

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

January 13, 2003

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

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

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, and Scott Thomasson. Absent: Councilmember Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek and Deputy City Clerk Angela Chaufy.

Councilmember Thomasson explained that it was not necessary to formally excuse Councilmember White from a special meeting (Council Rule 7).

AGENDA REVISION

Upon the Mayor's request, City Attorney Marousek announced that the first three items listed on the agenda would not be discussed during the meeting. As the items had been removed by the Mayor at the previous meeting, she explained that Council would review the items at the January 16, 2003 regular meeting and decide at which subsequent meeting the removed items would be discussed. This action would comply with the requirements of Council Rule 9.

Councilmember Steenrod expressed her desire for Council to review and revise the Council Rules of Procedures to improve efficiency.

City Manager Piasecki noted that a Draft Ordinance was scheduled for Council's review at the next meeting which would allow Council, by majority vote or two-thirds vote, to waive any of its rules.

In response to Councilmember Steenrod's questioning, Councilmember Thomasson clarified that if there had been a motion to continue the items to a later meeting rather than the Mayor removing them from the agenda, Council would have had an opportunity to discuss them now. He explained that the intent of Rule 9 was to prevent a Mayor from removing an item from the agenda and burying it.

Councilmember Steenrod said that she would like to insure Councilmember comments, as well as citizen comments, were allowed during the meetings.

Airport Defense Fund

Councilmember Steenrod introduced the subject. She said that she was not in favor of the Third Runway nor was she in favor of continuing to tax people. Councilmember Steenrod suggested that a process for citizens to donate private contributions to specific causes be developed. She said that she had given the City Manager a check for \$500 for the legal fees of the Airport Defense Fund last week. Councilmember Steenrod stated her belief that it was not the time to discontinue funding legal fees for the Third Runway fight. She said that a donation process would allow people who wished to fund the fight an opportunity to do so. Councilmember

Steenrod felt it was important to thank and acknowledge the individuals who donated to specific City causes. She suggested that their names be listed in the monthly report or posted on the City website. Councilmember Steenrod said that citizen donations were one way to fund the Third Runway fight while the City was experiencing a budget crisis.

Mayor Pro Tem Benjamin said that some donors to the Mount Rainier Pool Fund had expressed a desire to remain anonymous. Those that have not expressed this wish would be recognized on a plaque at Mount Rainier Pool. He recommended that more fundraising efforts be conducted. He suggested that Channel 21, Des Moines News, and the City Currents be utilized to publicize needs. Mayor Pro Tem Benjamin said that 66% of the people do not support continued spending for the Third Runway fight. He said that if the other 33% of the citizens each paid \$15 per person, the Airport Defense Fund would be funded at the \$150,000 level. Mayor Pro Tem Benjamin said that Council needed to represent all people and that those who think the fight is worth funding can do so through donations..

City Manager Piasecki informed Council that all donors to the Mount Rainier Pool Fund have received letters of appreciation. The names of those donors wishing to be acknowledged on the plaque had been given to Julie Mitchell. City Manager Piasecki noted that a process for citizens to donate money or land for any activity of the City already exists. Citizens were already able to make donations to the Airport Defense Fund. Property donations required Council's acceptance while monetary gifts were receipted into the appropriate fund.

Councilmember Steenrod said that she had concerns about the accountability of the Airport Communities Coalition but that she did not have a problem with funding the legal defense costs.

City Manager Piasecki said that all donors should specify their wishes upon presenting the donation to the City.

MOTION was made by Councilmember Benjamin and seconded by Councilmember Steenrod to direct administration to arrange a procedure to allow citizens of Des Moines and surrounding cities to voluntarily contribute funds to the Airport Defense Fund. Only those funds contributed by citizens may be paid to the lawyers to help defray the costs of fighting the Third Runway. There will be no funds from any mandatory tax, fee or license paid or transferred to this fund or to the ACC. Further, a report of the amount contributed during periods between Council meetings as well as the total to date shall be reported or become a part of the Administration Report at each City Council meeting. The reporting requirements shall apply to any fund that is in existence or may be set up in the future for any other purpose.

Councilmember Sheckler questioned the need for the motion as a donation process was already in place. He felt that Council should not restrict the use of the funds to legal fees as people should have the right to put their money where they desired.

City Manager Piasecki said that Administration could accept the reporting requirements as direction from Council.

In regard to reporting, Councilmember Steenrod said that she was more concerned that people are recognized for their contributions. She said that from time to time, Council should receive a report on the amount contributed. This could encourage others to contribute.

City Manager Piasecki said that the list could be printed in the City Currents.

In regard to the last clause of the motion (reporting requirements shall apply to any fund), City Attorney Marousek said that she would like an opportunity to research whether the language might be in violation of the single subject rule.

Councilmember Sheckler suggested that Council just direct staff to report on donations.

Councilmember Thomasson questioned at what point should the City stop doing general government actions and leave everything up to voluntary contributions. He asked what the role of government was in deciding which programs or projects should or should not move forward. Councilmember Thomasson cited the funding of baseball fields by people who do not like baseball and the funding of federally mandated programs as examples. He questioned whether the City should stop doing something just because some people did not like it.

City Manager Piasecki confirmed that contributions to the City were tax deductible.

Councilmember Steenrod stated her belief that government should interfere as little as possible in citizens' daily lives. She said that government should provide a framework but not provide everything.

City Manager Piasecki reiterated that the donation mechanism already exists for all cities. He said that the donation process could be better publicized. Specific reporting requirements could be directed by motion. City Manager Piasecki said that if donations of significant size were received, Council might need to amend the budget.

In response to Councilmember Steenrod's questioning, City Manager Piasecki said that he did not believe that the donation process was listed in the Des Moines Municipal Code (DMMC).

In regard to the motion, Councilmember Thomasson said the following:

Clause 1: The process already exists.

Clause 2: Council should not restrict the contribution but allow whoever makes the donation to state their own restrictions. He suggested that a donation form be developed which asked the donor to specify the allocation of the contribution and to indicate whether the donor wished to remain anonymous.

Clause 3: He felt that requiring a report during every Administration Report seemed too demanding on staff.

Councilmember Thomasson questioned whether the motion was necessary.

Mayor Wasson asked the maker and seconder of the motion to consider directing Administration to prepare a resolution based upon Council's discussion and direction for Council's review.

Councilmember Thomasson suggested that a section dealing with donations be included in the DMMC.

Based upon Council's discussion, City Manager Piasecki said that the code could include the following:

- Citizens, companies, etc. could donate money, property, goods, or services to the City;
- The Finance Department has a donation procedure in place to receive such contributions;
- A quarterly or monthly reporting mechanism would be established so that Council was made aware of donations received.
- Donations could be made specific to one purpose or general in nature.
- Donors would indicate which fund or case they are donating to.

Councilmember Thomasson suggested that a clause stating that the City could refuse a donation also be included.

A **substitute motion** was made by Councilmember Thomasson and seconded by Councilmember Sheckler to direct Administration to prepare an Ordinance section dealing with the acceptance of donations and contributions.

Councilmember Steenrod asked that the ordinance be presented to Council by March 1, 2003.

Councilmember Thomasson and Councilmember Sheckler **accepted** the March 1, 2003 deadline **as part of the substitute motion**.

Mayor Pro Tem Benjamin said he would support the substitute motion. In regard to voluntary payments versus taxes, he said that people could voluntarily choose to support something while taxes affected those who could least afford to pay them. He felt that to not differentiate was a severe injustice to those in greatest need. Mayor Pro Tem Benjamin said that the State and Federal government have mandated taxes and unmandated taxes. He felt that Council needed to be conscientious of those hit hardest by the economic times.

VOTE ON SUBSTITUTE MOTION: Motion passed unanimously.

Councilmember Sheckler stated that the Airport Defense Fund began as a mandate by the citizens ten years ago and was funded by a utility tax. He said that an unscientific survey performed by a citizen indicated that 66% of the people no longer support the fight against the Third Runway or wished to fund it. Councilmember Sheckler asked that Council direct Administration to conduct a scientific poll to determine whether the citizens wished to continue the fight. He felt it was wrong and unfair to the citizens and Council to make decisions based upon an unscientific study.

MOTION was made by Councilmember Sheckler and seconded by Councilmember Thomasson to direct staff to take a scientific survey of the citizens and voters of Des Moines to determine the true answer to this question.

Councilmember Steenrod said that she did not trust surveys. She said her decisions were based upon citizens' comments and e-mails. Councilmember Steenrod said that she had previously asked that the issue be put to a vote but had been told it was too expensive. She said she was representing those citizens who said that they did not want the Third Runway but could no longer afford to pay their taxes opposing it. Councilmember Steenrod said that she did not feel Council

needed to put the question to a vote but that it was Council's job to make the decision and do what they believed to be best.

Councilmember Sheckler agreed but felt that the issue had gotten out of hand. He said that if Council was going to make decisions based upon what they perceived the citizens to be telling them, then they should be sure they understand exactly what the citizens are saying.

Councilmember Steenrod suggested that the issue be put on a ballot.

Councilmember Sheckler said that he was comfortable with a ballot process.

Mayor Wasson said that when the utility tax to pay for the fight against the Third Runway was first proposed, the citizens had started an initiative to overturn the tax. Council then rescinded the existing dedicated utility taxes and instituted a joint 5% utility tax to fund Parks and Police services and Airport Defense. He felt it was an underhanded action by Council to defeat the initiative process.

MOTION was made by Mayor Wasson and seconded by Mayor Pro Tem Benjamin to **amend the motion** by placing the issue on a ballot for the people to vote.

Mayor Wasson clarified that the intention of the **amending motion** was to place the issue on the April Special Election.

Councilmember Sheckler said that he would **withdraw his original motion** as long as he had an understanding that Council would not take any further action until the results of the Special Election were known. He felt it was important to not cut funding until the results were known.

Mayor Wasson agreed.

Mayor Pro Tem Benjamin, the **seconded of the amending motion agreed** with the placement of the issue on the April Special Election.

Mayor Wasson confirmed he would not take any further action regarding the issue until the results of the Special Election were known.

Councilmember Thomasson **withdrew his second to the original motion**.

As the amending motion now had no basis, no motions were before Council.

MOTION was made by Councilmember Thomasson and seconded by Mayor Wasson that Council proceed with a special election to ask the public for a advisory vote on whether to continue to fund airport defense.

Councilmember Thomasson said that the intent of the motion was to direct staff to bring back an ordinance to accomplish that purpose.

Councilmember Sheckler asked for an understanding that no action would be taken on the utility tax item until results were known.

Councilmember Thomasson said that he did not include that as part of the motion as he did not think Council could make a motion that would restrict them from taking another action. As long as there was an understanding regarding the issue, he felt Council could move forward.

Mayor Wasson agreed to Councilmember Sheckler's request.

Councilmember Steenrod confirmed that Councilmember Sheckler wished to postpone discussion concerning the reduction of the utility tax rate from 6% to 4% until results were known.

Councilmember Thomasson said that until Council knew whether they wanted to fund airport defense, they should not cut its funding mechanism for it.

Councilmember Steenrod confirmed that the motion would not prevent citizens from donating to the Airport Defense Fund.

Mayor Pro Tem Benjamin said that he was in favor of placing the issue on the ballot but that he was not comfortable with the restriction of action. He confirmed that the restriction of action was not part of the motion.

VOTE ON MOTION: Motion passed unanimously.

Reduction of Utility Tax Rate from 6% to 4%

MOTION was made by Councilmember Thomasson, seconded by Mayor Wasson, and passed unanimously to table the issue.

Payment of Legal Fees

MOTION was made by Councilmember Petersen to authorize and direct the City Manager to promptly issue a check in full payment of the legal fees incurred by the attorneys for Councilmembers Wasson, Steenrod and Benjamin in successfully defending the case of *Citizens for Des Moines, Inc. and Allan Furney v. Donald Wasson, Margaret Steenrod, Richard Benjamin and Gary Petersen*.

Councilmember Petersen read the following statement:

The amount of those fees and the basis for payment are set out in letters from Scott Missall to Tony Piasecki dated November 12th and November 25th.

The City Attorney has already advised the Council that it is appropriate for the City to pay the attorneys for the three Councilmembers under the Des Moines City Code. Thus, the only real issue is whether the City should pay all of the requested fees or only a portion of them. I think the City should pay them in full for several reasons.

First, the judge ruled that the Plaintiffs were wrong to name individual Councilmembers as defendants. The judge clearly said that the actions taken could only be taken by the City Council, and that therefore the suit should have been brought against the City in the first instance.

Second, that lawsuit was obviously motivated by pure politics. The Plaintiffs comprise one, or at most, just a few individuals who think they know better than the rest of the citizens of this town. The only reason they filed the lawsuit was to try and overturn the clearly expressed will of the voters who elected three new members to the City Council.

Third, the legal defense by Wasson, Steenrod and Benjamin was therefore made not only on behalf of the City but on behalf of the entire City Council and all the voters in the City that elected and still support this Council.

Fourth, if the City does not pay all of the legal bills incurred by these three Councilmembers, the City will be avoiding a debt that lawfully belongs on its shoulders. These Councilmembers were sued in their official capacity as Councilmembers. But for the fact that they were City Councilmembers, they would not have had this expense at all. They should not be left holding the bag for a public expense, nor for something where they did nothing wrong, and which was tossed out of court by the judge.

Fifth, if the old City Attorney and City Manager had not refused to defend this case, the Councilmembers would not have incurred these legal costs at all. It is unfair to them for the City to deny them coverage, and then turn around later and say they did too much in winning the case. The City is just trying to avoid paying the whole legal bill when the City should have been responsible for this case to begin with.

Councilmember Thomasson questioned how many Councilmembers needed to vote in order to approve payment of fees. He suggested that it might be better to have the motion brought before Council when Councilmember White was present also as it might fail for lack of a quorum.

City Attorney Marousek informed Council that Council Rule 23 and RCW 35A.13 required the affirmative vote of four councilmembers to expend funds. She also noted that a quorum must exist for Council to take any action. City Attorney Marousek read RCW 42.23.030 that states that the interests of a municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract. In order to determine whether Council had a quorum, City Attorney Marousek conducted the following poll of Council to determine who would recuse themselves or participate:

Mayor Wasson – Chose to suspend his response until the vote was called. He said that, notwithstanding the City Attorney's advice, he would **second the motion** for discussion purposes.

Mayor Pro Tem Benjamin – The conflict of interest provision did not apply as he would make no financial gain by voting on the issue. Mayor Pro Tem Benjamin recused himself however due to the Appearance of Fairness provision.

Councilmember Petersen – Eligible to participate. Councilmember Petersen noted that he was not represented by the law firm of Short Cressman and Burgess and the attorney Scott Missall in the lawsuit created by the *Citizens of Des Moines and Allen Furney* regarding an illegal meeting. Councilmember Petersen said that his attorney, Art

Langley, had passed away so he had represented himself at both hearings. Councilmember Petersen said that he never entered into an attorney-client relationship with Scott Missall during that time period. Further, Councilmember Petersen said that he did not have any financial interest in the motion.

Councilmember Thomasson – Eligible to participate.

Councilmember Steenrod - The conflict of interest provision did not apply as she would make no financial gain by voting on the issue. Councilmember Steenrod recused herself however due to the Appearance of Fairness provision.

Councilmember Sheckler – Eligible to participate.

As the memorandum issued by the City Attorney to Council under the attorney-client privilege had been disclosed, Councilmember Thomasson said that the City Attorney had written a legal opinion stating which portion of the fees she believed were eligible for payment by the City, approximately \$28,000. The remainder of the invoicing had come after the court had ruled that the lawsuit should be recaptioned naming the City as the defendant. Based upon the advice of the City Attorney, he would vote against the motion.

In response to Councilmember Sheckler's questioning regarding what would happen if Council did not have a quorum, City Attorney Marousek explained that RCW 35A.13.035 states that in the event of an excused absence or disability of a Councilmember, the remaining members, by majority vote, may appoint a Councilmember Pro Tempore to serve during the absence or disability. Municipal Research Service was of the opinion that "disability" would include legal disability.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to table the issue until Councilmembers Petersen, Sheckler, Thomasson, and White were all in attendance and it would be certain that there was a quorum to act on the motion.

VOTE ON MOTION: Councilmembers Petersen, Sheckler, and Thomasson voted "Yes" while Mayor Wasson was opposed.

Upon questioning from Mayor Wasson, Councilmember Steenrod said that she had previously recused herself.

Mayor Wasson said that the motion to table had nothing to do with the merits of the motion so all could participate. He said that he had no confidence in the City Attorney and that he did not need to consult with her regarding the issue.

Upon questioning from Councilmember Steenrod, City Attorney Marousek said that recused Councilmembers could participate in discussion and vote on a procedural issue as long as it was clear that procedural steps were not being used to address the merits of the case. If the record looked like procedural issues were being used to address or to avoid addressing the issue to help yourself, you should not vote.

Councilmember Thomasson clarified that the intent of his motion was to insure that at least four members who appeared not to have a conflict of interest were able to participate.

Mayor Wasson said that the motion to table was a procedural motion and any Councilmember could vote on it. Mayor Wasson **called for another vote on the motion.**

VOTE ON MOTION: Motion failed, 2 –3, with Mayor Wasson, Mayor Pro Tem Benjamin, and Councilmember Petersen opposed. Councilmember Steenrod refrained from voting.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to amend the payment amount to reflect the dollar figure included in the City Attorney's memorandum of December 16, 2002.

City Attorney Marousek clarified that the amount recommended was \$28,805.35.

VOTE ON AMENDMENT: YES – Councilmembers Sheckler and Thomasson. NO – Councilmember Petersen. Motion failed for lack of a quorum.

VOTE ON MAIN MOTION: Yes – Councilmember Petersen. NO – Councilmembers Sheckler and Thomasson. Motion failed for lack of a quorum.

City Attorney Marousek announced that no action was taken by the Council regarding this issue due to a lack of a quorum.

NEXT MEETING DATE – Regular Meeting, January 16, 2003

ADJOURNMENT

At 8:58 p.m., **motion** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Petersen and passed unanimously to adjourn.

Respectfully submitted,

Angela M. Chaufy
Deputy City Clerk