

REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

August 5, 2004

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

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

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, City Attorney Linda Marousek, and City Clerk Denis Staab.

DISCUSSION ITEMS

Dinghy Storage at Marina

Mayor Sheckler advised that Mr. Walt Heft has requested that this agenda item be moved to another meeting to allow him more time to prepare. He requested direction from Council.

MOTION was made by Councilmember White, seconded by Councilmember Steenrod and passed unanimously, to remove this item from the Agenda.

City Manager Piasecki advised that this item will be placed on the August 12, 2004 Agenda.

EXECUTIVE SESSION

At 7:35 p.m. City Attorney Marousek announced that the City will now go into an Executive Session for approximately 30 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.

Attendance: All Councilmembers were present along with City Manager Piasecki, Assistant City Manager Loch, City Attorney Marousek and outside Counsel Peter Eglich.

At 7:58 p.m. Assistant City Manager Loch announced that the Executive Session will last approximately 10 minutes more.

At 8:12 p.m. Assistant City Manager Loch announced that the Executive Session will last another 15 minutes.

At 8:30 p.m. Assistant City Manager Loch announced that the Executive Session will last approximately 10 more minutes.

No formal action was taken.

At 8:39 p.m. the Executive Session adjourned and Mayor Sheckler announced that Council will take a five minute break before resuming the regular meeting.

Draft Resolution No. 04-138 Council Rules of Procedure, Rule 20 - Board & Committee Reports - 1st Reading

Assistant City Attorney Brown introduced the draft resolution noting that he prepared the changes to Rule 20 at the request of four Councilmembers during the Council's June retreat. He reviewed the following changes:

- The amendment in section (g) limits Councilmembers' Board and Committee reports to three minutes unless extended by the presiding officer and provides that the presiding officer may rule out-of-order any comments made during a Committee or Board report that do not pertain to activities of the particular Board or Committee.
- Section (h) allows the presiding officer to give reports on activities participated in as part of the official duties of the Mayor, in addition to any special board or committee reports.
- New section (i)(1) allows Councilmembers to comment on topics not on the agenda and to respond to citizen comments. Councilmember comments made during this portion of the meeting regarding an agenda item or quasi-judicial matter pending before the Council, or its Boards or Commissions, will be ruled out-of-order by the presiding officer.
- Section (i)(2)(b) limits Councilmember non-agenda comments during the Councilmember comment period to three minutes.

Upon questioning by Councilmember Petersen as to why these changes are needed, Mayor Sheckler responded that the changes are proposed to establish an orderly meeting in order to accomplish business on the Agenda. He remarked that too much time is being spent on non-related business items and by establishing new guidelines the public will have a better opportunity to hear items that are scheduled to be addressed.

Mayor Pro Tem Thomasson advised that while discussing Council relations at the June retreat, it was felt that these rule changes might establish more efficiency.

Councilmember White felt that these new guidelines will help meetings run more smoothly.

Councilmember Steenrod spoke in opposition to establishing a 3 minute time limit on speaking during Councilmember Comment period.

Councilmember Sherman felt that 3 minutes is plenty of time for brief statements, which can be followed up with e-mails if necessary. He also noted that within that 3 minute period a Councilmember can request that a topic be placed on an agenda for future discussion.

Mayor Sheckler noted that the presiding officer can be flexible and if an issue warrants, more time can be granted.

Mayor Pro Tem Thomasson felt a 3 minute time limit is appropriate as these comment periods have been abused by long discussions that have held up other planned agenda items that do not get addressed due to the length of meetings.

Councilmember Steenrod stated that if time periods are going to be strictly adhered to, then all rules need to be specifically followed such as reading guidelines for the benefit of the public before conducting public hearings.

Councilmember Benjamin stated that he has always believed in conveying the truth and therefore, he has taken the opportunity during Board and Committee reports to explain issues to citizens. He felt that rather than try to solve financial problems, Councilmembers that attended the retreat in June devoted time to prevent him from speaking what he believes to be the truth to citizens.

MOTION was made by Councilmember Benjamin, seconded by Councilmember Steenrod, to amend the resolution by inserting a new sentence at the end of the title to read: "This action will help curtail the painful and often times uncomfortably truthful words of Mr. Benjamin."

Councilmember Benjamin injected that the rule change is just an attempt to muzzle him and prevent him from informing citizens as to what is going on with the City. He noted that in the past other Councilmembers have used the Board and Committee reports to inform citizens of other activities and he has always respected their opinion, while not always in agreement.

Councilmember Sherman noted that this rule change applies to all Councilmembers. He felt that the Mayor has allowed too much time to be spent on non-agenda items. He felt Council has an obligation to get to scheduled Agenda items and owe it to constituents to do so. He stated that Councilmember's personal issues should not block an efficient meeting.

Councilmember White advised that she has observed that Council meetings are not as productive as they could be and she is not willing to waste time as there are too many critical issues facing the City.

Councilmember Petersen felt that the Mayor must treat all request equal in regards to time limits.

VOTE ON AMENDMENT: Motion failed 6 to 0 with Councilmember Benjamin abstaining.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to place Draft Resolution No. 04-138, amending Council Rule 20 of the Des Moines City Council Rules of Procedure, on a subsequent regular Council meeting agenda for adoption.

MOTION was made by Councilmember Steenrod, seconded by Councilmember Benjamin, to amend section (i)(2)(b) by striking the existing language and inserting: Councilmembers shall be mindful of the need to keep their comments brief and shall promptly conclude their remarks upon request of the presiding officer.

Mayor Pro Tem Thomasson advised that it is hard to judge the appropriate amount of speaking time, and the proposed amendment would make it harder for the presiding officer to make determination of 30 seconds or 10 minutes. He felt 3 minutes is ample time to make a point.

Councilmember Sherman commented that there has to be some limits placed on amount of time. He noted that if all members take three minutes it can add up to an hour delay in getting to scheduled agenda items. He felt that three minute limits is more than fair.

VOTE ON AMENDMENT: Motion failed 4 to 2 with Councilmembers Petersen and Steenrod voting yes, and Councilmember Benjamin abstaining.

VOTE ON MAIN MOTION: Motion passed 4 to 3 with Councilmembers Benjamin, Petersen and Steenrod opposed.

Levy Lid Lift - Status Report

City Manager Piasecki called Council's attention to the three documents contained in Council's packet regarding information materials to provide the voters with details regarding the City's budget situation and the Levy Lid Lift Proposition. The items are:

1. A flyer inviting residents to one of nine community budget meetings to be held between August 9 and September 1, 2004.
2. Draft language for an upcoming edition of City Currents.
3. A revised version of the budget presentation that staff gave to the Council at the July 8, 2004, meeting for use at the community budget meetings.

Councilmember Sherman commented that overall the material is well done. However, he offered the following suggested changes:

City Currents: Page 4 under "How would the proposed property tax levy increase affect me?"

Explain Des Moines levy rate is only Des Moines' portion and that nearly 50% is for education.

City Currents: Page 6 under "What efforts have been made already to identify potential savings and increase City revenues?"

2nd paragraph, last sentence insert "will" between 'experts' and 'identify'.

3rd paragraph, 3rd sentence should read: The Zoning Code "will be reviewed" - instead of 'is being streamlined'.

3rd paragraph, 4th sentence should read: A new economic development "will be developed" - instead of 'is being written'.

3rd paragraph, 6th sentence should read: . . . "may help solve some of" - instead of 'can solve'.

City Currents: Page 8, Budget Opinion Survey.

Objects to section "I will support" or "I will not vote for"

Mayor Pro Tem Thomason commented that the Budget Opinion Survey proposed for the City Currents is not meaningful.

Councilmember White felt that the Budget Opinion Survey is not a good approach. Would prefer to encourage and invite citizens to write or e-mail comments, or attend meetings and verbally respond.

It was general Council consensus to leave the Opinion Survey out of the issue.

Councilmember Benjamin felt that the proposed City Currents issue is basically a pro statement to tell voters to vote to raise taxes. He felt that this a conflict of interest in trying to get the voters to pay for the mistakes of the Council. He is of the opinion that the priorities to reduce the City's budget have been neglected. He stated that this is campaign literature, at tax payers expense, to raise their own taxes.

Assistant City Attorney Brown advised Council that the proposed City Currents issue is not illegal. It is important that it be factual and not be slanted. He noted that he has reviewed the submitted material and found everything to be factual.

Councilmember Sherman expressed agreement with Assistant City Attorney Brown. He noted that Councilmember Benjamin has publicly taken a stand against the Levy Lid Lift and distributed a flyer with false figures.

Mayor Sheckler noted that while Councilmember Benjamin is criticizing the City for what he terms campaign literature, Mr. Benjamin has done so himself with incorrect figures.

Councilmember Benjamin acknowledged that his flyer did contain inaccuracies which he did not discover until after the fact, but he has since corrected the information. He stated however that the real issue is that taxes are being raised without Council being accountable for what needed to be done three years ago. He advised that the literature was paid for at his own expense or through donations. He feels that Council has done nothing to control spending. Council needs to develop a plan to address the core problems. He felt that the City Manager and Department Directors can prioritize department cuts so that Council can make the necessary decisions to reduce costs. He welcomed the opportunity to inform the public tonight of his earlier errors and acknowledges that the levy lid lift would be a 26% increase in property taxes, he also noted that he reported this error to the PDC. He pointed out that his mistake did not cost the City any money, unlike the \$6 million spent fighting the 3rd Runway. He felt that this \$6 million is a big part of the reason for the City's budget shortfall today.

Councilmember Sherman advised that the City is not in its current budget condition because of expenditures to fight the 3rd runway as this was funded through a utility tax.

Councilmember Benjamin pointed out that the utility tax went from 4% to 6% to be used for the fight against the 3rd runway. If the money is not being used to fight the 3rd runway, it should be given back to the taxpayers. However, he felt citizens are confused as to how money is being spent.

Mayor Sheckler questioned Councilmember Benjamin whether he supports cutting the utility tax by 2%.

Councilmember Benjamin stated that he wants voters to vote against the Levy Lid Lift to force the City to live within its means. He felt that Council has ignored budget problems for two years and has been using "rainy day" funds and State "bridge gap" money instead of making appropriate budget cuts. In regards to cutting the utility tax, he advised that he is unsure of his position at this time.

Mayor Pro Tem Thomasson noted that he has supported budget cuts in the past and acknowledged that the City has used rainy day and bridge gap funds in the hopes that the State would step in and save us. He agrees that budget cuts are needed as even if the levy lid lift passes it will not protect everything, but is an alternative to having to cut everything. He feels the proposed City Currents issue is not telling people to vote yes, but explains the choice of choosing to tax themselves. He noted that Council will still have to prioritize cuts whether the proposition passes or not.

Councilmember Sherman commented that he believes the proposed City Currents is an accurate, enlightening document to help citizens be informed.

Councilmember Steenrod expressed concern that Council is soliciting comments from the public on how to prioritize budget issues. She suggested that this discussion be held closer to September at a regular meeting. She felt citizens can e-mail, write or attend a Council meeting and give Council their priorities then. She does not feel that holding community budget meetings is for the goal to educate citizens, but rather to campaign to make sure the Levy Lid Lift passes.

City Attorney Marousek reminded Council that Assistant City Attorney Brown distributed a memo last week to staff and Council concerning the use of public facilities on initiative, referendum or any kind of campaign. She advised that cities are allowed to provide factual, accurate information to the public concerning ballot issues and Council's are required to have budget hearings to listen to the citizens.

Councilmember Steenrod questioned who will be representing the opposing view at the neighborhood meetings, as she feels this is a thinly disguised way for the City to solicit votes.

City Manager Piasecki advised that the intent of the neighborhood meetings is to present the same type of presentation that was given to Council regarding the budget situation and all the various options that are available. He noted that the revised budget presentation that is contained in Council's packet shows the material that staff proposes to give at the meetings and then open the floor to allow the citizens to ask questions, make comments or offer suggestions.

Assistant City Attorney Brown encouraged Councilmembers to review his memo regarding using public facilities for campaigning. He pointed out in particular that it is illegal for employees or City officials to use City resources or City time to campaign. However, there is no prohibition against an employee or official to take a position on an issue as long as it is on their own time and it is made clear that it is not a City position.

In regards to the Community Budget Meetings presentation on page 19, Councilmember Steenrod questioned who made the decision that these specific parks as listed would be closed.

City Manager Piasecki advised that these parks are the 20% recommendation from the Park Director.

Councilmember Steenrod felt that the listed parks would impact the low and mid income citizens hard and strongly recommended that any closure of parks would be determined by Council.

City Manager Piasecki noted the intention was to provide an example of what could happen and that the final decisions have yet to be made. He noted that there are other options available to Council than those that were suggested by the Department Directors.

Mayor Sheckler suggested that rather than listing parks by name, a number could be used instead.

Councilmember Steenrod requested that more verbs need to be used in the presentation material such as possible, suggested, optional, etc.

Councilmember Benjamin remarked that the budget presentation is rather scary. He felt citizens will pay for services that are really needed, but that is not part of this presentation. He questioned whether departments have listed services by priority.

City Manager Piasecki advised that the departments have prepared budgets showing what will be cut at the 5, 10, 15 and 20 percent levels, which also lists which services will no longer be provided at each level.

Councilmember Benjamin requested that specific services be listed that the passage of the Levy Lid Lift would preserve.

Councilmember White remarked that Council was in agreement at the June retreat, to get information out to the public to educate them as to why this issue is on the ballot.

Mayor Pro Tem Thomasson noted that without the passage of the proposition, he would guess that the City Manager will prepare recommendations for cuts at the 20% level to balance the budget. He advised that Council will make the final decisions. He felt the proposed budget presentation for the public meetings presents a realistic package of options for the citizens to consider in making a decision on the ballot issue.

Mayor Sheckler informed Council that this material must be ready by end of next week and encouraged Councilmembers to contact the City Manager for any further comments.

Upon questioning by Councilmember Petersen, City Manager Piasecki advised that the Levy Lid Lift measure will only require a simple majority of those who vote.

ACC - Policy Issues Decisions

Due to meeting time about to expire, Councilmember Steenrod requested this item be moved to the next meeting date.

NEXT MEETING DATE

Mayor Sheckler announced the next regular meeting will be August 12, 2004.

ADJOURNMENT

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

Respectfully submitted,

Denis Staab
City Clerk