

SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

March 13, 2002

The special meeting of the Des Moines City Council was called to order by Mayor Wasson at 7:03 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the flag was led by Mayor Wasson.

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Attorney Gary McLean and City Clerk Denis Staab.

Announcement

Mayor Wasson announced that he called this special meeting of the City Council for the purpose of discussing personnel matters.

Council Rules

Councilmember Thomasson questioned whether or not legitimate notice of the meeting was given in accordance with City Council Rules. He noted that the City Attorney has distributed a legal brief as to what the rules say. He stated that he believes there is a violation of Council Rules that would make this an illegal meeting.

Public Comments

Mayor Wasson announced that no public comments will be accepted at this meeting, no demonstrations and anyone making out of order comments or a disturbance shall be subject to removal from the meeting.

Council Rules

Councilmember Thomasson announced that he wishes to discuss the manner of notice of the meeting because he cannot condone participation in an illegal meeting. Councilmember Thomasson advised that he has reviewed the Council rules in regards to the notification of this meeting. He stated that the Rules clearly state that the notice must be prepared by the City Clerk. He inquired of the City Clerk as to whether she had prepared the notice.

City Clerk Staab replied that she did not.

Councilmember Thomasson then questioned whether the City Attorney had reviewed the notice as required by City Council Rules.

City Attorney McLean replied that he did not.

Councilmember Thomasson noted that the rules require that every City Councilmember and the City Manager must be served with a copy of the notice at least 24 hours prior to the meeting. He inquired of Council as to whether they had all received a copy of the notice.

All Councilmember replied that they had received a copy.

Councilmember Thomasson again questioned whether the City Manager had received the meeting notice.

Mayor Wasson responded that he had not.

Councilmember Thomasson noted that clearly Council cannot hold the meeting because it was illegally called. He stated that Council's Rules have the force of law as they have been written. He further stated that the Rules have been written to provide for an orderly form of government. He advised that he believes Council should leave the Chambers at this time and not continue with discussion. He expressed curiosity as why a special meeting was called when Council has a regularly scheduled meeting tomorrow night where any business item could come before Council.

Councilmember Thomasson questioned Mayor Wasson as to whether he intended to continue with the illegal meeting.

Mayor Wasson responded that it is his intention to continue.

Councilmember White expressed the opinion that the meeting is clearly illegal as the procedures have not been followed. She stated that she will purposefully not participate in a meeting that is not legal.

Councilmember Thomasson announced that since he has strong view points that need to be expressed, and because he normally would not deal in personalities but with issues, but this issue is strongly dealing with people, and he must deal with that. Councilmember Thomasson noted that one of the things he insists on in order to continue participation in the illegal meeting, while not waiving his objection to it being an illegal meeting, and he will not acquiesce on his objection to this being an illegal meeting, but to continue he expressed the following view and expressed that it be placed on the record:

"If you take any action, whatever action it is, it is subject to legal suit by whatever individual or citizens may take objection to the action that was taken. So, if you continue you are opening the City up to another law suit, which I am certain will arrive. You are the ones that are claiming that you are trying to save the tax payers money and if that is indeed the case, we should go home tonight and deal with this issue tomorrow. I do insist that Councilmember Petersen remove himself from discussions or actions on the City Manager's contract due to several issues related to his conflict of interest. Specifically, I have heard via Councilmember White in a telephone conversation that she had with him, that his vote is in retaliation for zoning issues and permitting issues relative to his business and property on the Highway. He is looking for special interests from the City Council and City staff and I cannot let that go unchallenged. So, I am expecting himself to step down from any discussion or any action on this issue. I believe that would also add, if he continued to participate, to whatever legal action an individual or citizens may wish to take."

Councilmember Thomasson asked Mr. Petersen if he wishes to continue his participation tonight.

Councilmember Petersen replied that this was correct.

City Attorney McLean advised that the Council needs to be fully aware of the consequences that could flow from its actions tonight if it were to continue to engage in a meeting that appears to be in violation of the City Council Rules as well as the Open Public Meetings Act. He noted that Council Rules are specific and that the Code does read that the Council Rules have the full force of law, meaning that they are mandatory, they are not optional and actions undertaken or decisions made at any meetings held in violation of City Council Rules are subject to challenge as they could be deemed null and void. He further advised Council that if they choose to do anything tonight, other than a motion to adjourn, any action that might be taken would be open to legal challenge. He noted that it is also possible that individuals could bring actions to enforce the provisions of the Open Public Meetings Act or the City Council Rules themselves, and any individuals that believe that they might be harmed through any action undertaken by the Council this evening, would be well within their rights to bring their own actions for any damages or injuries that might flow from those actions. He noted that he has provided Council with a detailed memo prepared earlier today. He advised that had he received an opportunity to be aware of the meeting notice he would have been happy to review it and to approve it as to form to help. He stated that he understands that the Mayor believes he has consulted with attorneys at the law firm of Short, Cressman and Burgess, and it should be noted that this is the law firm that represented Ms. Steenrod in her independent action raised against the City of Des Moines, that was dismissed earlier this year. City Attorney McLean again advised Council that this meeting tonight would be an illegal meeting and it would be prudent to adjourn this meeting, and if it wishes to take any personnel actions, it needs to properly note that matter and detail for the public what that action might be. He noted that the public has been advised by the Council that the subject is the City Manager's Contract and that is a subject that can be brought up at a regular meeting, actions can be taken publicly, executive sessions can be held to discuss performance issues, so as long as they conform with the law. However, it is his legal opinion that the meeting tonight is not conformance with Council's own Rules and the Open Public Meetings Act. He again reminded Council that there are penalties for violations of those laws as well as exposures that Councilmembers open themselves up to.

Councilmember Sheckler stated that he also has read the Council Rules and noted that this clearly an illegal meeting and he will not participate in the meeting.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to adjourn the meeting. Motion failed 4 to 3 with Councilmembers Sheckler, Thomasson and White voting YES.

Councilmember Sheckler announced that he is leaving the meeting.

Councilmember White announced for the record that she is leaving as well, as she believes the meeting to be illegal.

7:13 p.m. Councilmembers Sheckler and White left the Council Chambers.

Councilmember Steenrod stated that she read the Rules and the way she reads the Rules, Rule 15 talks about the presiding officer shall have the sole authority to request a Councilmember to excuse himself on the basis of an appearance of fairness violation, I believe that is what you are talking about and I have not heard the presiding officer do that. She further noted that Rule 4 says: "notwithstanding the request of the presiding officer or other Councilmembers, the Councilmember may participate in any such proceeding." She noted that it is her understanding

that Mr. Petersen, as an elected officer, can choose to recluse himself or not, and if he chooses not to, that is his decision.

Councilmember Thomasson replied that clearly with regards to an Appearance Fairness issue, that the Mayor does have the discretion to ask people to step down. In his opinion, this is not an Appearance of Fairness issue, this is an outright conflict of interest. He stated that he has every right to be able to express this opinion and challenge Mr. Petersen, which he has.

City Manager's Contract

Mayor Wasson announced that the first item of business is the City Manager's contract.

City Attorney McLean referenced the Mayor's agenda that was handed to him at 7:02 p.m. tonight. He noted that the agenda indicates that there is an intent to have a motion. He stated that given the notice that the Mayor prepared and given to him this morning reads: "The purpose of the meeting will be to discuss personnel matters." He advised Council that anything beyond a discussion this evening would be in clear violation of the Open Public Meetings Act, as anything beyond a discussion would be a final action type of item which was not provided in the notice that the Mayor issued. He further advised that a discussion, if you believe this to be a legal meeting, might be in order, but clearly any final action at tonight's meeting would not be in order.

Councilmember Steenrod advised, that under separate legal counsel, she brought the issue up and was advised that it is a perfectly legal meeting. She noted further that she has been advised that we are free to bring any motion under the notice of meeting as it was published. She also commented that with regard to legal counsel, she as a Councilmember, has no faith in the City Attorney's legal counsel and that is the reason she has retained outside legal counsel.

City Attorney McLean advised that the definition under the Open Public Meetings Act of the word "actions" means: "the transaction of official business of a public agency of the governing body including, but not limited to receiving public testimony, deliberations, discussions, considerations, or views or evaluations, and final actions", in other words, action includes discussions. He further detailed, final action in quotes means: "a collective position or negative discussion, decision or an actual vote by a majority of the members of the governing body when sitting as a body enter upon a motion, proposal, resolution, order or ordinance." He advised that those two terms are very different. He also noted that the definition of a special meeting is very clear in allowing what a special meeting can do and read the following: "The calling notice of a special meeting shall specify the time and place of the special meeting and the business to be transacted." He noted that specifically on tonight's notice it read the purpose of the meeting would be to discuss personnel matters. He continued to read the statute as follows: "Final disposition shall not be taken on any other matter at such meetings by the governing body." He stated there was no notice that there would be any motion, or resolution. He gave the opinion that he believes someone could allege that there is a violation of the Open Public Meetings Act.

Councilmember Steenrod apologized to the Council because on February 21, 2002 she met with the City Manager to spare him embarrassment and humiliation that might arise out of bringing up in the open the request for his termination. She noted that she felt it was important to have someone that could work with the Council, someone she felt she could work with. She advised that she told the City Manager very specifically that if he choose to resign then she would not bring a motion, but if he choose not to resign then she would personally bring a motion for his

termination. She expressed the opinion that for the City Manager to have allowed this situation to go on so long, was a very poor choice of judgement. She felt she made an error in judgement in not calling for his termination on February 21, 2002. She read a paragraph from the City Manager's contract to explain what the grounds are as follows:

"The City Council may terminate this employment agreement and the services of the City Manager for any reason and without cause in accordance with RCW 35A.15.130, provided that the notice provision shall be at least 30 days. In the event the Council takes such an action, the City shall pay to the City Manager a contract termination penalty in the amount of six months severance pay. For purposes of this clause the 30 day notice period is in addition to the six months severance pay. Severance pay shall include all benefits except vacation and sick leave accrual. Severance pay includes without limitation medical, dental and vision coverage for six months, and all retirement fund payments required by the Personnel Manual, the ordinances and the Municipal Code of the City, and State, and Federal laws."

Councilmember Steenrod proceeded to read a resolution into the record as follows:

"Whereas, the City Manager is a confidential employee of the City Council; and
Whereas, the City Council has determined that it no longer has confidence in the City Manager to perform his duties and carry out the policies and directions of the City Council.

Now, therefore, the City Council of the City of Des Moines, Washington resolves as follows:

Section 1. The City Manager's employment and his employment contract with the City of Des Moines, is hereby terminated effective April 30, 2002.

Section 2. It is the Council's desire that the City Manager be placed on paid administrative leave commencing immediately and ending at 5:00 p.m. on April 30, 2002."

MOTION was made by Councilmember Steenrod, seconded by Councilmember Benjamin, to call for a vote on the termination of the City Manager.

7:23 p.m. Mayor Wasson called for a 10 minute recess to clear the Council Chambers.

Councilmember Benjamin stated that he ran on a campaign to bring good government to Des Moines and on a platform of decisive leadership. He noted that he felt action must be taken and that it is an issue of confidence of which he does not have in the current City Manager.

Councilmember Thomasson noted that while clearly the City Manager's contract is written as though he is an at-will employee of the City Council and realizing that in many cities City Managers have a tenure of an average of 18 months, so Bob Olander has had a long profession with Des Moines. He personally wished to congratulate him and will be clearly disappointed in his absence. He once again insisted that there is a clear conflict of interest by Mr. Petersen with regards to his voting on the City Manager contract because of his expectation of a special privilege. He also continued to insist that in his view this is an illegal meeting and has not waived his objection by remaining to represent the interests of some of the Councilmembers. He advised that he will not vote on this issue because he agrees that the alleged attempt at notice said "discussion", and left nothing open for final action, therefore he will not vote against, will not abstain, he will just not vote. He felt this was a sad day in Des Moines to have stooped to this level of politics and he is very disappointed.

Mayor Wasson noted that he has worked with Bob Olander for many years but since the election in November he has lost confidence in his ability to be of value to him as a City Councilmember. Therefore he has decided to ask for his termination.

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to adopt the resolution to terminate the City Manager's contract effective 45 days from tonight due to the Council's lack of executive confidence in the City Manager and to so advise the City Manager as soon as possible. Motion passed 4 to 0 by the following roll call vote: YES: Councilmembers Steenrod, Petersen, Mayor Pro Tem Benjamin and Mayor Wasson. Councilmember Thomasson "I am not here".

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to place the City Manager on paid administrative leave for the 45 day interim period. Motion passed 4 to 0. [ED NOTE: Councilmember Thomasson did not participate.]

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to designate the Assistant City Manager as the Acting City Manager until further notice by this Council, and at no change in compensation or benefits at the present time. Motion passed 4 to 0. [ED NOTE: Councilmember Thomasson did not participate.]

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to direct that the Acting City Manager meet with the Council on Thursday, March 14th to discuss personnel issues including the process to begin selection of a new City Manager. Motion passed 4 to 0. [ED NOTE: Councilmember Thomasson did not participate.]

Councilmember Steenrod went on record to state that she has zero confidence in the ability of existing legal staff to provide advice and counsel to the City Council and felt that her reading of the rules tells her that Council has the right to retain legal counsel that can be replied upon. Therefore she made the following motion:

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to retain the law firm of Short, Cressman and Burgess as special counsel to the City Council pursuant to RCW 35A.13.090 for the express purpose of advising this Council on its day to day business and such other matters as desired by the Council, and to direct the Acting City Manager to bring back to this Council, for its approval, a professional services agreement for that purpose by March 19, 2002. Motion passed 4 to 0. [ED NOTE: Councilmember Thomasson did not participate.]

ADJOURNMENT

MOTION was made by Councilmember Petersen, seconded by Councilmember Steenrod, to adjourn. Motion passed 4 to 0. [ED NOTE: Councilmember Thomasson did not participate.]

Meeting adjourned at 7:42 p.m.

Respectfully submitted,

Denis Staab,
City Clerk