REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES November 9, 2000

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

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

ROLL CALL – Present: Mayor Scott Thomasson, Mayor Pro Tem Bob Sheckler, Councilmembers Terry Brazil, Dave Kaplan, Dan Sherman, Gary Towe and Don Wasson. Also present were City Manager Bob Olander, Assistant City Manager Tony Piasecki, City Attorney Gary McLean, Finance Director Scott McCarty, Budget Accountant Peggy Watson, and Deputy City Clerk Angela Chaufty.

ADMINISTRATION REPORTS

Executive Session

City Manager Olander requested that Council meet in executive session at the end of the meeting to discuss potential litigation.

High Speed Chase

City Manager Olander announced that the Kent Police Department had been involved in a high speed chase which traveled through Des Moines. He said that Des Moines Police Officers were involved only peripherally in the police activity.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the minutes of October 19 and 26, 2000.

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 42.24.080, 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 check #73805 through #73962 in the total amount of $567,499.59
Payroll fund transfers in the total amount of $292,774.84

3. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of November 23, 2000 through December 28, 2000:

a. All vouchers for payment of payroll checks, including Marina payroll, and

b. All vouchers for payment of claims and Marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented at the January 11, 2001 meeting.

4. Motion is to approve the Interlocal Agreement, Airport Communities Coalition, January 1, 2001 through December 31, 2001, and to authorize the City Manager to sign the agreement substantially in the form as submitted.

5. Draft Ordinance No. 00-235 ***[Assigned Ord. No. 1274]*** - Title: An Ordinance of the City of Des Moines, Washington amending Ordinance No. 844 to extend through February 28, 2001 the non-exclusive franchise currently held by AT & T through Ordinance No. 844, adopted on April 12, 1990, to construct, install and operate, repair, replace and maintain lines, wires, coaxial cable

and appurtenances for originating, receiving, distributing and supplying radio, television and other cable communications services along, across and upon public streets, ways, alleys, and places within the City of Des Moines.

TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 00-235.

6. Motion is to confirm appointments by Mayor Thomasson as follows: Mark Proulx to the Planning Agency for a 4 year term beginning January 1, 2001; Douglas Rutherford, Joan Kennedy and Marsha Kauzlarich to the Library Board for a 3 year term beginning January 1, 2001.

MOTION was made by Councilmember Sherman, seconded by Councilmember Brazil, and passed unanimously to approve the consent calendar as read.

PUBLIC HEARING

Draft Resolution No. 00-234 ***[Assigned Res. No. 897]*** - Adult Use Moratorium

City Attorney McLean introduced the subject. He stated that RCW 34A.63.220 and RCW 36.70.390 required Council to conduct a public hearing and adopt findings of fact regarding the moratorium on adult entertainment uses which was adopted by Ordinance No. 1272 at the September 21, 2000 meeting. He asked that Council hold all legal questions regarding the issue for the executive session. City Attorney McLean distributed a list of reference materials available for Council's review and the proposed work plan schedule. He noted that three Planning Agency meetings had been scheduled to study the issue in addition to four or five Council meetings.

City Attorney McLean questioned whether anyone in the audience wished to address Council on this issue.

None responded.

Mayor Thomasson opened the public hearing and called for speakers.

None responded.

Mayor Thomasson closed the public hearing.

MOTION was made by Councilmember Kaplan and seconded by Councilmember Sherman to approve Draft Resolution No. 00-234, adopting findings of fact and continuing a moratorium established by Ordinance No. 1272 on the acceptance of applications for and issuance of zoning, land use, building and development permits, business licenses, or any other City approvals related in any way to adult entertainment or adult retail businesses and/or uses in the City of Des Moines.

Upon questioning from Councilmember Towe, City Attorney McLean said that he will continue to collect the legislative record from recent proceedings.

Councilmember Towe asked that staff identify common themes and findings in the records. He suggested that the Planning Agency and Council conduct a joint meeting to discuss guidelines and Council's key points.

VOTE ON MOTION: Motion passed unanimously.

NEW BUSINESS

Draft Ordinance No. 00-205 ***[Assigned Ord. No. 1275]*** - Updating Des Moines Municipal Code Title 20, Telecommunications

Assistant City Manager Piasecki introduced the subject. He noted that the City Council Ad Hoc Committee had reviewed DMMC 5.52 and Title 20 to determine if any changes were needed to bring the code up-to-date with federal and state law and to eliminate redundancies and conflicts. He reviewed the following recommendations of the committee:

- Move Chapter 5.52 into Title 20;
- Update the definition section of Title 20;
- Resolve redundancies of the Code;
- Adopt specific standards for cable construction in the rights-of-way and non-transferable franchise.

Assistant City Manager Piasecki recommended the following revisions to Draft Ordinance No. 00-205:

- Section 2.3 - Insert "or renewal of franchise" after the word "franchise".
- Section 2.10 - Require a monthly rather than quarterly franchise fee due on the 15th day after the end of the month.
- Section 2.20 - Add sexual orientation as a listed class.

In response to Councilmember Towe's question, Assistant City Manager Piasecki explained that the current cable franchise required fiberoptic upgrades to be completed within 24 months of certain "trigger" events. He noted that the first event occurred in July, 1999. He said that the adoption of the draft ordinance would allow Council to consider past performance and quality when establishing or renewing a cable franchise. Assistant City Manager Piasecki also noted that Section 2.15 required an annual written report and presentation to Council.

Rather than list specific classes, Mayor Thomasson recommended that Section 2.20 of the draft ordinance only state that the franchisee must follow all applicable federal and state laws.

City Attorney McLean said that the non-discrimination language was a policy issue for Council. He said that specific language was more helpful than general language.

Mayor Thomasson questioned whether Section 2.23 regarding continuity of service gives an expectation of responsibility to the City.

Assistant City Manager Piasecki noted that the language provided the City with options if a franchisee failed to operate a Cable Television System or other video system for 72 continuous hours.

Cable Consultant Lon Heard explained that the language was typical for franchise agreements. He said that the clause could eventually become obsolete as customers were provided with a choice of service providers.

In regard to Section 2.20, Mayor Thomasson noted that the existing code contained within DMMC 5.52 did not cover hiring practices.

Upon questioning, Mr. Heard said that he was uncertain whether the Federal Cable Act listed sexual orientation in its non-discrimination clause.

Assistant City Manager Piasecki explained that a financial penalty for lack of performance was contained within Title 20 and would also be included in the actual franchise agreement.

Councilmember Sherman requested statistics regarding the number of homes receiving cable service only, satellite service only, and both cable and satellite services.

Mr. Herd said that approximately 70% of all households in the City subscribed to AT&T Cable Services.

In regard to Section 2.6, Mayor Thomasson said that the Rights-of-way Code stated that no new wires could be installed overhead.

City Manager Olander said that the issue was a policy decision for Council. He noted that requiring the undergrounding of all new cable facilities could create a de facto monopoly due to the expense of compliance for any new franchisee.

Councilmember Towe suggested that Council evaluate the policy issue once a specific proposal was submitted to Council.

City Attorney McLean noted that Council could choose to differentiate between cable and utility facilities.

Councilmember Kaplan felt that allowing new overhead cable facilities would encourage competition.

MOTION was made by Councilmember Sherman, seconded by Councilmember Kaplan and passed unanimously to waive City Council Rule 26(b) to allow Draft Ordinance No. 00-205 to be approved on the first reading.

MOTION was made by Councilmember Sherman and seconded by Councilmember Kaplan to approve Draft Ordinance No.00-205 as recommended, amending Title 20 of the Des Moines Municipal Code to incorporate cable television elements.

Mayor Thomasson read the title of the draft ordinance into the record.

MOTION was made by Mayor Thomasson and seconded by Councilmember Wasson to amend Section 20 by deleting all of the entire first paragraph except for the last sentence.

Mayor Thomasson noted that the proposed language went beyond the scope of the State's discrimination language. As the Federal Cable Act likely referred to sexual orientation, he felt that the last sentence of Section 20, Paragraph 1, was sufficient.

If specific language was preferred, Councilmember Wasson questioned why every law that applied to the draft ordinance was not included.

Councilmember Kaplan felt that it was important to recognize that people were discriminated against for various reasons.

VOTE ON MOTION: Motion failed, 3 - 4, with Mayor Thomasson and Councilmembers Brazil and Wasson voting in favor of the motion.

Mayor Thomasson announced that he would vote against the draft ordinance due to the unresolved street code issue and the non-discrimination clause.

Councilmember Sherman stated his understanding that the street standards applied to everything but cable facilities.

VOTE ON MOTION: Motion passed, 6 - 1, with Mayor Thomasson opposed.

At 9:10 p.m., Mayor Thomasson declared a ten-minute break.

NEW BUSINESS

Year 2001 Budget Policy Issues

Finance Director McCarty asked Council for direction regarding the 2001 property tax increase, the creation of a two-officer traffic unit, and the allocation of fund balances and reserves. He proposed a 3% property tax increase which would result in an additional $93,000 for the City. He noted that the Association of Washington Cities and various municipal attorneys had advised that Initiative 722 would be declared unconstitutional. He explained that the implicit price deflator (IPD) was set at 2.61% for 2001.

City Manager Olander explained Initiative 722's formula for determining the maximum levy rate.

Councilmembers Towe and Kaplan recommended that Council adopt a 2.61% property tax increase.

Mayor Thomasson, Mayor Pro Tem Sheckler, and Councilmember Sherman supported a 3% increase.

Councilmembers Wasson and Brazil questioned whether any increase was needed.

City Manager Olander explained that the City receives only 11 - 13% of the overall property tax. He recommended that Council not rollback any on-going revenue sources nor increase any on-going expenditures until the impacts of Initiative 722 were known.

Council reached general consensus to set the property tax increase at 2.61%.

In regard to the two-officer traffic unit, Finance Director McCarty projected the first two years' annual revenues to average $485,000 while its expenditures averaged $450,000.

City Attorney McLean said that the traffic unit would address a public safety issue as the number of accidents and injuries in the City generated its formation.

Mayor Thomasson preferred for the increase in the ratio of police officers to population to be tied to City growth.

Council reached general consensus to create the two-person traffic unit with Mayor Thomasson and Councilmember Kaplan opposed.

Mayor Thomasson asked that the Budget document that the two-person traffic unit must be a self-supporting program.

Finance Director McCarty projected the 2001 Ending Fund Balance and Revenue Stabilization Fund Balance to total $1,647,205. He recommended that Council:

- Use $841,385 to fully fund the 7% operating reserve;
- Use $338,922 to fully fund Revenue Stabilization at $1,400,000;
- Save $400,000; and
- Maintain an available balance of $66,898.

City Manager Olander expressed concern that the recent passage of Initiative Nos. 732 and 728 would limit the flexibility of the State to fund Initiative 695 impacts. He noted that the projected balance included one-time money sources.

Councilmember Kaplan suggested that Council eliminate the internal loan and retain money in the Revenue Stabilization fund.

Mayor Thomasson recommended that the $400,000 be used to pay off external debt in order to avoid further interest payments.

Finance Director McCarty said that the earnings on the money were higher than the interest paid for the loan.

City Manager Olander suggested that staff bring the issue back to Council after the Legislature determined how much Initiative 695 replacement money Des Moines would receive.

Council concurred.

EXECUTIVE SESSION

At 10:06 p.m., Mayor Thomasson announced that Council would convene in Executive Session for approximately fifteen minutes to discuss potential litigation.

At 10:29 p.m., the Council reconvened in open session.

At 10:29 p.m., **motion** was made by Mayor Pro Tem Sheckler, seconded by Councilmember Kaplan, and passed unanimously to extend the meeting ten minutes.

MOTION was made by Mayor Pro Tem Sheckler and seconded by Councilmember Kaplan to authorize and direct the City Attorney to file and pursue legal actions on behalf of the City of Des Moines to seek injunctive, declaratory and other appropriate relief based upon constitutional issues posed by Initiative 722.

Councilmember Towe spoke in opposition to the motion as he did not support taking legal action against a citizen approved initiative. He felt that Initiative 722 was not a good initiative but said that the issue should have been dealt with in public session to educate Council and the public. As a suit was already being filed against the initiative, Councilmember Towe questioned why the City had to join the lawsuit.

Councilmember Sherman noted that the City was also seeking injunctive relief until a decision had been made in the case. He noted that Initiative 722 would harm Des Moines taxpayers since it would increase the tax burden to communities with slower growing assessed values, while decreasing property taxes in areas of high growth and demand such as the Eastside.

Councilmember Kaplan said that Initiative 722 further burdened the residents of Des Moines as the City had experienced slower growth in terms of assessed value. He felt that Council must be attentive and responsive to the needs of their residents.

VOTE ON MOTION: Motion passed, 5 - 2, with Councilmembers Towe and Wasson opposed.

NEXT MEETING DATE - November 16, 2000

ADJOURNMENT

The meeting adjourned at 10:39 p.m.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk