

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 23, 2003

The regular meeting of the Des Moines City Council was called to order at 7:37 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 Councilmember Sheckler.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, and Scott Thomasson. Absent: Councilmember Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Public Works Director Tim Heydon, Finance Director Paula Henderson, Finance Manager Peggy Watson, and Deputy City Clerk Angela Chaufy.

MOTION was made by Councilmember Sherman, seconded by Councilmember Petersen, and passed unanimously to excuse Councilmember White from attendance.

COMMENTS FROM THE PUBLIC

Judy Grande, 21018 4th Avenue South

As a parent of children who attend Des Moines Elementary School, Ms. Grande asked Council to consider other possible locations for the cell tower as the long term effects of the towers were still unknown.

BOARD & COMMITTEE REPORTS

SR-509 Project Funding

Councilmember Sherman reported that 5% of the SR-509 project would be funded through the gas tax while the remainder of the funds would be secured through the formation of a Regional Transportation Improvement District. Despite formerly entering into an agreement stating that 24th Avenue South and 28th Avenue South should not be used as south access for the airport, the Port of Seattle has now indicated that they do not support a south access road but wish to use the two streets for that purpose. Councilmember Sherman asked Council to direct Administration to send a letter to King County stating the City's objection to the removal of the south access road from the SR-509 project due to anticipated significant traffic impacts to 24th Avenue South and 28th Avenue South.

Council concurred.

Councilmember Petersen said that the Port of Seattle should be held to its 1999 agreement.

Mount Rainier Pool

Councilmember Sherman asked citizens who are interested in his opinion concerning the Mount Rainier Pool to question him directly. He informed Council that Highline YMCA planned to construct a full-service facility, including a regional pool, in SeaTac within three to five and one half years. Councilmember Sherman said that he had discussed the Mount Rainier pool issue with City Manager Tony Piasecki, King County Councilmember Patterson's Assistant Karen

Freeman and concerned citizen Julie Mitchell. Councilmember Sherman voiced concern that the City Council had not been provided the opportunity to lobby for earlier agreement between King County and the Highline School District; thus, keeping the pool title issue unresolved. Councilmember Sherman said that he was also concerned that the City Council representative to the Ad Hoc Pool Committee had antagonized a King County Councilmember Representative by evicting her from a meeting after she had provided information regarding a federal grant.

Mayor Pro Tem Benjamin recounted the pool committee's formation. A coalition between the cities of Normandy Park, SeaTac, and Des Moines and the Highline School District had been formed to study the issue and formulate solutions. Mayor Pro Tem Benjamin said that he insisted that Julie Mitchell be appointed to the pool committee. Since joining the group, she has been a driving force behind the committee. Mayor Pro Tem Benjamin reported that the committee had collected over \$30,000 of private donations to keep the pool open. He stated that he had made a motion for the City's share of the proceeds collected from the Waterland Beer Garden to be allocated to the pool fund. Mayor Pro Tem Benjamin said that there was no other attempt of any other Councilmember, on the record, working to keep the pool open.

MOTION was made by Mayor Pro Tem Benjamin and seconded by Councilmember Petersen to direct the City Manager to draft an interlocal agreement between Des Moines, Normandy Park, SeaTac, King County and the Highline School District to make possible for the cities of Des Moines, Normandy Park and SeaTac to adopt an operating agreement and to assume joint ownership of the Mount Rainier Pool.

Prior to voting on an agreement, Councilmember Sherman asked for information regarding

1. The potential risks to the city,
2. The potential capital expenses,
3. The current position of the other cities concerning an interlocal agreement,
4. The timeline for YMCA facility construction, and
5. The possibility of eventually returning the pool to the County.

Upon questioning from Councilmember Sheckler, City Manager Piasecki informed Council that staff from Des Moines, SeaTac, Normandy Park and Highline School District has been working to develop an interlocal agreement regarding joint ownership of the pool. The document would include capital, maintenance, and financial provisions. No document had been presented to any of the legislative bodies yet. He confirmed that SeaTac and YMCA had reached agreement concerning the lease of property for the YMCA facility. In regard to keeping the pool open through the end of 2003, City Manager Piasecki said that the City would need approximately an additional \$4,000.

Councilmember Thomasson said that the interlocal agreement should discuss the exit strategy, identify who would operate the pool, and name the owner of the pool.

Mayor Steenrod said that the Ad Hoc Committee was studying a three-year agreement with two one-year options. She identified title to the pool as the key issue before the cities. She asked the Assistant City Attorney to research potential liability issues for the City if Des Moines took ownership of the pool.

City Manager Piasecki explained that as Washington Cities Insurance premiums were based upon history and the number of worker hours, there would be no initial impact from owning the pool. He noted that the contractor would also be required to maintain a specified level of insurance. The Ad Hoc Committee would meet October 27, 2003 to further discuss the subject.

Councilmember Sherman asked staff to confirm that if the City was given title to the Pool, it could return it to the County at no risk.

Mayor Pro Tem Benjamin stated that it was premature for Northwest Center to sign an agreement until they had reviewed the document signed by King County and the Highline School District.

City Manager Piasecki informed Council that Normandy Park had indicated that they were willing to be a joint owner of the pool. Northwest Center and Aquatics Management Group had submitted proposals for operation of the pool.

City Attorney Marousek confirmed that the City had followed the proper procedures for soliciting bids as it was a request for professional services.

VOTE ON MOTION: Motion passed unanimously.

Councilmember Sheckler recounted the history of the Mount Rainier Pool. He stated that he had made a motion at the August 1, 2002 Council meeting to form a committee to study possible solutions. Councilmember Sheckler said that he was in complete support of the Mount Rainier Pool.

PRESIDING OFFICER'S REPORT

Waterland Festival Beer Garden Proceeds

Mayor Steenrod announced that the Chamber of Commerce had given the City \$1,677 for their share of the proceeds from the Beer Garden. She questioned whether the City owed any money to the Chamber of Commerce.

Municipal Facilities Committee

Mayor Steenrod said that the Municipal Facilities Committee would continue to discuss the dry stack project and Marina Master Plan.

Human Services Grants

Mayor Steenrod read a letter regarding the "Reinvesting In Youth" project. The letter said that the program had received broad support which resulted in more than 800 local and national grant and foundation commitments for 2004. The City of Des Moines had donated \$2,800 to the program. Two hundred twenty four families would receive intervention annually through this program. Mayor Steenrod also read an excerpt from a Northwest Catholic Progress' article regarding Intercommunity Mercy Housing. The program was opening two housing facilities. Mayor Steenrod encouraged Council to assist programs with seed money. She said that seed money could provide support for the community.

ADMINISTRATION REPORTS

Chief of Police

City Manager Piasecki announced that Roger Baker, current Police Chief in Anaheim, CA, had been hired to serve as Des Moines' Chief of Police. He will begin employment after the first of the year.

Rainfall Clean-up Report

City Manager Piasecki reported that Public Works and Park Maintenance crews had been very busy responding to the record amount of rainfall received on Monday, October 20, 2003. City streets and surface water management facilities experienced little damage. The Des Moines Beach Park's dining hall, however, experienced settling damage while the shelter and restrooms experienced structural damage.

Political Sign Removal

City Manager Piasecki announced that the Street crew's political sign removal log had been distributed to Council. Anyone wishing to obtain a copy of the log should contact the City Manager's office.

SB-150: Internet Tax Non-Discrimination Act

City Manager Piasecki said that he had drafted a letter to Senators Murray and Cantwell asking them to oppose SB-150. As currently written, the bill posed a threat to the local governments' ability to apply local utility taxes to telecommunication services and to impose franchise fees in exchange for commercial use of public rights-of-way. If approved, he said the City could experience an annual loss of approximately \$1,500,000.

Council concurred that the Mayor should sign the letter.

At 8:33 p.m., Councilmember Sheckler left the Council Chambers.

CONSENT CALENDAR was read by Deputy City Clerk Chaufly.

1. Motion is to approve the minutes from the special and regular meetings of October 2, 2003 and the regular meeting of October 9, 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 #91369 through #91531 & electronic fund transfers in the total amount of \$1,066,489.64

Payroll fund transfers in the total amount of \$338,277.64

3. Motion is to approve the Agreement for Professional Services with Prosecutor Susan Mahoney and to direct the City Manager to execute said agreement, substantially in the form as attached.

4. Motion is to approve the agreement with Association of Washington Cities to enroll and participate in the Workers' Compensation Group Retro Program and authorize the City Manager to sign the agreement, substantially in the form as submitted.

Mayor Steenrod removed Item Nos. 3 and 4.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin, and passed, 5 – 0, to approve the consent calendar as amended. (*Editor's Note: Councilmember Sheckler was not present to participate in the vote.*)

At 8:36 p.m., Councilmember Sheckler returned to the Council Chambers.

REMOVED CONSENT CALENDAR ITEMS

Agreement for Professional Services – Prosecuting Attorney Susan Mahoney

In regard to Page 2, Section 6 of the proposed agreement, Mayor Steenrod questioned why the City would agree to defend, indemnify and hold harmless the Contractor, her agents and her employees from any and all claims, injuries, damages, losses, suits or actions arising out of the performance of her official duties as municipal court prosecutor while Councilmembers were not provided the same protection.

City Attorney Marousek said that the agreement would provide the same protection afforded to any employee of the City Attorney's office.

Prosecutor Mahoney informed Council that Supreme Court law granted prosecutors acting in their capacity as prosecutors immunity to lawsuits. Prosecutors who acted negligently were responsible for any resulting costs. Ms. Mahoney informed Council that she carried negligence insurance to cover this situation.

City Attorney Marousek said that a City Councilmember was not immune to the same level as a prosecutor.

Councilmember Thomasson said that legal defense of Council was established through a City ordinance. Council could revise the ordinance if they wished to change the standard.

Mayor Steenrod asked Council to discuss the level of protection provided to elected officials at a study session.

City Manager Piasecki said the topic could be discussed at the December 1, 2003 study session.

MOTION was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin, and passed unanimously to approve the agreement for Professional Services with Prosecutor Susan Mahoney and to direct the City Manager to execute said agreement, substantially in the form as attached.

Agreement with Association of Washington Cities for Workers' Compensation Group Retro Program

Mayor Steenrod asked for a briefing on the subject.

City Manager Piasecki introduced Paul Chasco, Assistant Director for Insurance Services at Association of Washington Cities (AWC).

Mr. Chasco explained that the State of Washington Department of Labor and Industries (L&I) allowed cities to pool their premiums and experience ratings. For the years that the premiums paid exceeded the claim costs incurred, premium refunds would be returned to AWC for distribution to the cities. Mr. Chasco informed Council that the 6.5% administration fee would

first be returned to all participating cities, and then those cities that experienced a positive year would receive an additional refund. The Retro Program would also provide claims management services and a strict safety program. Mr. Chasco said that the 6.5% administration fee was divided in the following manner:

- 4% - Claims administration
- 1% - Loss control services
- 1.5% - Association of Washington Cities administration

MOTION was made by Councilmember Sheckler and seconded by Councilmember Sherman to approve the agreement with Association of Washington Cities to enroll and participate in the Workers' Compensation Group Retro Program and authorize the City Manager to sign the contract, substantially in the form as submitted.

Upon questioning from Councilmember Thomasson, Mr. Chasco confirmed that, by law, members of a Retro Pool must re-enroll each year. In response to Councilmember Petersen's question, Mr. Chasco explained that cities were not eligible to individually form an L&I Retro Pool. He confirmed that each participating city would still individually pay their premiums. The goal of the program was for each city to obtain an experience rating of .75 or less through loss control measures.

City Manager Piasecki noted that, without participation in the Retro Program, the city would not be eligible to receive any refund on their premium nor would it be eligible for the loss control services, (i.e. - a site visit, injury reduction and safety suggestions, claims administration services). City Manager Piasecki said that staff could provide a status report of the Retro Program next year to Council.

VOTE ON MOTION: Motion passed, 4 – 2, with Mayor Steenrod and Councilmember Petersen opposed.

At 9:00 p.m., Mayor Steenrod declared a fifteen-minute break.

OLD BUSINESS

Draft Resolution No. 03-275 [Assigned Res. No. 965] - Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan

Public Works Director Heydon reminded Council that Highline Water District representatives had presented their Draft Comprehensive Water System Plan to Council on September 5, 2002. The District Commissioners had now officially accepted the plan and it was being presented to Council for official action. Public Works Director Heydon recommended approval of the Plan. He said it was a good plan and Highline Water District had a history of fulfilling their comprehensive plans.

Councilmember Thomasson suggested that expiration language be added to the resolution.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, and passed unanimously to approve Draft Resolution No. 03-275 approving the Highline Water District 2002 Comprehensive Water System Plan with the insertion of a sentence stating the

approval was valid until the Washington State Department of Health and King County's approval expired.

EXECUTIVE SESSION

At 9:25 p.m., Mayor Steenrod announced that the Council would hold an Executive Session for approximately ten minutes.

City Attorney Marousek explained that the purpose of the executive session was to discuss with legal counsel representing the City litigation or potential litigation to which the City was or was likely to become a party and about which public knowledge regarding the discussion was likely to result in an adverse legal or financial consequence to the City.

No formal action was taken.

At 9:40 p.m., Council reconvened in open session.

Cingular Lease

Councilmember Sherman said that the Cingular Lease had been presented to Council twice before its approval. No speakers had provided comments regarding the lease prior to its approval. During Council's first review of the issue, Councilmember Sherman said that Councilmember Thomasson had asked for a revision to the term length. During its second reading, Councilmember Thomasson was not present and the lease had been approved without any revision. Councilmember Sherman stated that the Telecommunication Act did not allow cities to consider health concerns when considering cell tower issues. Councilmember Sherman asked that Council reconsider the lease on the basis of financial concerns. He said that he had heard that children would be removed from Des Moines Elementary School and people would not participate in the recreation programs if the cell tower were to be constructed at the Field House. These situations would financially impact the city.

Councilmember Thomasson said that he was disappointed that the lease had been approved without a termination clause. As the lease had been signed, it was difficult to rescind it now. He noted that Cingular had threatened a lawsuit. Councilmember Thomasson suggested that Council amend the City's Telecommunication Code to clarify that Council was not interested in leasing City property for this purpose.

Mayor Pro Tem Benjamin expressed frustration that real concerns could not be mentioned while discussing the issue. He noted that cell towers were installed throughout the area due to the demand for their services. He apologized for voting for the lease and said that he had been unaware of the associated health concerns. Mayor Pro Tem Benjamin hoped that a conducive relationship could be established between Cingular and its neighbors (i.e. – residents, Des Moines Elementary attendees and Field House program participants).

MOTION as made by Councilmember Sherman and seconded by Councilmember Sheckler to conduct discussions with Cingular regarding mitigation of potential negative financial impacts due to the tower.

City Attorney Marousek informed Council that the Hearing Examiner would apply the City code under the provisions of the conditional use permit process.

Mayor Pro Tem Benjamin questioned whether other available sites could be studied without threatening litigation.

City Attorney Marousek read a section of a letter from Cingular Attorney Richard Busch stating Cingular's position that they had no reason to negotiate with the City. She also said that Cingular engineers had researched other potential facilities to determine whether the services to the downtown area could feasibly be provided from a different location. The search had been unsuccessful.

Councilmember Sheckler withdrew his second of the motion.

MOTION was made by Councilmember Thomasson and seconded by Mayor Pro Tem Benjamin to direct administration and staff to recommend denial to the Hearing Examiner using every conceivable legal argument, including Councilmember Sherman's argument.

City Attorney Marousek clarified that staff needed to base their arguments on the Municipal Code.

Councilmember Thomasson and Mayor Pro Tem Benjamin **accepted** "in as much as it applies to the City Code and federal law" **as a friendly amendment** to their previous motion.

VOTE ON MOTION: Motion passed, 5 – 1, with Mayor Steenrod opposed.

Upon questioning from City Attorney Marousek, Council concurred that staff should present a "good faith argument".

NEW BUSINESS

Agreement With Net Assets Corp. for Conduits Service

Finance Manager Watson informed Council that the proposed agreement would allow the City to provide lien and other real property information via the Internet to title companies and others who were interested in accessing this information. The service streamlined the title search process through self-service, calculation of payoffs, and speedy response times. She informed Council that she had contacted thirteen cities and three title companies that currently used the service. All enthusiastically endorsed the program. Finance Manager Watson informed Council that the cost of the program to the City would be recovered through the fee charged to the title companies for accessing the information. In response to Councilmember Sheckler's questioning, Finance Manager Watson confirmed that the title companies would still perform title searches while the City would be responsible for maintaining the database.

Mayor Steenrod expressed concern that the access fee would be passed on to the consumer.

Finance Manager Watson said that Chicago Title, Stewart Title, and Pacific Northwest Title had indicated that they had not increased their fees with one exception. One title company reported that they increased the service fee for Lake Oswego, OR as the fee charged by that city was \$58. The title companies had used Net Assets Corp.'s services for approximately three and one half years.

Mayor Steenrod said that she did not believe the service should be used as a revenue generator for the City. She suggested that the City charge a set percentage over the actual cost to the City. She felt it was wrong to just charge \$25. She reiterated that she did not want the fee passed on to the consumer. Mayor Steenrod questioned whether the purpose of the service was to provide a service to the consumer or to create a revenue source for the City.

Councilmember Sheckler suggested that the City notify participating title companies of Council's concern regarding any fee increase due to using the service. He recommended that the City ask the title companies to notify them if an additional fee would be charged.

City Attorney Marousek noted that the proposed agreement would allow the City to terminate the agreement with 45 days notification.

MOTION was made by Councilmember Sheckler and seconded by Mayor Pro Tem Benjamin to approve the agreement with Net Assets Corporation for Conduits Service for Internet property title searches and to authorize the City Manager to sign the agreement, substantially in the form as submitted.

In response to Councilmember Thomasson's questioning, Assistant City Attorney Brown explained that the City was not legally required to file a lien with the County. He said that the City would be liable for failing to enter information into the database.

Mayor Steenrod asked that staff perform an analysis of the city's expenditures associated with the program, including staff time and postage, to ensure the fee was accurate.

VOTE ON MOTION: Motion passed, 5 – 1, with Councilmember Thomasson opposed.

AGENDA REVISION

Council agreed to discuss the remaining items of business at the October 30, 2003 meeting. The start time of the meeting was changed to 6:00 p.m. Council stated its intent to conduct the continued public hearing for Zenith Viewpointe after 7:30 p.m.

NEXT MEETING DATE – Regular Meeting, October 30, 2003, 6:00 p.m.

ADJOURNMENT

The meeting expired at 10:30 p.m.

Respectfully submitted,

Angela M. Chafty
Deputy City Clerk

ACTION ITEM FROM 10/30/03 MEETING

- Draft a letter to King County stating the City's objection to the removal of the south access road from the SR-509 project.

- Draft an interlocal agreement between the Normandy Park, SeaTac, Des Moines, King County and the Highline School District to make possible for the cities of Des Moines, Normandy Park and SeaTac to adopt an operating agreement and to assume joint ownership of the Mount Rainier Pool.
- Schedule discussion of Council indemnity for the December 1, 2003 study session.
- Recommend denial of the Cingular lease to the Hearing Examiner using every conceivable legal in as much as it applies to the City Code and federal law, including Councilmember Sherman's arguments.