REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES November 21, 2002

The regular meeting of the Des Moines City Council was called to order by Mayor Wasson at 7:32 p.m. in the City Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler (left the meeting at 9:28 p.m.)Maggie Steenrod, Scott Thomasson and Susan White (left the meeting at 9:00 p.m.). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Finance Director Paula Henderson, Community Development Director Judith Kilgore, Assistant Planner Celeste Carlson, and Deputy City Clerk Angela Chaufty.

COMMENTS FROM THE PUBLIC

Robert McCauley, 553 John Street, #16, Seattle

City Attorney Marousek said that Council had previously discussed labor negotiations with Teamster Local No. 763 in open session. In order to prevent any suggestion that the speaker's comments might be out of order and to avoid any unfair labor practice charges, City Attorney Marousek suggested that Council approve a motion to allow comments regarding the negotiations prior to Mr. McCauley's comments.

MOTION was made by Councilmember White and seconded by Mayor Pro Tem Benjamin to allow comments regarding the labor negotiations. **VOTE ON MOTION**: Motion passed, 6-1, with Councilmember Sheckler opposed.

As the Business Agent for Teamsters Local No. 763 representing the City's Marina, Parks and Public Works maintenance employees, Mr. McCauley informed Council that he was surprised to learn that Council had not ratified the proposed contract and that they wanted an open shop agreement. As Washington law requires that a union must bargain for all members and in recognition of the costs associated with that representation, Mr. McCauley said that most public sector agreements contain an agency shop clause. He said that the employees were willing to support language that required everyone to either pay dues or a representation fee to the Union or submit funds to a charity. Mr. McCauley said that if Council accepted the compromise, the members would accept the proposed agreement.

Dan Caldwell, 19547 2nd Avenue South

Mr. Caldwell asked Council to maintain the small sling launch and the parking lot at the Marina. He felt that they were important issues for several residents. Mr. Caldwell said that the Councilmembers who had previously voted for the Master Plan had not been reelected.

Charles Martin, 34507 32nd Court SW

Mr. Martin informed Council that he was a Marina employee and the Union shop steward representing four workers at the Marina. He said that the workers democratically voted to be represented by the Union over two years ago. Mr. Martin said that he did not believe that the wishes of a vocal minority within the bargaining unit should persuade Council to alter the democratic process. He asked Council to listen to the majority of the workers and to reconsider their insistence on the exclusion of dues for religious or philosophical disagreement clause.

Councilmember Thomasson stated that Mr. Martin's statements implied that bargaining members have spoken to Council. He said that he did not believe that to be true and that he had not been approached by any Union members. Councilmember Thomasson said that Council was speaking their own opinions.

Councilmember Sheckler voiced agreement with Councilmember Thomasson's comments. He said that he had received a suspicious envelope in his home mailbox that did not contain a return address or a stamp. After having the police inspect the envelope, he discovered that it contained Union information and felt that the Union was trying to affect his vote. Councilmember Sheckler said he did not consider the incident to be democratic but an attempt to intimidate him. Councilmember Sheckler said he still agreed with his comments made at the last meeting, but if the majority of the workers were willing to support the provision, he could agree to the language.

George Buley, 19901 11th Avenue South

Mr. Buley told Council that his neighbor's commercial shipping container was affecting his neighborhood's quality of life and property value. Mr. Buley informed Council that his neighbor said that the container was grandfathered into the city as it was in place prior to the property's annexation into the City of Des Moines. After researching the Des Moines Municipal Code, Mr. Buley said that he could not find a grandfather clause. Mr. Buley provided copies of the email and picture he had sent to Council on July 7, 2002. Mr. Buley asked Council to draft a resolution to protect his quality of life.

Upon questioning from Councilmember Thomasson, Community Development Director Kilgore explained that the container appeared to be a legal non-conforming use as, under King County, it was an allowed use at the time of its placement. She said that there was no abatement process in place for such situations.

Councilmember Thomasson asked that the abatement process be researched.

BOARD & COMMITTEE REPORTS

Redondo Area Burglaries

Councilmember White reported that there have been several recent burglaries in the Redondo area. She reminded the community that to watch their neighborhoods.

ADMINISTRATION REPORTS

Des Moines Memorial Drive Triangle Flagpole

City Manager Piasecki reported that the Park and Recreation Director was trying to contact Mr. Barden in response to his letter regarding the Des Moines Memorial Drive Triangle Flagpole. He informed Council that the City had budgeted $3,000 three years ago to repair the flagpole and had issued a request for qualifications but that the funding was subsequently cut from the budget. City Manager Piasecki explained that a smaller flag was hung in the winter due to adverse weather conditions. Any repairs to the flagpole would need to be postponed until Spring.

Councilmember Thomasson thought that a Veterans of Foreign Wars group from Sand Point had previously offered to provide flags to the City. He asked staff to research this matter.

PRESIDING OFFICER'S REPORT

Agenda Revision

Mayor Wasson deleted Consent Item No. 3 from the agenda using the authority granted the presiding officer in Rule 9 of the City Council Rules of Procedure.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the minutes of October 31 and November 7, 2002.
2. Motion is to approve the Interlocal agreement with King County for Jail services and to authorize the City Manager to sign the agreement substantially in the form as submitted.
~~3. Draft Resolution No. 02-260 - Title: A Resolution of the City Council of the City of Des Moines, Washington, granting permission to the Greater Des Moines Chamber of Commerce to use the City's Big Catch Plaza for a holiday carousel and community activities.~~
~~MOTION is to approve Draft Resolution No. 02-260.~~
4. Motion is to enter into the attached agreement with the City of Kent for their participation in costs of design work for the Pacific Highway South Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted.

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

AGENDA REVISION

Mayor Wasson announced that Old Business Item #2 would be discussed first.

OLD BUSINESS

Draft Ordinance No. 02-258 ***[Assigned Ord. No. 1312]*** Marina Bonds - 2nd Reading

City Manager Piasecki introduced Finance Director Henderson and Seattle-Northwest Securities Vice President Lindsay Sovde.

Ms. Sovde informed Council of the bond pricing results. She said that $5,420,000 limited tax general obligation bonds had been issued to fund capital improvements at the Marina and to refund the 1968 Marina revenue bonds. She noted that the following results had been obtained:

1. The 1.50 times debt service coverage covenant from the 1968 bonds had been removed.
2. The new issue will have a 1.25 debt service coverage covenant.
3. The City was assigned an A3 credit rating from Moody's Investors Service.
4. Moody's Investors Service removed the City's "negative outlook" credit rating.
5. A true interest cost of 4.32% was secured.
6. Bond insurance from MBIA at a cost of 27.5 basis points was received.

Ms. Sovde displayed a chart of the City's total limited tax general obligation bonds.

Mayor Pro Tem Benjamin requested a copy of the amortization schedule for the bonds.

Ms. Sovde introduced Dan Gottlieb, Bond Counsel from Gottlieb, Fisher and Andrews, to brief Council on Draft Ordinance 02-258.

Mr. Gottlieb informed Council that the purpose of the proposed ordinance was to provide for the sale, issuance, and security of the bonds, to grant permission to execute the bonds, to refinance the 1968 Marina bonds, and to fund marina improvements.

Councilmember Thomasson asked that the definition of "Marina" on Page 3 of the proposed ordinance clarify that it includes both the Marina and the Redondo facilities. He also noted that the word "board" in the ninth paragraph on the same page should be "boat".

In response to Councilmember Steenrod's questioning, Mr. Gottlieb explained that the proposed parity obligations language provided Council with the flexibility to issue bonds on an equal basis with these bonds and to use the revenues for other purposes according to the described process.

Councilmember Thomasson likened the situation to obtaining two debts rather than a first and second mortgage.

Ms. Sovde explained that the language provided Council with the maximum flexibility to issue bonds and protect the interests of the Marina. Without the language, Council would need to obtain junior lien bonds that would be approximately ten basis points higher.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to adopt Draft Ordinance No. 02-258 providing for the sale and issuance of $5,460,000 limited tax general obligation bonds, 2002, to provide funds to advance refund the City's Marina Revenue Bonds of 1968 and to fund capital improvements identified in Phase One of the Comprehensive Marina Master Plan.

Councilmember Thomasson clarified that the motion included his previously recommended changes for Page 3.

Mayor Pro Tem Benjamin stated that historically the marina had paid for itself. He said that the funds taken from the marina and allocated to the general fund could have been used to fund the improvements. Therefore, he would not support the motion. He felt that the voters should decide the issue.

In regard to Mr. Caldwell's comments during Comments from the Public, Councilmember Thomasson explained that the Marina Plan included the installation of a boat sling installed in a new location.

Mayor Wasson distributed proposed language (new Table of Contents and new Section Nos. 20, 26, 27, 28, and 29) that would reinstate the covenants that controlled the maintenance of the Marina and the Repair and Replacement Reserve contained in the original bonds amended to reflect an annual transfer of $100,000 to an aggregate total of $1,000,000.

MOTION was made by Mayor Wasson and seconded by Councilmember Petersen to include Mayor Wasson's proposed language in the bond issue ordinance.

Councilmember Thomasson felt that it was unwise to change the language of a thirty-page ordinance prepared by a specialist without knowing the ramifications of doing so. He noted that legal counsel had not had an opportunity to comment on the Mayor's proposed language.

Councilmember White agreed with Councilmember Thomasson's comments.

Mr. Gottlieb said that he would need more time to review the proposed language than provided at the meeting to determine how Mayor Wasson's proposed language fit with Draft Ordinance No. 02-258. At staff's request, Mr. Gottlieb said that he had prepared draft language addressing the maintenance and operation of the Marina and its Repair and Replacement Reserve Fund.

Finance Director Henderson distributed the language (Version B, Section 27 and new Section 28).

Mr. Gottlieb explained that Version B, Section 27 would create a Marina System Repair and Replacement Fund. Within thirty days after the close of each fiscal year, $30,000 or such portion as was available for transfer annually, would be deposited into the fund until the funds and/or investments in the Repair and Replacement Fund totaled $300,000. The proposed language then detailed the specific allowed uses of the money. Mr. Gottlieb informed Council that the proposed language in new Section 28 was similar to the language contained in Ordinance 265. Mr. Gottlieb confirmed that his proposed language (Version B, Section 27 and new Section 28) would fit in the proposed ordinance.

Mayor Wasson explained that his proposed language for Section 29 reflected current day dollars rather than 1968 dollars to insure the needs of the marina were met. The funds would be for catastrophic needs only.

Mr. Gottlieb said that the original bonds allowed for the payment of debt service.

Councilmember Thomasson said that he was willing to support Mr. Gottlieb's proposed language. He said that $1,000,000 might be appropriate due to present value considerations.

<u>**MOTION**</u> was made by Councilmember Thomasson to strike the previous amendment motion and to substitute it with Mr. Gottlieb's Version B, Section 27 and new Section 28 language with the provision that, in Section 28, $30,000 is changed to $100,000 and $300,000 is changed to $1,000,000.

In response to Councilmember Thomasson's questioning, Mr. Gottlieb explained that proposed Section 28 was covenanting to the bondholders as they were the beneficiaries of the draft ordinance. He noted that this could be clarified in the ordinance.

Councilmember Steenrod said that it was important to balance flexibility with prudent handling of the money.

Mr. Gottlieb said that the Mayor's proposed language for Section 20 would require changes in other sections of the proposed ordinance as other funds were cross-referenced.

Councilmember White voiced disappointment that Council was not yet ready to vote on the motion. She said that she would like to vote on the issue but had to leave the meeting.

At 9:00 p.m., Councilmember White left the meeting.

Councilmember Thomasson said that a requirement to put $100,000 per year into the Marina Repair and Replacement Fund would result in higher marina rates. He stated his preference for Draft Ordinance No. 02-258 without any amendments. Councilmember Thomasson said that language was not necessary to make the Council maintain the Marina. He stated his belief that the Marina had been run well in the past. If, in the future, it were not, the election process would address the issue.

Ms. Sovde said that she had significant concerns with the ordinance requiring the transfer of $100,000 annually into a reserve fund. She said that the stipulation had not been presented to the investors as part of the plan. The rate increase to meet the requirement could impact the number of marina tenants. This could result in the City's inability to collect revenues to pay the bond's principal and interest. She said that if Council wanted to adopt a required transfer into the Marina Repair and Replacement Fund then the bond issuance should be cancelled.

In response to Councilmember Steenrod's comments regarding the bond issuance process, Mr. Gottlieb informed Council that the procedures followed by this proposed bond issuance was consistent with the procedures followed by every city throughout the state. If the draft ordinance was changed, the investors would have the opportunity to discontinue their commitment.

Ms. Sovde said that she was more comfortable presenting language that said that the transfer would be made to the extent the funds were available. She reiterated that requiring the transfer would be considered a substantial material change and the investors would most likely walk.

MOTION was seconded by Councilmember Sheckler.

City Attorney Marousek said that she had serious concerns with Section 28 due to its subjective nature.

Councilmember Thomasson **amended his motion** to clarify that the covenant was with the bondholders. **The seconder of the motion accepted the amendment**.

Mayor Wasson said that last year's Council had voted to remove the restriction on Marina fund usage. He felt that the action had been ambiguous and Council had not been aware of what it was voting on.

Councilmembers Sheckler and Thomasson disagreed with Mayor Wasson's statement. Councilmember Thomasson said that he had been very aware of what he was voting on.

At 9:20 p.m., Councilmember Steenrod left the chambers.

Councilmember Thomasson spoke in support of the proposed substitute motion as it addressed the Mayor's concerns and met the needs of the bond counsel.

At 9:25 p.m., Councilmember Steenrod returned to the chambers.

VOTE ON MOTION: Motion passed, 4 – 2, with Mayor Wasson and Mayor Pro Tem Benjamin opposed.

Mr. Gottlieb confirmed that it was okay to use "owners" instead of "bondholders" in Section 28.

Mayor Wasson said that he would not support the main motion as he felt it did not supply adequate protection for the City.

VOTE ON AMENDED MAIN MOTION: Motion passed, 4 – 2, with Mayor Wasson and Mayor Pro Tem Benjamin opposed.

At 9:28 p.m., Mayor Wasson declared a ten-minute break and Councilmember Sheckler left the meeting.

PUBLIC HEARING

Draft Ordinance No. 02-186 Dangerous Fences - 1st Reading

City Manager Piasecki introduced the subject. As staff had notified the people who currently have razor wire on their property of the hearing only a few days ago, he suggested that Council allow written comments and continue the hearing to a later date.

Mayor Wasson opened the hearing.

Assistant Planner Carlson said that the proposed ordinance was written in response to Council's direction due to a citizen's request. She informed Council that the Code currently did not address any dangerous fences. The proposed ordinance would ban razor wire fencing and regulate electric fences and barbed wire fences. Assistant Planner Carlson confirmed that Council had received the letter submitted by the owner of Midway Motors (Exhibit 1). She said that, if the proposed ordinance passed, property owners would be required to remove the dangerous fencing at their own expense within sixty days. Assistant Planner Carlson confirmed that the ordinance did not address buried fences.

City Attorney Marousek said that the exclusion of buried fences could be clarified in the definition section of the draft ordinance.

Upon request, Assistant Planner Carlson said that she would provide Councilmember Steenrod with a copy of DMMC 18.40.150.

Councilmember Steenrod said that Council must consider the issue carefully as the fencing was also a visual deterrent to crime.

City Manager Piasecki confirmed that Council could restrict the use of dangerous fencing in specific zones.

Upon questioning, Assistant Planner Carlson explained that the proposed ordinance was based upon the ordinances of four different cities and contained the commonly addressed items.

Councilmember Thomasson noted that the draft ordinance did not contain a process for a hearing or compensation. He said that the existing fences could be argued to be a non-conforming use.

City Attorney Marousek said that she would research the issue.

Councilmember Petersen stated his belief that the fencing was not a deterrent to an experienced thief.

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

Speakers

Vernena Bergin, 21628 28th Avenue South
Ms. Bergin spoke in opposition to the proposed ordinance. She said that the purpose of a fence was to keep people out and the purpose of razor wire was to keep people from going over. She stated that her razor wire has protected her tenants from crime. Ms. Bergin said that common sense goes a long way. She informed Council that she had received a permit and signed for the razor wire when she initially got it. Ms. Bergin said that electric fences would not kill anyone but only shock them. She said that anyone caught in a fence had no business being there in the first place.

Phil Yohann, 1300 South 250th
Mr. Yohann said that he was the concerned citizen who had originally brought the issue to Council. He said that his only concern was with the razor wire surrounding the RV lot at Huntington Park. Mr. Yohann informed Council that he has extricated three cats, including one that died, from the razor wire within the last seven years. Mr. Yohann voiced agreement with Councilmember Petersen's comment that anyone could cut the wire to get into the property. He reiterated that his only concern was with razor wire in a residential area. Razor wire used in commercial areas was a different issue.

Robert Back, 23840 16th Lane South
Mr. Back asked that a clear definition of barbed wire be included in the ordinance. As an owner of horses enclosed with an electric fence, Mr. Back said that he was satisfied with how the proposed ordinance was written. He wanted to be sure that if his fence became dangerous due to exposed nails, he would not have to fix it right away. Mr. Back thanked Council for addressing his concerns.

Mayor Wasson called for additional speakers three times.

None responded.

MOTION was made by Councilmember Thomasson, seconded by Mayor Pro Tem Benjamin and passed unanimously to continue the hearing to January 9, 2003.

PUBLIC HEARING CONTINUED

Draft Ordinance No. 02-246 Adopting 2003 Budget - 1st Reading

Mayor Wasson re-opened the public hearing. He noted that the rules read previously would apply to this hearing as well.

Speaker

Greg Schumacher, 19610 7th Avenue South
Mr. Schumacher informed Council that he was a member of the Ad Hoc Mount Rainier Pool Committee. He said that the pool was important to his family and that he was impressed by how many people would be impacted if the pool were to close. Mr. Schumacher expressed appreciation for Council's assistance with the matter. He urged Council to allocate funds to keep the pool open next year.

Mayor Wasson called for additional speakers three times.

None responded.

Mayor Wasson closed the public hearing.

MOTION was made by Mayor Wasson, seconded by Mayor Pro Tem Benjamin and passed unanimously to move Draft Ordinance No. 02-246 to a second reading on the December 5, 2002 meeting,

OLD BUSINESS

Budget Items - Continued Discussion

City Manager Piasecki introduced the subject. He noted that the 2002 ending fund balance was projected to be approximately $300,000 higher than previously anticipated. This was the result of a hiring, travel, and overtime freeze as well as the addition of the 2002 sales tax amount.

Councilmember Thomasson noted that the City Code required a reserve of approximately $820,000.

City Manager Piasecki said that one time monies received in 2003 were expected to increase the ending fund balance to that level. He then asked Council to provide direction regarding Mount Rainier Pool. City Manager Piasecki explained that the County has said that the pool will close December 31, 2002 if an entity does not take over or fund the facility. He informed Council that an Ad Hoc Committee has drafted an interlocal agreement to fund the pool through 2003. City Manager Piasecki informed Council of the following proposed funding levels for each entity:

Des Moines	$50-75,000
Normandy Park	$30,000
SeaTac	$25,000
Highline School District	$20,000
Citizen Committee	$20-40,000
Burien	Declined to participate financially at this time but still participating in discussion.
Kent	Declined to participate at this time but will reconsider if necessary.

Mayor Pro Tem Benjamin explained that the Ad Hoc Committee was seeking to buy time until a long-range funding solution could be identified.

City Manager Piasecki explained that the interlocal agreement would require the County to provide a quarterly accounting to adjust costs. He asked Council for direction on the issue.

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

MOTION was made by Mayor Wasson and seconded by Councilmember Steenrod to commit the City to contribute $75,000 to keep the pool open for one year.

City Manager Piasecki suggested that the money could be funded with one time monies.

Councilmember Thomasson said that he was disturbed that the County had walked away from its responsibilities and placed the cities in this position. He said that he would support the motion to contribute to the funding of the pool for one year but felt that the city could not afford to do so on an on-going basis. He asked that this point be made clear to the committee. Councilmember Thomasson said that streets were a higher priority than the pool.

Councilmember Steenrod agreed with Councilmember Thomasson's statements. She asked that the information be posted on the City's website so as to inform the public of Council's action.

VOTE ON MOTION: Motion passed unanimously.

NEW BUSINESS

Draft Ordinance 01-142 - Telecommunications Code Readoption - 1st Reading

City Attorney Marousek said that the proposed revised telecommunications ordinance reflected the changes directed by the decision of the Ninth Circuit Court of Appeals. A copy of Draft Ordinance 01-142 with all the proposed revisions marked would be distributed to Council later.

NEXT MEETING DATE - Regular Meeting December 5, 2002

ADJOURNMENT

At 10:40 p.m., the meeting expired.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk