar for approval.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and approved unanimously, to approve the special meeting minutes of June 26, 2003.

OLD BUSINESS

Draft Ordinance No. 03-177 ***[ASSIGNED ORDINANCE NO. 1326]*** Amending 2003 Budget to Re-program MCI Funds

Finance Director Henderson informed Council that the purpose of this agenda item is to request Council's approval of Draft Ordinance No. 03-177 amending the 2003 budget by amending the Municipal Capital Improvements Fund to include additional appropriations of $529,423. She advised that this adjustment allows for the funding of the following projects:

- Activity Center Room Divider System - $8,000
- Steven J. Underwood Memorial Sports Park Phase I - $211,988
- Activity Center - $284,367

She further noted that this reduces the funding for the Eden Software Upgrade by $4,486 and Transfer-out to Fund 216 in the amount of $19,864; and provides for $49,418 in additional funding for new projects and will increase the Municipal Capital Improvement Fund ending balance by $12,111.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to suspend Council Rule 26(b) in order to take final action on Draft Ordinance No. 03-177 on first reading.

Upon questioning by Council, City Manager Piasecki noted that the funds raised by the seniors for the room divider at the Activity Center have been placed in the General Fund and it requires Council to give budget authority to expend these funds.

VOTE ON MOTION: Motion passed unanimously.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to approve Draft Ordinance No. 03-177.

Cingular Wireless Lease Agreement - Des Moines Field House Park

Parks and Recreation Director Thorell introduced Liz Carrasquero, representing Cingular Wireless. She proceeded to note that staff has revised the lease agreement as per Council's direction when the lease was reviewed earlier this year. She advised that the term of the lease has been reduced to five years, with options to renegotiate the lease fee for additional five year terms. She reminded Council that Cingular must have the lease from the City prior to the Conditional Use Process which will be heard at a Public Hearing before the Hearing Examiner. She further advised of the following:

- Cingular is agreeable to furnishing a co-location pole
- Cingular is agreeable to reviewing the fee (market rate) every five years
- Cingular will maintain the pole to City's specifications and standards
- Pole height has been reduced to meet City's code

Ms. Carrasquero used a view foil to show a rendering of what the pole will look like and its location near the corner of South 219th and 11th Avenue South. She advised the main goal is for improved service for customers along the Marine View Drive corridor.

Parks and Recreation Director Thorell pointed out that the placement of the cell tower and ballfield lighting system at the new location will allow the City to expand the stadium ballfield's outfield as identified in the proposed Park Master Plan. Also the area around the facility will be re-graded and improved so that usable park space is enhanced.

Mayor Pro Tem Benjamin did not feel that the language on page 5, 15 (c) contained specific enough language to ensure co-location. Ms. Carrasguro advised that Cingular is agreeable to stronger wordage to ensure this is what is intended.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to approve the Lease of a location in Des Moines Field House Park for installation of a wireless antenna tower and an equipment storage area to Cingular Wireless LLC and to authorize the City Manager to sign the Lease substantially in the form as submitted with the understanding that the tower is encouraged to have the largest number of co-users as possible.

9:50 p.m. Mayor Steenrod called for a 5 minute break.

Mayor Steenrod expressed appreciation that all items Council had brought up when the agreement was first reviewed, had been addressed by staff and Cingular.

NEW BUSINESS

Draft Resolution No. 03-181 ***[ASSIGNED RESOLUTION NO. 959]*** - Sole Source Procurement for a Floating Breakwater System for the Redondo Boat Launch & Draft Resolution No. 03-193 ***[ASSIGNED RESOLUTION NO. 960]*** - Sole Source Procurement an Anchoring System for the Floating Breakwater at the Redondo Boat Launch

Assistant City Manager Loch stated that the purpose of these Agenda items is to seek Council approval for sole source purchasing. First item is a floating breakwater system for the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project. It was noted that State law allows for this type of purchase when the item is clearly and legitimately limited to a sole source supplier. He advised that the WhisprWave offers a unique solution to the wave protection problem at Redondo. It is made of durable polyethylene modules. He noted that the WhsiprWave is the only breakwater system on the market that meetings the requirements of the project, and it’s installation is entirely separate from the rest of the project’s scope of work. He stated that staff recommends this purchase for the following reasons:

- It is the only wave barrier on the market than can be assembled and placed on station using existing Marina equipment.
- It can be retrieved at the end of the boating season, disassembled and stored, again using Marina equipment.
- It is acceptable to the State and Federal environmental agencies.
- When it is assembled and on station, it is massive enough to dampen the short-period waves that make the ramp unsafe or unusable.

In conclusion, Assistant City Manager Loch advised that installation is scheduled for September.

MOTION was made by Councilmember White, seconded by Councilmember Sherman, to adopt Draft Resolution No. 03-181, waiving the state competitive bidding requirements and allowing the City to enter into a sole source purchase from Wave Dispersion Technologies, Inc. of a WhisprWave floating breakwater, with a purchase price of $186,700, plus Washington State Sales Tax. Motion passed unanimously.

For the second item, Assistant City Manager Loch informed Council that to keep the breakwater on location at all tidal stages and in varying wind conditions, the Project Engineers have specified an anchoring system that uses Helix anchors and Seaflex anchor connectors. It has been determined that these items are specialized products that are essentially available from one source. In conclusion he noted staff recommends purchasing the Helix Anchors and the Seaflex Anchor Connectors because:

- Helix Anchors are the original “auger-in” type anchors and have a proven performance record.
- They have a unique installation system and a connecting device that are not available with any other product.
- They create minimal disruption to the seabed and are part of the State’s permit approval.
- The anchor connectors are the only product on the market that can keep the floating breakwater in the optimum location at all tide levels, while still being relatively maintenance free and easy to install.
- The connectors are acceptable to the State and Federal environmental agencies because they eliminate the bottom drag around the anchor that kills sea life.

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sherman, to adopt Draft Resolution No. 03-193, waiving the state competitive bidding requirements and allowing the City to enter into a sole-source purchase form Helix Mooring Systems, Inc. for 20 Helixanchors and 20 SeaFlex connectors for $96,740.

Upon questioning by Council, Harbormaster Dusenbury stated that should the auger run into a very large rock, they may have to relocate, however he advised that the geo report was very positive.

VOTE ON MOTION: Motion passed unanimously.

Agreement with Comcast Regarding the Pacific Highway South Redevelopment Project

Assistant City Engineer Andrews informed Council that Comcast has agreed to participate in their costs for the utility undergrounding improvements along Pacific Highway South for a total amount of $161,000 as part of the Pacific Highway South Redevelopment Project. She noted that the City’s contractor will install the necessary conduit and vault system furnished by Comcast, and Comcast will be responsible for installing their own wiring within the system and making all wiring connections. She advised Council that the City’s contractor is anxious to get started and staff recommends approval of this agreement.

MOTION was made by Councilmember Sherman, seconded by Councilmember White to enter into the joint trench agreement with Comcast for their participation in costs for the utility undergrounding improvements of the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted. Motion passed unanimously.

Draft Ordinance No. 03-032 Comcast Cable TV Franchise - Briefing

City Manager Piasecki introduced the City’s consultant for working on the franchise agreement, Lon Hurd of 3-H Cable Communications Consultants.

Assistant City Manager Loch advised that given Federal restraints on Cable TV service, staff has worked to negotiate the most-favorable terms possible. He highlighted some of the items contained in Council's packet as follows:

- Six year franchise term with possible two year extension.
- $10,000 paid to the City to (partially) offset costs related to evaluation of the franchise renewal.
- $140,000 paid to the City for upgrades to the public, education, and government broadcast system. These funds will be used to update the character generator, and upgrades to the light, video, audio and projection systems within the Council Chambers. Cable customers in Des Moines will be assessed a monthly charge to allow Comcast to recoup this expense.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to schedule a public hearing at the July 31, 2003 City Council meeting regarding renewal of Comcast's non-exclusive cable TV franchise.

Upon questioning by Council, Assistant City Manager Loch advised that the improvements to the Council Chambers will require seeking a contractor, Council's review and input, and then a final contract brought to Council for approval.

Mayor Pro Tem Benjamin questioned what dollar amount might be passed on to cable customers to pay back the $140,000. Mr. Hurd advised that Comcast believes this will amount to about a twenty-five cent increase on the average monthly cable bill.

Councilmember Sheckler commented that he has some concerns about passing the $140,000 off on the cable customers, but overall feels the agreement is good.

Mayor Steenrod voice the opinion that the $140,000 should not be tied into this agreement since it had not been demonstrated that improvement costs would not exceed $140,000.

Assistant City Manager Loch advised that the first draft of the franchise agreement called for $120,000 about three years ago, and the $140,000 is due to inflation, and was negotiated with Comcast.

VOTE ON MOTION: Motion passed unanimously.

NEXT MEETING DATE - Regular Meeting July 31, 2003

ADJOURNMENT

At 10:28 p.m. **MOTION** was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE RECALL) CHARGES AGAINST CITY OF DES) MOINES MAYOR DONALD WASSON,) COUNCILMEMBER RICHARD) BENJAMIN, COUNCILMEMBER GARY) PETERSON AND COUNCILMEMBER) MAGGIE STEENROD.)	No. 73036-9 EN BANC Filed Jul 10 2003

PER CURIAM - This case involves a recall petition alleging various violations against the Des Moines Mayor and three councilmembers (councilmembers). The trial court found the charges legally and factually insufficient. We affirm on the ground that the petition fails to satisfy the specificity requirements of RCW 29.82.0 10.

FACTS

Eduardo Pina initiated a recall petition against Des Moines Mayor Donald Wasson, Councilmember Richard Benjamin, Councilmember Gary Peterson and Councilmember Maggie Steenrod, alleging four violations.

First, Pina generally alleges that the councilmembers violated the notice requirements of the Open Public Meetings Act (OPMA), chapter 42.30 RCW, when they held a special meeting on March 13, 2002. To support his allegation, Pina attached a videotape of the meeting and a six-page amended complaint concerning a separate civil lawsuit filed against the councilmembers.

Second, Pina generally contends the councilmembers violated the conflict of interest laws when they directed the city attorney to withdraw a motion for reconsideration at the July 11 2002, regular meeting. Since the councilmembers were once a named party to the lawsuit, Pina says it was improper for them to take action upon the issue. To support his allegation, Pina provided a videotape of the meeting.[1]

Third, Pina generally alleges Councilmember Peterson violated the conflict . of interest laws when he engaged in matters having a potential effect on his personal tow truck business. He claims. that Peterson has a potential pecuniary interest in some council matters. To support his allegation, Pina attached a fourpage complaint against Peterson concerning a separate civil lawsuit filed against

[1]The petition also refers to an Exhibit C. The record on appeal does not contain this exhibit. Although it likely has something to do with the council minutes (Clerk's Papers at 68), we elect not to make a presumption.

him. The complaint comes from a citizen's group lawsuit, alleging similar misconduct as challenged by Pina in his petition.

Finally, Pina generally alleges that the councilmembers violated the OPMA when they met and signed a letter on July 12, 2002, directing the city attorney to hire outside counsel to represent them. To support his allegation, Pina attached a copy of the letter to his petition.

The prosecutor drafted the ballot synopses after receiving additional information from petitioner's counsel. The petitioner did not sign the additional information or verify under oath that he believed the charges to be true and that he had knowledge of the facts as required by RCW 29.82.0 10.

The trial court found that the charges were factually insufficient, legally insufficient, or both, for several reasons: (1) It determined that the charges pertaining to the city attorney's termination, the promotion of the assistant city attorney, and the legal defense of the councilmembers were legally insufficient because the officials were. acting within their lawful discretionary authority and the petition failed to identify the specific legal violations; (2) it found that the charge relating to improper notice at the March 13, 2002, special meeting was factually insufficient because the legally required notice was given and all councilmembers attended; (3) it determined that the charges were factually insufficient because they failed to show that the councilmembers intended to violate the law; and (4) it found. that the charges failed to satisfy RCW 29.82.010 because the petitioner failed to satisfy the, specificity requirements, failed to sign the charges forming the bases for the recall, and failed to verify under oath that he believed the facts to be true and had some knowledge of the facts.

ISSUE

Are the alleged charges factually sufficient in terms of the specificity required under RCW 29.82.010?

ANALYSIS

The sufficiency of a recall petition is reviewed de novo. *Teaford v. Howard, 104* Wn.2d 580, 590, 707 P.2d 1327 (1985). An elected official can only be recalled for cause. *Chandler v. Otto***,** 103 Wn.2d 268, 274, 693 P.2d 71 (1984). To satisfy this requirement, a petition must be both factually and legally sufficient. *Id.* This inquiry is determined from the face of the petition. *In re the Recall of Zufelt, 112* Wn.2d 906, 914, 774 P.2d 1223 (1989).

Factual sufficiency means the facts must establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office (quantitative prong). *Cole v. Webster,* 103 Wn.2d 280, 285, 692 P.2d 799 (1984). The facts must also be stated in concise language and provide a detailed description that includes the date, location and nature of each allegation (qualitative prong). RCW 29.82.010; *Chandler,* 103 Wn.2d at 274. This precision and detail is required to enable the electorate and a challenged official to make informed decisions. *Chandler, 103* Wn.2d at 274. Although there is no requirement that the petitioner have firsthand knowledge of the facts, he or she must have some knowledge of the facts underlying the charges. *In re the Recall of Ackerson,* 143 Wn.2d 366, 372, 20 P.3d-930 (2001). A simple belief that the charges are true is insufficient. *Id.* Furthermore, when a charge concerns a violation of the OPMA, the facts must show that the official intended to violate the OPMA. *In re the Recall of Anderson,* 131 Wn.2d 92, 95, 929 P.2d 410 (1997).

Legal sufficiency means the charge must define substantial conduct clearly amounting to misfeasance, malfeasance or a violation of the oath of office. *Id.* Legal sufficiency is not satisfied: when there is a legal justification for the challenged official's conduct. *In. re the Recall of Wade, 115* Wn.2d 544, 549, 799 P.2d 1179 (1990): As such, lawful discretionary acts are not a- sufficient legal basis for a recall: *Chandler, 103* Wn.2d at 274.

A reviewing court does not have the authority to look at the truthfulness of a charge or to question the underlying motivation. *Cole, 103* Wn.2d at 288. Instead, a reviewing court must consider whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position. *Teaford*, 104 Wn.2d at 586.

On the face of his petition, Pina makes general statements as to the violations without citing specific legal authority. He then attempts to support his allegations by providing videos, complaints from other lawsuits and a copy of a letter. Although the attachments may contain some relevant information, a significant amount of the information is irrelevant. Pina fails to parse out the relevant from irrelevant information in order to clearly identify the legal violations and the facts that support those violations as required by RCW 29.82.010. The petition must provide a concise statement of the legal violations and a detailed description of the acts to inform the electorate and the official being charged. *Chandler, 103* Wn.2d at 274. Pina's petition fails to satisfy this specificity requirement. If a petitioner chooses to refer to attached information, he or she must reasonably identify the information in such a manner to satisfy the specificity requirements of RCW 29.82.010. A general reference to sources containing relevant and irrelevant information is insufficient.

Pina's failure to satisfy the specificity requirements was also observed by the prosecutor tasked with developing the ballot synopses. The prosecutor initially rejected the petition because it did not contain a concise statement of the charges. The petitioner's counsel then sent a letter to the prosecutor containing revised recall charges with additional facts. This letter, however, did not satisfy the petition requirements of RCW 29.82.010. Furthermore, the petitioner did not sign the letter, affirm or adopt the revised charges, or verify under oath that he believed the revised charges to be true as required by statute. Despite these formal deficiencies, the prosecutor drafted the ballot synopses. The prosecutor should have rejected the additional information because it did not remedy the original deficiencies and Pina did not file an amended petition.

Because Pina's petition does not satisfy the qualitative prong of the factual sufficiency analysis, we do not need to reach the other elements of the analysis. *See Zufelt*, 112 Wn.2d at 914 (a petition failing either the factual or legal sufficiency review is insufficient).

CONCLUSION

We affirm the trial court's decision to dismiss with prejudice because the petition does not satisfy the specificity requirements of RCW 29.82.010.