

REGULAR MEETING OF THE DES MOINES CITY COUNCIL

MINUTES

November 20, 1997

The regular meeting of the Des Moines City Council was called to order by Mayor Thomasson at 7:00 p.m. in the Council Chambers, 21630 11th Avenue South.

PLEDGE OF ALLEGIANCE to the Flag was led by Cub Scout Pack 391.

OATH OF OFFICE

City Attorney McLean administered the oath of office to Councilmember Kaplan.

ROLL CALL - Present: Mayor Scott Thomasson, Mayor Pro Tem Terry Brazil, Councilmembers Dave Kaplan, Bob Sheckler, Dan Sherman, Gary Towe and Don Wasson. Also present were City Manager Bob Olander, Assistant City Manager Tony Piasecki, City Attorney Gary McLean, Community Development Director Judith Kilgore, Finance Director Jim Hathaway, Civil Engineers Loren Reinhold and Jim Seitz, and Deputy City Clerk Angela Chaufy.

PRESIDING OFFICER'S REPORT

Rescinding of Proclamation: "Bible Week" - November 23-30, 1997

Due to respect for free exercise of speech and beliefs, Mayor Thomasson announced that he would rescind the "Bible Week" proclamation that was scheduled for the meeting. He noted that he had submitted payment to the City sufficient to cover any staff time or material used in preparing the proclamation.

COMMENTS FROM THE PUBLIC

Mary Jo Bauen, 3118 34th Avenue South

Ms. Bauen thanked Council and the Human Services Committee for their support of the Community Schools Project. She noted that the program has increased parent involvement and has improved the area schools.

Councilmember Sheckler thanked Ms. Bauen for her efforts in spearheading the Community Schools Project.

BOARD & COMMITTEE REPORTS

South County Area Transportation Board

Councilmember Sherman noted that the Board discussed Ron Sims' proposal to increase transportation funding which includes enlargement of the Park and Ride located on Kent-Des Moines Road. The Board also discussed State Pedestrian Facility Program funding for the Pacific Highway South project.

ADMINISTRATION REPORTS

Street Vacation Hearing Moved

City Manager Olander requested that Council move the South 251st Street/11th Avenue South street vacation hearing to February 12, 1998 due to time constraints.

MOTION was made by Councilmember Sheckler, seconded by Mayor Pro Tem Brazil, and passed unanimously to reschedule the December 11, 1997 South 251st Street/11th Avenue South street vacation hearing to February 12, 1998.

CONSENT CALENDAR was read by Deputy City Clerk Chaufy.

1. **Motion** is to award contract for professional engineering services for the design of the Marine View Drive Slide Repair to INCA Engineers, Inc. in the amount of \$99,967.28, plus a 10% contingency, and further to authorize the City Manager to sign said contract substantially in the form as submitted.

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

APPEAL

Appeal of Hearing Examiner Decision - C. Erik Foss

Mayor Thomasson introduced the subject.

City Attorney McLean explained the role of Council in the appeal process. He questioned Council regarding the appearance of fairness doctrine. No councilmember was dismissed. Mr. McLean introduced the appellant's attorney, David Kerruish, and the city's attorney Michael Kenyon.

Mayor Thomasson established a ten minute limit for each side.

Representing the appellant, Mr. Kerruish stated that he does not dispute the facts established at the hearing but questioned whether the hearing examiner considered all the material in determining a decision. As the law allows modification of a contract by oral agreement, Mr. Kerruish felt that the issue was a question of contract law. He felt that Ms. Foss had orally executed the service agreement with the former harbormaster. In regard to the record's testimony of Mr. Barney, Mr. Kerruish stated that the oral agreement was reached after 1981. Therefore, no appeal was necessary at that time.

On behalf of the City, Mr. Kenyon stated that the lack of clarity over what occurred twenty-two years ago was the issue that established the hearing examiner's decision correct. He felt that the testimony given did not provide sufficient proof that an oral agreement existed. He noted that Council must give substantial weight to the hearing examiner's decision and that the decision should be upheld if the decision was reasonable, based on the record presented, and consistent with law. Mr. Kenyon stated that no reason had been provided for why the 1975 agreement had remained unsigned.

In rebuttal, Mr. Kerruish stated that the 1975 agreement was executed orally. He felt that the City had chosen to ignore the second half of the record in this case.

Upon questioning, Mr. Kenyon agreed that an agreement can be modified by oral agreement. He stated that no oral agreement had ever existed, however.

MOTION was made by Councilmember Sherman and seconded by Mayor Pro Tem Brazil to affirm the decision of the Hearing Examiner and affirm the findings of fact.

Mayor Thomasson and Mayor Pro Tem Brazil noted that the hearing examiner's findings did not support the existence of an oral contract.

Councilmember Wasson voiced support for the appellant as he was convinced an agreement was reached.

VOTE ON MOTION: Motion passed, 6 - 1, with Councilmember Wasson opposed.

PUBLIC HEARING

Draft Ordinance No. 97-261 Adopting the 1998 Budget

City Manager Olander introduced the subject.

Finance Director Hathaway displayed a pie chart of proposed General, Streets, and Parks expenditures and revenues and total 1998 budget expenditures.

City Manager Olander requested direction from Council regarding the following issues:

1. General Fund contribution to MCI Fund decreased from \$300,000 to \$250,000.
2. Referendum 47 affects.
3. Zoning Code rewrite postponement due to revenue shortages.

In regard to issue No. 2, Finance Director Hathaway explained the 106% and Statutory Rate methods for determining the tax rate of the City. Based upon the Assessor's office most current figures and Referendum 47, the maximum levy amount allowed for the city is \$2,127,355. Therefore, approximately \$40,654 would need to be cut from the proposed budget.

City Attorney McLean read the rules for conducting a public hearing.

SPEAKERS

Dave Daniels, 1200 South 331st Street, Federal Way

On behalf of the King County Multi Service Center, Mr. Daniels thanked Council and the Human Services Committee for their past support. He noted that continuing cuts are being applied to emergency shelter programs while the number of displaced individuals is increasing. He asked Council to readdress the Multi Service Center's request for a \$5,000 grant. He noted that the Center is looking to the communities to meet the increasing needs.

Susan Silverman, 17516 149th Avenue SE, Renton

On behalf of the King County Sexual Assault Center, Ms. Silverman asked Council to maintain the current line item for the King County Sexual Assault Center in the budget. She noted that the center serves all of South King County and provides 24 hour crisis counseling.

Earline Byers, 22315 6th Avenue South

Ms. Byers stated that very few Park and Recreation events were available to the participants at no charge. She felt that some free recreational opportunities should be provided. Ms. Byers encouraged Council to keep sight of the people on limited budgets and asked them to maintain the quality of life.

Mayor Thomasson called for additional speakers. None responded.

Mayor Thomasson closed the public hearing on the budget.

Upon questioning, Finance Director Hathaway noted that the County assessed the City two years ago.

In regard to the proposed budget for the legal department, City Manager Olander noted that a part-time file clerk had been added. He felt that the lean budget restricted further increases to the department but suggested that the situation be reevaluated mid year.

At 8:30 p.m., Mayor Thomasson declared a ten minute break.

After a brief discussion regarding Issue No. 1, Council concurred to reduced the 1998 General Fund contribution to \$250,000.

Councilmember Towe suggested that needs be prioritized in case revenue became available. He felt that the legal department should have priority over General Fund contributions to capital.

In regard to Issue No. 3, City Manager Olander noted that a Zoning Code rewrite would provide a cleaner code, clarify expectations, and ease administration.

Due to revenue shortages, the council concurred to postpone the rewriting of the Zoning Code.

MOTION was made by Mayor Pro Tem Brazil, seconded by Councilmember Sherman and passed unanimously to move Draft Ordinance No. 97-261 to a second reading at the December 11, 1997 Council meeting.

NEW BUSINESS

Draft Ordinance No. 97-300 [Assigned Ord. No.1202] 1998 Property Taxes

Finance Director Hathaway informed Council that final assessed value figures for Des Moines were not yet available from the County Assessor's Office. He further noted that the County required the city to return a completed ordinance to the assessor's office by December 5, 1997 so that 1998 tax rolls could be produced. Upon questioning, Mr. Hathaway explained that private utilities were assessed by the State. He confirmed that staff monitored the levy rates for the various assessment sections of the City.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Towe, and passed unanimously to suspend Rule 26(b) in order to enact Draft Ordinance 97-300.

MOTION was made by Councilmember Sheckler and seconded by Councilmember Towe to enact Draft Ordinance 97-300.

Mayor Thomasson suggested additional language directing the Finance Director to incorporate the proper figures into the ordinance when received.

This language was accepted as a **friendly amendment**.

Mayor Thomasson read the title of the proposed ordinance.

VOTE ON MOTION: Motion passed unanimously.

Draft Ordinance No. 97-294 [ASSIGNED ORDINANCE NO. 1203] SEPA Code Updates

Community Development Director Kilgore noted that the proposed SEPA Code updates would provide for the addition of policies, plans and other documents commonly referenced by the City's Public Works and Community Development departments.

Upon questioning, City Attorney McLean noted that conflicting documents within the SEPA Code must be consistent with the Des Moines Municipal Code and must be supported by findings. He noted that the proposed ordinance provided for future amendments to specifically named documents. He stated that the emergency clause was important to include in the ordinance due to the current project proposed by the Port of Seattle. He distributed Port of Seattle material concerning the Fill Material Alternative Delivery Method Study for the Third Runway (Exhibit 1). He also felt that the emergency clause language was important due to potential mud slide issues.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler, and passed unanimously to suspend rule 26(b) to consider Draft Ordinance No. 97-294 on first reading.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler, and passed unanimously to adopt Draft Ordinance No. 97-294 substantially in the form as attached, and, based upon findings contained in such ordinance, to declare an emergency which necessitates that the ordinance take effect immediately upon its passage by a majority plus one of the whole membership of the City Council.

Review of 1998-2003 Capital Improvement Program

Finance Director Hathaway reviewed the following project listings and displayed their various revenue sources:

Arterial Streets

- Arterial Management Program;
- Kent-Des Moines South/10th Avenue South/South 230th Street Project;
- 7th Avenue South, South 236th Street, South 239th Street, and South 240th Street;
- Transportation Comprehensive Plan Update;
- South 216th Street Sidewalk Improvements;
- Pacific Highway South/South 216th Street to Kent-Des Moines Road;

- 16th Avenue South/South 272nd Street to South 250th Street
- Neighborhood Traffic Control Program; and
- 6th Avenue South and side streets to 7th Avenue South and Marina;

Mayor Thomasson asked that the procedures for establishing a Neighborhood Traffic Control Program be distributed to Council.

Mayor Pro Tem Brazil suggested that the procedures be discussed during a study session.

In regard to Surface Water Management programs, Finance Director Hathaway highlighted the following projects and their funding sources:

- 10th Avenue Culvert Replacement;
- Barnes Creek Detention Facility;
- Marine View Drive Bridge Project;
- Barnes Creek/South 223rd Street Culvert Replacement;
- 7th Avenue South Drainage between South 236th Street and South 240th Street;
- South 204th Street North Hill Trunkline;
- Comprehensive Plan Update; and
- Des Moines Creek Basin Project.

Mayor Thomasson suggested that staff also track a project's budget estimate amount over time.

Civil Engineer Reinhold noted that the South 204th Street North Hill Trunkline project had been discussed Normandy Park.

Finance Director Hathaway highlighted the following Municipal Capital Improvement projects and their funding sources:

- Field House Outdoor Lights;
- Public Works Service Center Fuel System Improvements;
- Public Works Service Center Improvements;
- Comprehensive Utility Study;
- Internet Web Server;
- Field House Roof and ADA Improvements;
- Water Tower Park;
- Olympic Elementary School Field Renovation Project;
- Des Moines Entryways;
- Des Moines Beach Park Improvements;
- Field House Improvements;
- Sonju Open Space Improvements;
- Midway Park Improvements;
- Parkside Sport Field; and
- Mount Rainier Sport Field.

Finance Directory Hathaway stated that he would provide notebooks describing the mentioned projects by Monday.

In regard to the Marina, Finance Director Hathaway highlighted the continued bulkhead repair and south restrooms improvement projects.

Airport Community Coalition

Mayor Pro Tem Brazil asked Council to contact him with any questions regarding the litigation schedule and calendar.

Levy Rate Increase

City Manager Olander noted that the EMS issue would be discussed at the December 11, 1997 meeting. He noted that Fire District No. 26 Chief Jim Polhamus had indicated that their district had developed a plan to handle the funding shortfall for the basic life support element for 1998.

Noting that King County Executive Ron Sims' funding proposal would affect Des Moines' citizens, Councilmember Sherman asked Council to consider the proposal and possibly submit a comment regarding the proposal.

Councilmember Towe suggested that comments also be submitted to King County Councilmembers Chris Vance and Pete von Reichbauer.

NEXT MEETING DATE - Regular Meeting December 11, 1997

ADJOURNMENT

The meeting adjourned at 10:15 p.m.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk