REGULAR MEETING OF THE DES MOINES CITY COUNCIL

MINUTES December 11, 1997

The regular meeting of the Des Moines City Council was called to order by Mayor Thomasson at 7:34 p.m. in the Council Chambers, 21630 11th Avenue South.

Pledge of Allegiance to the Flag was led by Councilmember Towe.

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, Finance Director Jim Hathaway, Community Development Director Judith Kilgore and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Earline Byers and Reverend Jerry Theckston, Co-Chairs of Des Moines Human Services Advisory Committee

The Co-Chairmen reminded Council that the Committee recommended that $8,000 be allocated to the Des Moines Police Chaplain's Fund in the 1998 City Budget. They noted this amount is contained within the proposed Budget. However, they informed Council that the two long time administrators of the Police Chaplain program, Reverends Mel Hinz and Gene White have resigned. They requested the right to hold the funds for a few months to determine if the program can be reorganized. They advised Council that the Police Chaplain's Fund helps local citizens in need of help with such items as emergency housing, payment on power bills and other items of that nature. Ms. Byers informed Council that if for some reason the Police Chaplain's Fund cannot be up and running, the Human Services Advisory Committee will make a new recommendation for distribution of the budgeted funds. They thanked Council for their assistance.

City Manager Olander commented that the funds have been designated in the Budget and will remain there.

Jim Polhamus, Fire Chief, King County Fire #26

Mr. Polhamus thanked the Council for support of the Emergency Management Services System. He noted that since the levy failed in the November election, several Councilmembers and City staff have been working at several levels to help find solutions to the funding crisis. He noted that the funding issue will be back on the ballot in February 1998. He informed Council that the King County "Medic One" system in unique, for the following reasons.

- It is a regional system not a service. The system is a partnership of over thirty agencies in King County that operate under an umbrella of medical standards issued by the Health Department. The service is delivered locally through every fire department in the County.
- This has created a seamless delivery of service. This also gives the district the ability to respond to major incidents in the least amount of time, again because all agencies operate under a single set of standards.
- The medic one system in King County is a leader in saving lives from sudden cardiac arrest, and trauma situations. King County has the highest save rate in the country

with quality of care that is second to none. This starts with citizen CPR Training and follows through the system all the way to the University of Washington School of Medicine.

Mayor Pro Tem Brazil concurred with Mr. Polhamus' request for support from the City and requested that each Councilmember contact King County Councilmembers either by phone or fax urging support of the EMS system.

Upon questioning from Councilmembers, Mr. Polhamus advised that Fire District #26 has loss 9% of its total operating budget which amounts to $151,000. Des Moines area residents can expect to see a 10 to 20% reduction in EMS system services even if the new ballot measure in February passes. He also noted that if the February ballot fails, Fire District #26 would be forced to lay off staff, or put a local ballot issue to the residents of Des Moines.

BOARD & COMMITTEE REPORTS

Suburban Cities Association

Mayor Pro Tem Brazil informed Council that the Association has formed their agenda for the upcoming Legislature session. He advised Council that he will distribute copies to each Councilmember.

PRESIDING OFFICER'S REPORT

Suburban Cities Association - Board Appointment

Mayor Thomasson announced that Mayor Pro Tem Brazil has been appointed to the Board of Directors of the Suburban Cities Association, as a Medium Size Cities Representative.

National League of Cities

Mayor Thomasson reported that he and several other Councilmembers attended the National League of Cities, Congress of Cities and Expo in Philadelphia last week.

ADMINISTRATION REPORTS

Des Moines Municipal Court

City Attorney McLean reported an incident to Councilmembers regarding a person who was arrested this week for possession of drugs, which he placed in a receptacle when passing through a uniformed officer's metal detector on his way into Court. Mr. McLean noted that the suspect bolted from the Courtroom and was chased down the street by several Des Moines officers who were in the Court testifying on another case. Since the suspect was apprehended near the Recreation Center, he will be charged with possession of drugs in a "Drug Free" zone, which will automatically double any charges.

Growth Management Annual Report

Community Development Director Kilgore noted Council has been furnished with Plan Development Division of the Community Development Departments "1997 Annual Report". She informed Council that the Growth Management Act requires that Des Moines prepare a strategy for addressing all Growth Management planning mandates and that the portion of the

Annual Report relating to future years satisfies this requirement. She noted that the Council will continue to determine and authorize specific work plans for each upcoming year.

Emergency Medical Service Update

Assistant City Manager Piasecki advised Council that a special 7 member Task Force is being formed from representatives of 5 large cities and 2 smaller cities within King Council. Their task is to study the funding of EMS and how services are provided. He noted that a report is expected in early spring.

Des Moines Municipal Court Judge

City Manager Olander informed Council that Municipal Court Judge Paul Codd has resigned effective December 15th. He requested Council confirm an interim appointment of Mike Slish as Municipal Court Judge until February 12th, and at that time he will present a permanent appointment for Council's confirmation.

MOTION was made by Mayor Thomasson, seconded by Councilmember Kaplan, to confirm the City Manager's appointment of Mike Slish as Municipal Court Judge, for the remainder of his predecessor's term and on an interim basis through February 12, 1998.

Council requested that Mr. Slish's resume be distributed to Council.

City Attorney McLean advised Council that Mr. Slish has been the Judge Pro Tem for Des Moines Municipal Court for a number of years, Judges for Aukeen Court, lives in Des Moines and is a well respected attorney.

VOTE ON MOTION: Motion passed unanimously.

Agenda Revision

City Manager Olander announced, that with concurrence of Mayor Thomasson, New Business Item #2, Draft Resolution No. 97-304 1998 Employee Salaries has been moved to the Consent Calendar as Item No. 9.

EXCERPT
DES MOINES CITY COUNCIL MINUTES
December 11, 1997

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of November 13 and 20, 1997.
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 #58792 through #59132 in the total amount of $879,535.86
Payroll fund transfers in the total amount of $399,501.70

3. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of December 12, 1997 through December 25, 1997:

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 to the Council for ratification at the City Council meeting of January 8, 1998.

4. Motion is to authorize the City Manager to sign the Interlocal Agreement substantially in the form as attached, with the City of Normandy Park for Senior Services.

5. Motion is to authorize the City Manager to apply for Riparian Habitat Grant Funds for the Marine View Drive Bridge Project.

6. Motion is to award the contract for the Seawall Rehabilitation Project to Diamaco, Inc. in the amount of $258,871, plus sales tax, plus a 10% contingency, and to authorize the City Manager to sign the contract.

7. Motion is to reject all bids for construction of the Marina Underground Fuel Tank Project and to authorize staff to rebid the project.

8. Motion is to authorize the City Manager to sign Computer Services Contract with substantially in the form as submitted.

9. Draft Resolution No. 97-304 ***[ASSIGNED RESOLUTION NO. 836]*** - Title: A Resolution of the City Council of the City of Des Moines, Washington, adopting the 1998 employee pay schedule.

MOTION is to approve Draft Resolution No. 97-304.

MOTION was made by Mayor Pro Tem Brazil, seconded by Councilmember Towe, to approve the Consent Calendar as read. Motion passed unanimously.

City Attorney McLean noted for the recorded that Councilmember Sheckler removed himself from voting on Consent Item No. 9 as he is related to a City employee.

PUBLIC HEARING

Draft Ordinance No. 97-051 ***[ASSIGNED ORDINANCE NO. 1204]*** 1997 Comprehensive Plan Amendments & Growth Board Amendments - 1st Reading

Mayor Thomasson introduced the subject and inquired if there was anyone in the audience who wished to address the Council under Public Comment. One individual raised his hand.

City Attorney McLean recited the legal rules of procedure for conducting this public hearing.

Administration's Report

City Attorney McLean introduced Kevin Raymond of Cairncross & Hempelmann, the City's representative over Port of Seattle/Airport Expansion related matters. City Attorney McLean informed Council that the draft ordinance contains amendments designed to comply with, and are consistent with, the Growth management Hearings Board's decision and integrate the City's SEPA policies and authority into important portions of the City's Comprehensive Plan. He noted that the amendments are consistent with existing City Council policies requiring appropriate environmental review, mitigation, approval or denial of various proposals based upon their probable, significant, adverse environmental impacts. He proceeded to review the amendments contained in Attachment "A" - 1-04-04 (5), Attachment "B" - 1-04-05 (1) and Attachment "C" - 5-04-04. In conclusion, Mr. McLean recommended approval of the draft ordinance.

PUBLIC SPEAKERS
Bob Hennessey, Port of Seattle, Port Public Affairs Office
Mr. Hennessey presented Council with two pieces of correspondence dated December 11, 1997, for consideration by Council from:

- Diane Summerhays, Aviation Planning Manager for the Port of Seattle, re. "Compliance with Central Puget Sound Growth Management Hearings Board Order Dated August 13, 1997 ('Board Order'). The letter contains alternative language to be considered for the draft ordinance. ED NOTE: Entered into the record as **EXHIBIT #1.**
- Michael Cheyne, Project Manager 3rd Runway Project Team for the Port of Seattle, re. "Port of Seattle Proposed Comprehensive Plan Amendments". ED NOTE: Entered into the record as **EXHIBIT #2**.

Copies of the letters were distributed to Councilmembers.

8:37 p.m. Mayor Thomasson announced that Council will recess until 9:00 p.m. to allow Councilmembers an opportunity to read the letters submitted by the Port of Seattle.

As there were no further comments from the public, Mayor Thomasson noted the public comment portion of the hearing was closed.

Mayor Thomasson questioned staff as to whether they had any additional information, comments or corrections for the record.

City Attorney McLean and Mr. Raymond responded to the written material furnished by the Port of Seattle, Exhibits #1 and #2 noting the following:

- Exhibit #1:
  - City Attorney McLean noted that Port staff's recommendations are an attempt to establish primacy of the Growth Management Act over SEPA authority which he believes to be contrary to law. SEPA is an over arching statute, it requires that probable significant adverse environmental impacts are to be considered in whether any local governmental jurisdiction is going to go forward with approving, conditioning or denying any proposal or connected action. He noted that each of the Port's amendments are designed to incorporate language that is found in certain provisions of arguments raised in the Port's petition in front of the Growth Board. He felt the Port is trying to eliminate any question on some of the issues that are currently on appeal, and on that basis, he does not feel that these proposed amendments would be in the best interest of the City.

  Mr. Raymond commented that any reviewing Court would look first at ways to read the Growth Management Act and SEPA together, and that is the methodology that any reviewing Court would employ. The amendments drafted by the Port appear to whittle back on the authority of SEPA. He also felt that the Port's amendments enlarge, unfairly, the Growth Management Act on this point.

  City Attorney McLean outlined City and state SEPA policies, that they generally require an EIS, after there is a determination of significance, that there are likely to be significant, probable, adverse environmental impacts as a result of a proposed action, or any sort of project. Once an EIS is completed, the City's action to condition, deny or approve has to be based on whether the Council believes those probable significant adverse environmental impacts are capable of being mitigated. Mitigation should only be imposed when it is capable of being accomplished. That is what staff is recommending be incorporated into its Comprehensive Plan language that allows that to occur.

Councilmember Brazil commented that after reading the Port's suggestions, that it seems to be a battle between the Growth Management Act and the State Environmental Protection Act. He noted that if you do not consider the State Environmental Protection Act as prior governing authority, you do not need a Growth Management Act. There will not be any place to live.

Councilmember Sheckler stated that after reading the Port's correspondence it seemed apparent to him that the Port believes that the provisions of the Growth Management Act supersede SEPA. Therefore, because they want to expand their airport, they do not care about the environmental impacts to the City and the citizens rights to mitigate those impacts.

Councilmember Sherman questioned Mr. Hennessey regarding the Port's proposed wording that in essence indicates that no conditions can be imposed that would have the effect of precluding by making impossible or impracticable, the operation or expansion of essential public facility. He inquired whether he considers the recommendations in the HOK study to make impossible or impracticable the operation or expansion of the Port.

Mr. Hennessey stated that the Port has provided very detailed written comment on the HOK study and he would refer to that. The Port had very serious concerns about the methodology and conclusions of the HOK study.

Councilmember Sherman again questioned Mr. Hennessey whether it is the Port's position that the conclusions of the HOK study, whether the Port agrees or disagrees with it, and whether would make impossible or impracticable the operation or expansion of the Seatac Airport. Twice Councilmember Sherman asked for a yes or no answer.

Mr. Hennessey stated that the Port's position on the HOK study is in written form which he could provide to the Council at a later time. He stated he would have to defer a verbal answer to Councilmember Sherman's question.

Mayor Thomasson noted that he felt Councilmember Sherman's question was a fair one. He asked Mr. Hennessey if there is a price tag at which the Port would say the conditions are too much and therefore say the City is making it impractical, even if the City believes the mitigation measures are fair. He further questioned Mr. Hennessey on whether he believes GMA supersedes SEPA in this respect, and that the Port can do what it wants without mitigating any impacts.

Mr. Hennessey declined to answer as he felt this a legal issue that he is not prepared to answer.

- Exhibit #2:

  Councilmember Towe questioned Mr. Hennessey concerning Exhibit "2", letter from Michael Cheyne, regarding amendments to the chronology of events and the scoping documents, as to whether he feels these issues are pertinent to the issue before Council this evening.

City Attorney McLean noted that the second attachment of Exhibit “2” has more to do with the 26 amendments that were originally proposed by the Port of Seattle as to the City’s Comprehensive Plan. He advised Council that on those amendments, with the exception of those that address the two provisions that were invalidated by the Growth Board, the City’s SEPA Official issued a determination of significance which requires that an EIS go forward on those before the Council can consider those. he stated there was a recent meeting regarding the scoping issue, where every attempt was made to clarify precisely what the issues were. The scoping document has been issued and was confirmed in the meeting. The City’s SEPA official has issued a DS on the remaining items proposed by the Port, so the EIS must go forward, it is based on sound environmental principals, and is valid. He further informed Council that these separate amendments do not have any bearing on the issues before Council tonight.

Community Development Director Kilgore noted that she met last week with the Port and the Westcott Company to begin to review some of the Comprehensive Plan amendments and whether they should go forward. She informed Council that at that time the Port stated that they would need more time to think about what they needed to do next.

City Attorney McLean questioned Mr. Hennessey whether the Port objects to the fact that the DS has been issued, and that the EIS has not been accomplished, and that the Port understands that the amendments subject to the DS cannot now properly be placed before the City Council.

Mr. Hennessey concurred and agreed that the Port has no objection.

With Mr. Hennessey’s concurrence, City Attorney McLean again informed Councilmember Towe, that the amendments to the chronology of events and the scoping documents do not have any relevance as to the issues Council has before them tonight.

Councilmember Towe questioned the Port’s use of the words “preclude” and “impracticable” and asked if these are legal terms or phrases.

City Attorney McLean responded that the Port is over reading the GMA statute. Over reading in a sense that believing that the Port’s proposed language should supersede years and years of State environmental policy and State common law, which basically holds that local jurisdictions have the right to approve, condition or deny actions based on probable significant adverse environmental impacts.

Mr. Raymond noted that the word “preclude” appears in the Growth Management Act, some of the other terms come from the Growth Board’s decision. He reminded Council that this decision is still on appeal. It relates less to the specific language in the Growth Management Act than it does to this Growth Board’s interpretation of the word “preclude”. He advised that there is an important distinction between language that appears in the statute, and language that the Growth Board used in its decision to interpret what “preclude” means within the meaning of that statute.

Mayor Thomasson declared the Public Hearing closed.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler, to suspend Council Rule 26(b) in order to enact Draft Ordinance No. 97-051 on first reading. Motion passed unanimously.

MOTION was made by Councilmember Sherman seconded by Councilmember Sheckler, to enact Draft Ordinance No. 97-051 substantially in the form as submitted.

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

Councilmember Sherman noted that although he was not in favor of any changes, he complimented staff for doing a good job that he can support. He stated that he thoroughly read the Ports written material, and it is his position that he must protect the citizens of the City if a 3rd runway is ever built. He advised that he is a firm believer that SEPA is the proper tool provided by the State to protect citizens.

Councilmember Towe commented that he felt the Ports amendments object to Des Moines trying to protect the community, while using the same standards to protect their own interests. He believes there must be a balance and the Port is leaning heavily on GMA and the Growth Management Hearings Board authority. He noted that projects may be more expensive and may take longer to construct, but that does not preclude a project from being completed and SEPA is in place to protect the State's communities and citizens.

VOTE ON MOTION: Motion passed unanimously.

OLD BUSINESS

Draft Resolution No. 97-303 ***[ASSIGNED RESOLUTION NO. 837]*** Adopting 1998-2003 Capital Improvement Program

Finance Director Hathaway reminded Council that the 1998-2003 Capital Improvement Plan was presented to the City Council at the November 13, 1997. At that Council meeting the Plan summary sheets and project detail sheets were disseminated. He recommends approval.

MOTION was made by Councilmember Towe, seconded by Mayor Pro Tem Brazil, to approve Draft Resolution No. 97-303.

Mayor Thomasson read the draft resolution by title into the record.

Councilmember Kaplan commented that this CIP is very aggressive, particularly the year of 1999, and he hopes that City can meet the expectations.

City Manager Olander noted that staff is aware that many of the projects are dependent upon obtaining the appropriate funding.

Councilmember Sherman commented that if a project is not listed in the Plan, staff cannot request funding or grants. He noted that Council is aware that not all projects may materialize but it is important that they are recognized.

VOTE ON MOTION: Motion passed unanimously.

City Manager Olander complimented staff for one of the finer more detailed specific Capital Improvement Plans he has seen.

Draft Ordinance No. 97-261 [ASSIGNED ORDINANCE NO. 1205]Adoption of 1998 Budget - 2nd Reading

Finance Director Hathaway reminded Council that they have been reviewing the 1998 preliminary budget for several months and that a public hearing was held on November 20, 1997.

He noted the following corrections as a result of the adoption of the CIP and recommended adoption of the draft ordinance:

- Fund 404 Marina Depreciation and Improvement $726,793
- Fund 451 Surface Water Management Capital $1488,040
- Aggregate Total of Revenues & Beginning Fund Balances $25,097,354
- Aggregate Total of Expenditures & Ending Fund Balances $25,097,354

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman, to approve Draft Ordinance No. 97-261.

Councilmember Kaplan reiterated his request from last months meeting, that in the coming year Council visit the issue of user fees and request for donations in regards to the Senior Center and the Recreation Center. He expressed concern over the approach used by staff in requesting donations. He suggested perhaps the Senior Advisory Committee might be a good source for studying this issue and making any appropriate recommendations for Council's consideration.

VOTE ON THE MOTION: Motion passed unanimously.

NEXT MEETING DATE

Mayor Thomasson noted the next regular meeting will be January 8, 1998.

ADJOURNMENT

The meeting adjourned at 9:39 p.m.

Respectfully submitted,

Denis Staab
City Clerk