REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES October 31, 20002

At 7:32 p.m. City Manager Piasecki announced that Council is in Executive Session and it is expected to continue approximately 10 minutes more.

At 7:45 p.m. City Manager Piasecki announced that the Executive Session is expected to continue approximately 10 minutes more.

The regular meeting of the Des Moines City Council was called to order by Mayor Wasson at 7:58 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE was led by Councilmember Steenrod.

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 Manager Tony Piasecki, City Attorney Linda Marousek, Police Commander Kevin Tucker and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Carol Davis, 812 South 234th Place, Representing Des Moines Historical Society

Ms. Davis thanked the Council for the past financial support of the Historical Society. She also acknowledged the help of the City's Public Works Dept. Ms. Davis briefed Council on the Society's activities, various grants and partnerships with the surrounding communities. In conclusion she requested that the Historical Society funding be continued in the upcoming adoption of the 2003 City budget.

Rena Hamburger, 23600 Marine View Drive, President of Des Moines Legacy Foundation

Ms. Hamburger announced that the Foundation has approved an expenditure of $14,000 to aid in the renovation of the Activity Center to house seniors. She advised that these funds are designated to be spent in the following manner:

- $9,792.00 Entry Door 117A
- $1,893.12 Fabric Awning
- $2,314.88 Update Restrooms

Ms. Hamburger further announced that the Foundation is holding its annual fund raising event at Anthony's Homeport on Sunday November 3rd. She advised that that this year, the fundraising event is dedicated to raising funds to support building the commercial kitchen at the Activity Center.

BOARD & COMMITTEE REPORTS

Des Moines Legacy Foundation

Councilmember Sheckler thanked the Foundation for its efforts in helping to fund the Activity Center. He congratulated the organization for its impressive efforts in taking on so many large projects in its short period of existence.

Waterland Funding

Councilmember Sheckler noted that staff has prepared a report showing the cost of the Waterland Festival by Department. He requested that staff prepare a breakdown showing exactly which departments actually budget dollars for the Waterland Festival and what those amounts are.

Finance & Economic Development Committee

Councilmember Steenrod reported the Committee has been reviewing the proposed Marina Bond Ordinance and that it will be before Council at the November 14th meeting.

Councilmember Steenrod also noted that the Activity Center Remodel is approximately $80,000 over budget and a request to amend the CIP to provide the needed funding is on the consent calendar this evening.

"Requests for Action" Tracking

Councilmember Steenrod distributed a form used by the City of Tukwila to track citizens requests/concerns. She noted with this system items are less likely to "fall through the cracks". She felt it is important that a system be developed to ensure items brought to Council or staff attention be tracked to ensure proper follow-up and closure. She requested staff develop a similar form for Des Moines use.

Mt. Rainier Pool Ad-hoc Committee

Mayor Pro Tem Benjamin advised that the Committee is currently working with surrounding cities and Highline School District to find a solution to have King County keep the Mt. Rainier Pool open. He noted that he will keep Council advised of the negotiations.

ADMINISTRATION REPORTS

Fishing Pier Pilings

City Manager Piasecki reported that while working on the repairs to the Des Moines Marina Fishing Pier, additional problems were discovered. A portion of the Pier has been closed for safety reasons. It has been determined that repairs can be made and he hopes to have an update regarding the costs for these additional repairs at the next Council meeting.

Civil Service Commission Vacancy

City Manager Piasecki announced that a member of the Commission has resigned due to moving out of the City. He noted that he is seeking candidates interested in appointment to this unexpired position, and any interested citizen should contact the City Clerk's office for an application and more detailed information.

Des Moines Memorial Flag Pole

City Manager Piasecki advised that a letter had been received from Mr. Paul Barden commenting on the disrepair of the flag pole and improper sized flag being displayed at the Des Moines Memorial Flag triangle. He noted that Park and Recreation Director Thorell will follow-up with Mr. Barden, who also offered his assistance in bringing this flag pole up to standard. He advised he will keep Council informed.

Highline School District Presentation - Capital Facilities/Bond

City Manager Piasecki introduced Alan J. Schmidt, Director of Facilities Services for Highline School District #401.

Mr. Schmidt proceeded to review written material distributed to the Councilmembers regarding the District's Capital Facilities Improvement Plan. Items covered included:

- Prioritized Construction Schedule
- Pie-Chart showing distribution of the $189.5 Million Voter Approved Bonds
- Reviewed Elementary School Design Features
- Reviewed Interim Schools to be used during rebuild and remodel projects
- The 2002 Prioritized Construction Schedule
- Schematic site plan and artist rendering of the new 2 story Madrona Elementary School

In conclusion, Mr. Schmidt thanked Council for their support in passage of the School District's Bond issue.

CONSENT CALENDAR City Attorney Marousek noted that Item #2 has been removed and proceeded to read the Consent Calendar.

1. Motion is to approve the minutes of October 17, 2002.

~~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 42.24.090, 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 checks # through # & electronic fund transfers in the total amount of $~~

~~Payroll fund transfers in the total amount of $~~

3. Motion is to approve the Municipal Facilities Committee's request to approve additional funds in the amount of $87,990 for the renovation of the City's Activity Center and to amend the 2002 Capital Improvement Plan to provide for project funding in that amount.

~~4. Draft Resolution No. 02-236 Title: A Resolution of the City Council of the City of Des Moines, Washington, adopting an agreement between the City of Des Moines and the Public, Professional and Office-Clerical Employees and Drivers Local Union No. 763 (Teamsters) regarding wages, hours and working conditions for the period November 1, 2002 to December 31, 2004.~~

~~MOTION is to approve Draft Resolution No. 02-236.~~

[ED NOTE: This item was removed by Councilmember Sheckler.]

Councilmember Sheckler requested that Consent Item #4 be removed.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White and passed unanimously, to approve the consent calendar as read, with the deletions of items 2 and 4.

Consent Calendar Item #4 - Draft Resolution No. 02-236

Councilmember Sheckler voiced strong objection to the language in the Draft Agreement, Article I, 1.2 which would require any employee not wishing to become a Union member to still pay 90% of dues. He noted that these employees would have no voice and of course no vote, which is reasonable, but to still have to pay 90% of dues, is not right.

Councilmember Steenrod felt that this section, 1.2 is un-American to be forced to do something you do not want to do, such as paying 90% of dues to an organization you do not want to join.

City Manager Piasecki pointed out that section 1.2.1 would allow employees, based on a bona fide religious tenets or teachings, to pay the 90% fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union.

Upon questioning by Council, Cabot Dow, negotiator on behalf of the City, noted that to qualify for religious reasons, that would have to be contained within the Church's by-laws and creeds. The only religious group that he is currently aware of having this clause is Jehovah's Witnesses. Mr. Dow further explained the following union terms:

- Closed Shop - Illegal
- Union Shop - Requires membership as condition of employment
- Agency Shop - (Des Moines) - Requires employees to join or pay service fee of 90%. The other 10% is used by the Union to pay for Political actions.
- Open Shop - Employee can join the Union (pay full dues) or not join the Union (no financial requirement)

Upon questioning by Council, City Manager Piasecki advised that approximately 20 employees would be involved in this contract. However he noted, that none are paying any Union dues until the contract is approved and signed.

Mr. Dow noted that Section 1.2 is not standard Union contract language. A standard Union clause that the Union wants, is that everybody become a member as a condition of employment, with no exceptions. He noted that early in the negotiations it was made clear that this was not acceptable to the City.

Upon questioning by Mayor Wasson, Mr. Dow affirmed that if an employee is a Union member, then the employee is basically saying that they are sympathetic to the political causes that the Union promotes and supports. He further advised that Union members are notified annually by the Teamsters that if they object to any political contribution then they can have their dues deducted for that portion, to protect their rights of non-political support.

Mayor Wasson commented that negotiations have been on-going for over two years, and all issues with the exception of section 1.2 have been resolved. He advised that he cannot in good conscience vote for this agreement. He felt it is wrong to force any City employee to pay for something they do not want to be a part of.

Councilmember White advised that she is in favor of approving the agreement as so much time has been spent on the issue, it is time to move forward.

Mayor Pro Tem Benjamin stated that he can understand City workers needing an agreement, but he cannot agree with Section 1.2.

Mr. Dow advised that Council can reject the proposed draft agreement or can recommend agreement with a modification to Section 1.2. He advised then the Union would have the opportunity to accept or reject.

Upon questioning by Council, Mr. Dow noted that the draft agreement was passed by a simple majority of the effected employees.

Councilmember Thomasson requested that revisions to this draft agreement be done in an open Council meeting so employees will know why the Council is not in favor of the draft. He questioned whether the Union will even present Council's version to the employees or just flat reject any changes.

Mr. Dow advised that should Council choose to amend the draft agreement to say employees have the choice of joining the Union or not joining the Union with no financial payment, he felt this would be a "deal breaker" and not be acceptable to the Union. He reminded Council that the City, as an employer, cannot interfere in the affairs of the Union. So to what extent the Union listens to the employees or just does their own thing, is pretty much up to the Union to decide.

Mayor Wasson stated that he is not willing to give the Union the authority to impose their will upon employees of the City who do not choose to belong to the Union.

Councilmember Steenrod noted that the negotiations have been dragging on for too long and she would like the employees to get their bonuses.

Mayor Wasson pointed out that the employees will get a signing bonus retroactive, therefore they are not losing any financial gain.

Councilmember Sheckler advised that he would support a clause that says either you are a Union member or you are not. If an employee choose not to be a Union member there should be no adverse action taken against them. The employee is giving up his right to have a voice in the Union, that is enough.

MOTION was made by Mayor Wasson, seconded by Councilmember Petersen, to direct City Attorney Marousek to rewrite a motion for Council, to say that Council accepts the contract with the condition that section 1.1 and 1.2.1 be removed.

Mr. Dow interpreted this to mean the City wishes to amend the contract to allow each employee to decide if they wish to be a member or not.

Councilmember Thomasson suggested that perhaps more than one motion should be developed for Council's consideration.

City Manager Piasecki reminded Council that Mr. Dow has pointed out that if Council chooses to change the agreement to allow employees to either join the Union or not join the Union, then that would be a deal breaker for the Union and will not go anywhere. However, if the sections are rewritten to allow that 90% is either given to the Union as a representation fee, or to charity that is mutually agreeable, that may be something that the City could talk to the Union about.

Mr. Dow informed Council that by leaving in the 90% representative fee in the draft contract, he felt there is a reasonable possibility that this may be acceptable. However, if Council chooses total freedom of choice by the employee whether to join the Union or not, then he felt the Contract would be rejected.

Mr. Dow advised Council that some of the consequences that could result should there be no contract should the Union choose to exercise right of free speech, could be:

- Picketing which could put jobs & benefits at risk
- Could file unfair bargaining process - bad faith

Mr. Dow also noted that the driving force for the employees is most likely the money that is there for them to receive after waiting a significant amount of time.

9:32 p.m. Mayor Wasson called for a 10 minute break.

City Attorney Marousek read the following as option 1.2A to replace Section 1.2:

The first sentence would read: "It shall not be a condition of employment that all employees of the Employer covered by this Agreement become members in good standing." (The remainder of the paragraph would be stricken)

City Attorney Marousek read the following as option 1.2B:

The following language be added to the end of the existing paragraph 1.2: "In the alternative to paying the service fee an employee may elect to pay an amount of money equivalent to regular Union dues and initiation fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish written proof each month to the Union that such payment has been made or initiate and maintain a payroll deduction with the Employer. If the employee and the Union do not reach agreement on such matters, the Commission shall designate the charitable organization." And, eliminate section 1.2.1

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to adopt Draft Resolution No. 02-236 approving the agreement regarding wages hours and working conditions with the Public, Professional & Office-Clerical Employees and Drivers Local Union No. 763 (Teamsters) and the agreement resolving unfair labor practice charges, with the change that section 1.2 be changed to 1.2A as stated by the City Attorney, and authorize the City Manager to sign both documents substantially in the form as submitted.

Councilmember Sheckler stated that he believes every individual has the right to choose whether they become a Union member or not, without any recourse against them. He felt that the contract as originally written removes individual rights of choice.

Councilmember Steenrod stated that she supports Councilmember Sheckler's philosophy, but cannot support the motion as the City would be back to square one in negotiations.

Mayor Wasson stated that the draft agreement is the Union's priorities, not the City employees.

Councilmember Thomasson voiced appreciation for Mr. Dow's efforts to bring this matter to a closure. He noted this is the first opportunity for employees to hear that the City Council has always had the employees best interests in mind, not the Union. He advised that he feels the proposed change in the agreements is for the good of the employees to allow them to decide. He noted that the Union may not allow the employees to vote on this proposal, but it is a risk he is willing to take.

VOTE ON MOTION: Motion passed 4 to 3 with Councilmembers Steenrod and White and Mayor Pro Tem Benjamin voting NO.

OLD BUSINESS

Towing Services Contract

Police Commander Tucker informed Council that in July this year, request for proposals for impound and Towing services were sent to 16 companies, and four responded. He informed Council that he personally reviewed the proposals, made site visits, reviewed equipment and drive times, ran record checks with Washington State Patrol regarding complaints, contacted references and compared pricing. He advised Council that none of the companies met all of the criteria. He proceeded to review a three page comparison matrix furnished to Council in their packets. He concluded by recommending that the contract be awarded to RoadOne (Dick's Highline Towing) for having the best overall package and value. He did noted that response time will be of concern and would need to monitored and tracked.

City Manager Piasecki advised that should Council choose to award a contract, a standard contract would be prepared incorporating the information provided by the towing company, including all required insurance.

Upon questioning by Mayor Wasson, Commander Tucker advised that he ran a record check on all drivers for the companies submitting proposals.

Upon questioning by Mayor Pro Tem Benjamin, Commander Tucker advised that since the late 1950's the City has utilized the services of Pete's Towing. It is his opinion that Pete's is a quality company and has provided outstanding service, and he personally knows of no outstanding complaints.

Mayor Pro Tem Benjamin questioned why with a record of 40 years of outstanding service Council is even spending time considering this issue. He was of the opinion that this whole issue was politically motivated and since the service is already being provided, it is a waste of Council time.

Councilmember Steenrod felt that this issue has been raised to try to force Councilmember Petersen to resign. She noted that with longer towing times there is no benefit to the citizens and could force more overtime for Des Moines' Police officers. She reminded Council that Councilmember Petersen's case is still before the Judge to rule on a conflict of interest and that the Council should not make any decisions until the Judge has made his ruling.

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, that Council elect not to award a contract to any of the responders and leave the situation as it currently stands, pending the outcome of the Petersen conflict of interest lawsuit.

Councilmember Petersen announced that he must abstain from participation in this issue.

Councilmember Thomasson spoke against the motion citing that having a towing contract should have been accomplished 10 years ago, as it is just a good business practice. This issue has been heightened by Councilmember Petersen being on the Council and owning Pete's Towing. He felt there are valued reasons to have a contract including indemnity clauses and hold harmless agreements and other items of that nature. He is of the opinion that having a contract would have a guarantee for a fair price for citizens. He suggested that Council may wish to have a contract with several towing companies, which would be his preference, and let the citizens make the choice.

Mayor Pro Tem Benjamin voiced the opinion that this is a political issue. He noted currently citizens can have any towing company called they name. Picking one towing company does not encourage a free market. He advised that the current system is not broke, it is working well.

Councilmember Sheckler agreed that this is an emotional subject. He noted that probably no one is going to dispute the fact that Pete's Towing is the best company, but even Councilmember Petersen acknowledged at the beginning that he could see a potential problem with a conflict of interest. He reminded Council that three authorities in the State said that they believe there is a conflict and this is the real issue. He does not see any way around that. He acknowledged that the pending court case could be thrown out, then Council would have to revisit the issue.

10:28 p.m. **MOTION** was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Petersen and Thomasson voting NO.

Mayor Pro Tem Benjamin stated that he heard Councilmember Petersen say he may have a conflict and that he had been advised by past City legal representation, which was advice from the Attorney General's office, that he might have a conflict. He also reminded Council that Councilmember Petersen had stated that the State Auditor's office felt the only area that he might have a conflict of interest was in towing City of Des Moines vehicles, if he charged for towing City vehicles. [ED Note: Councilmember Petersen acknowledged this to be true.]

Upon questioning by Mayor Pro Tem Benjamin, Councilmember Petersen acknowledge that he is not charging the City for any towing of City vehicles.

Councilmember Steenrod felt that since Pete's Towing is not charging the City for towing City vehicles, which helps the City's budget, there is no conflict and therefore there is no need to take any action until after the Court case is settled.

Councilmember White stated that she did not believe this was a political issue, but rather a responsibility to have a contract in place outlining services, dispute resolution procedures, insurance, indemnification and hold harmless provisions.

Upon questioning by Council, City Attorney Marousek noted she had reviewed written opinions on the conflict of interest regarding Councilmember Petersen from the following:

- MRSC indicating that the current situation was an apparent conflict of interest
- Two letters from the Attorney General's office expressing an opinion that the current situation was a violation of the Conflict of Interest Rule for Councilmembers
- Opinion from the State Auditor's office noting that they would take the advice of the Attorney General

She noted that she had also read a letter from Mr. Langley, Mr. Petersen's attorney, disagreeing with those opinions. She further noted, that as she understands it, the Court has not yet expressed an opinion, but simply issued an injunction which Mr. Petersen has complied with tonight.

Mayor Wasson voiced the opinion that until the Judge makes a formal ruling, there is no conflict of interest. He felt this expensive process was politically motivated by a disgruntled citizen. He noted that the City Manager used his best judgement to place this RFP. However, he feels the first step is to adopt procurement policy guidelines for all services before any RFP is ever issued. Therefore, he supports Councilmember Stenrod's motion. If Council were to proceed to award a contract, the City could be stuck with the second best choice.

Upon questioning by Council, Councilmember Petersen stated that he believes the Judge may reach a decision around mid-December. He noted that originally he was advised by the City Manager that there may be a possible conflict of interest. He was informed that the Attorney General's office and Washington Cities Insurance Authority believed that there was a potential conflict of interest. He further noted that he then contact his attorney, who informed him that he did not believe there is any conflict of interest, due to the fact that in 1999 the Legislature re-wrote the Conflict of Interest Laws, to allow individuals who had years of good business and involvement in communities to get involved in State government.

10:45 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sheckler, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Thomasson and White voting NO.

City Manager Piasecki noted that when a Des Moines officer shows up at a stalled car on the side of the road, or an accident, the owner is asked if they have a preference of tow companies. He noted that even if Council chooses to award the contract, there would be no guarantee that they would have exclusive rights to towing all vehicles. Personal requests for a towing company would be honored. The Police only make the choice when the owner is not present or for some reason is unable to tell the police who they wish to have tow the vehicle.

VOTE ON MOTION: Motion failed by a 3 to 3 vote. With Councilmember Steenrod, Mayor Pro Tem Benjamin and Mayor Wasson voting YES. Councilmembers Sheckler, Thomasson and White voting NO. [ED NOTE: Councilmember Petersen did not participate.]

NEXT MEETING DATE

Mayor Wasson noted that the next meeting is a Study Session on November 7, 2002.

ADJOURNMENT - 10:51 p.m.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White at 10:51 p.m. to adjourn. Motion passed unanimously.

Respectfully submitted,

Denis Staab
City Clerk