

## REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

March 26, 2009

The regular meeting of the Des Moines City Council was called to order at 7:33 p.m. by Mayor Sheckler in the Council Chambers, 21630 11<sup>th</sup> Avenue South, #B.

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

ROLL CALL - Present: Mayor Bob Sheckler, Mayor Pro Tem Dan Sherman, Councilmembers Dave Kaplan, Ed Pina, Carmen Scott and Scott Thomasson. Absent: Councilmember Susan White. Also in attendance were City Manager Tony Piasecki, City Attorney Pat Bosmans, Planning, Building and Public Works Director Grant Fredricks, Police Chief Roger Baker, Police Commander Kevin Tucker and City Clerk Denis Staab.

MOTION was made by Councilmember Scott, seconded by Mayor Pro Tem Sherman and passed unanimously, to excuse Councilmember White.

### COMMENTS FROM THE PUBLIC

Jim Chastain, 32849 38<sup>th</sup> Avenue S, Federal Way

Mr. Chastain informed Council that he owns rental property in the Pacific Ridge Area and he thanked Council for the Police Departments efforts for the reduction of crime in that neighborhood.

### Draft Ordinance Regarding Multi-Family Development Tax Exemption

The following individuals addressed Council voicing opposition to the proposed legislation:

Pamela Jenn, 21814 Pacific Highway South

Mysty Beal, 22628 16<sup>th</sup> Avenue S

Ben Stark, 1310 S 230<sup>th</sup>

Max Vonbrock, 24437 Marine View Drive S

Cheryl Birdsong-Tuneau, 19818 3<sup>rd</sup> Place S

citing the following reasons:

- Increased unfair tax burden on existing tax payers to provide for schools, emergency services
- Unfair tax break for developer
- City needs the tax revenue for budget problems
- Unfairly evicts low income seniors from existing trailer park for redevelopment

### BOARD & COMMITTEE REPORTS & COUNCILMEMBER COMMENTS

#### Environment Committee

Councilmember Thomasson noted the Committee met earlier and the following items were discussed:

- Vehicle Wash Facility
- NPDES Permit Briefing
- Normandy Park Decant Facility and Maintenance & need for formal Agreement

#### Municipal Facilities Committee

Mayor Pro Tem Sherman advised the committee met recently discussing the following:

- Need for Midway Sewer District to install an emergency generator to pump sewage in the Marina
- Loan from Clear Water State Revolving fund for installation of a storm water treatment system in the Boat Yard at Marina
- Parks Capital Projects and order of projects due to lack of funds

#### Bicycle Club

Mayor Pro Tem Sherman announced that a Marshall Major Taylor Bicycle Club Chapter for teenagers is being formed in the City of SeaTac. For more information the number to call is 206-938-6067.

#### ADMINISTRATION REPORTS

##### Suburban Cities Association (SCA) - Update

City Manager Piasecki introduced Karen Goroski, Executive Director of SCA. Ms. Goroski distributed written material which she reviewed covering the following:

- 2008 Annual Report
- Long Range Goals
- Organizational Chart
- 2009 Calendar
- Working with King County to introduce ideas on a number of budget issues

Administration and Council thanked Ms. Goroski for her excellent leadership and accomplishments with SCA.

##### CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the regular minutes of February 26 and March 5, 2009.
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 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 #118468 through #118631 & electronic fund transfers in the total amount of \$750,150.34

Payroll fund transfers in the total amount of \$478,453.52

~~**3. Draft Ordinance No. 09-020-B – Title: An Ordinance of the City of Des Moines, Washington, relating to the acquisition by eminent domain of certain property in the City of Des Moines; describing the public convenience, use and necessity of such property; providing for the condemnation, appropriation, and taking of such land, including the mode of payment of cost of acquisition; and directing the City Attorney to prosecute such action in King County Superior Court.**~~

~~**MOTION is to approve Draft Ordinance No. 09-020-B on second reading.**~~ [Item removed b Councilmember Thomasson.]

4. Motion is to approve the Consultant Agreement that will provide for civil engineering services on the Transportation Gateway Project with KPG, Inc., in the amount of \$669,780.85, plus a 10% contingency, and authorize the City Manager or his designee to sign the agreement substantially in the form as submitted.

5. Motion is to approve contract Supplement No. 2 in the amount of \$126,623 for the final design and permitting for the Barnes Creek Detention Facility bringing the contract with Tetra Tech, Inc. dated 3/18/2008 in the original amount of \$85,648, to a revised contract total of \$212,171, plus a contingency amount of \$12,652.

~~6. Draft Ordinance No. 09-044 – Title: An Ordinance of the City of Des Moines, Washington relating to municipal finance, amending the 2009 budget adopted in Ordinance No. 1452, by authoring certain expenditures in the amounts specified in this ordinance.~~

~~**TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 09-044.**~~ [Item removed by Councilmember Thomasson.]

7. Motion is to approve the Interlocal Agreement between the City of Des Moines and the Des Moines Transportation Benefit District to support the TBD in its effort to coordinate, provide, maintain, construct, and reconstruct public street infrastructure and to authorize the Assistant City Manager to sign the ILA substantially in the form as attached.

Councilmember Thomasson requested Consent Items #3 and #6 be removed from the Consent Calendar.

**MOTION** was made by Councilmember Pina, seconded by Councilmember Kaplan and passed unanimously, to approve the Consent Calendar as amended.

#### REMOVED CONSENT ITEMS

##### Item #3 - Draft Ordinance No. 09-020-B [ ASSIGNED NO. 1456] Acquisition by Eminent Domain - 2<sup>nd</sup> Reading

Councilmember Thomasson stated he is not opposed to placing a jail facility in Des Moines. However, he would prefer a complete environmental review and conditional permit issues be undertaken to determine whether a jail should be on this site or not before we proceed with buying the site. He also felt we should discuss the possibility of the State giving us their portion of the site.

City Manager Piasecki explained that the property is WA State Dept. of Transportation property, most likely purchased with gas tax funds, therefore if it is not used for transportation purposes the State cannot give it back. In regards to doing permitting items first, he noted the property is currently owned by the Port of Seattle and we need to have use and possession before SCORE can start applying for the various permits.

**MOTION** was made by Councilmember Kaplan, seconded by Mayor Pro Tem Sherman, to approve Draft Ordinance No. 09-202B. Motion passed 5 to 1 with Councilmember Thomasson opposed.

##### Item #6 - Draft Ordinance No. 09-044 Amending the 2009 Budget - 1<sup>st</sup> Reading

Councilmember Thomasson advised that since he was opposed to the adoption of the 2009 budget, he cannot support amending it.

Councilmember Kaplan expressed the same position but since Council is one member short, he will vote to support.

**MOTION** was made by Councilmember Kaplan, seconded by Councilmember Pina, to suspend Council Rule 26(b) to consider the draft ordinance on first reading. Motion passed unanimously.

**MOTION** was made by Councilmember Kaplan, seconded by Councilmember Pina, to approve Draft Ordinance No. 09-044 relating to municipal finance, amending the 2009 budget adopted in Ordinance No. 1452, by authoring certain expenditures in the amounts specified in this ordinance. Motion FAILED 4 to 2 with Councilmember Thomasson and Mayor Pro Tem Sherman opposed. [Motion requires a super majority.]

Upon questioning, City Manager Piasecki stated the City is in violation of State Law by allowing the General Fund to go into a negative position and we will get a finding if we do not take some sort of action quickly.

**MOTION** was made by Councilmember Thomasson, seconded by Councilmember Kaplan, to transfer \$800,000 from the Revenue Stabilization Fund to the General Fund. Motion passed 5 to 1 with Mayor Pro Tem Sherman opposed.

City Manager Piasecki advised he will have the Legal Department review to see if this is a legal mechanism that Council can use to accomplish the transfer.

#### CONTINUED PUBLIC HEARING

#### Draft Ordinance No. 08-163 [ASSIGNED NO. 1457] Multi-Family Tax Exemption - 1<sup>st</sup> Reading

Mayor Sheckler introduced the item, reminding Council they are still in the question and answer period.

Planning, Building and Public Works Director Fredricks reviewed items provided in Council's packet which included:

- 4<sup>th</sup> Version of Draft Ord. 08-163
- Possible amendments to draft ordinance
- Waterview Crossing Development Impacts to Parks, Recreation & Senior Services
- 2/12/09 letter from South King Fire & Rescue Chief
- 3/13/09 Email for Highline School District Superintendent
- Revenue Estimate for the Entire Waterview Crossing and 2 Prototypical Projects

Commander Tucker distributed and reviewed a memorandum dated 3/25/09 regarding Waterview Crossing Impacts on Police Department Services. He concluded by noting the following amendment is being requested from the Police:

"The developer shall be required to have 24 hour a day/7 days a week onsite property management by a professional management company with a minimum of 5 years experience in providing property management for large scale residential projects. The developer shall also be required to provide 24 hour a day/7 days a week private security onsite to include onsite security offices, office space for public safety use and video camera monitoring."

8:52 p.m. Mayor Sheckler called for a 10 minute break.

Upon questioning, Police Chief Baker noted that the draft ordinance contains a provision that allows the City to recoup whatever the costs are to support the project. He felt the projected costs for police services for Phase I and II of the development are accurate.

City Attorney Bosmans called Council's attention to Section 4(5) contain the appropriate language the Chief is referencing. She also noted that the word 'applicant' should be changed to "property owner(s)".

Upon questioning, Planning, Building and Public Works Director Fredricks advised staff has identified an increase of \$369,000, over the course of the eight years, in revenue subject to the vehicle license tax to the Transportation Benefit District, which equals approximately \$35,000 to \$40,000 per year income.

In regards to the trailer park residents being displaced, Mayor Sheckler stressed this is not the City's doing, but the owner of the trailer park that sold the property to the developer to redevelop. Councilmember Thomasson added that he believes there is a special law that talks about relocation and the City can help supply that information to those residents.

After further discussion, Mayor Sheckler declared the Hearing CLOSED.

Councilmember Kaplan pointed out whether the legislation in front of Council passes tonight or not, the new owner of the trailer park can still redevelop the property if he wishes.

**MOTION** was made by Councilmember Pina, seconded by Councilmember Kaplan, to suspend Council Rule 26(b) to consider Draft Ordinance 08-163 on first reading. Motion passed 4 to 2 with Councilmember Thomasson and Mayor Pro Tem Sherman opposed.

**MOTION** was made by Councilmember Pina, seconded by Councilmember Kaplan, to adopt Draft Ordinance 08-163, creating a new chapter in Title 3 of the Des Moines Municipal Code implementing a Multifamily Tax Exemption program for developments on properties within the Pacific Ridge area.

**MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember Thomasson, to replace the previous motion with, "Council requests staff to obtain an independent financial analysis of the draft ordinance."

Mayor Pro Tem Sherman stated that once the draft ordinance is approved it creates a legal right for developers to sue the City in Court if they disagree with Council's decisions. He felt there is a lot of dispute about what represents a real return to make the City whole. He noted that staff has only provided estimated revenues, but no costs for providing services to an additional 2,650 more citizens, which is a 9% increase in the City's population, and we cannot support the citizens we currently have since revenues are down.

Councilmember Kaplan stated this does not create a legal right, but creates a tool which someone can apply for, and then we do an analysis of the specific project being requested to determine whether or not it "pencil's out". He noted an independent analysis will be required if a developer applies for the tax exemption.

Councilmember Pina noted that the ordinance if enacted does not automatically grant a tax exemption, developers must apply and Council will determine on a case by case whether to grant the benefit or not.

Upon questioning, City Attorney Bosmans advised the ordinance will give the developer the right to apply, for Council to do an analysis as to whether they meet the Code requirements and make a decision. She further noted anyone has the right to sue the City, however they cannot sue us for not implementing a multifamily tax ordinance.

**VOTE ON AMENDMENT:** Motion failed 4 to 2 with Councilmember Thomasson and Mayor Pro Tem voting yes.

**MOTION** was made by Councilmember Thomasson, seconded by Councilmember Scott, to amend the draft ordinance by incorporating Amendment 12, page 4 of attachment 2 into the ordinance at Section 4(3)(a). Motion passed 5 to 1 with Mayor Pro Tem Sherman opposed.

**MOTION** was made by Councilmember Thomasson, seconded by Mayor Pro Tem Sherman, to amend the draft ordinance by incorporating Amendment 13, page 4 of attachment 2 into the ordinance at Section 4(3)(b) and adding a "(iv)" to read "Buildings shall be constructed as a condominium for individual ownership."

At 10:26 p.m. **MOTION** was made by Councilmember Kaplan, seconded by Councilmember Pina, to extend the meeting to 11:15 p.m. Motion passed 4 to 2 with Councilmember Thomasson and Mayor Pro Tem Sherman opposed.

Mayor Pro Tem Sherman voiced the opinion that owner occupied (Condo) units are more desirable for creating a more stable environment and Council should strive to create a safe environment.

**VOTE ON AMENDMENT:** Motion passed unanimously.

**MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember Thomasson, to amend the draft ordinance by incorporating Amendment 11, page 2 of attachment 2 into the draft ordinance as a new Section concerning "Independent Financial Analysis Elements" in an appropriate spot. Motion FAILED 3 to 3 with Councilmembers Pina and Kaplan and Mayor Sheckler opposed.

**MOTION** was made by Mayor Pro Tem Sherman, seconded by Councilmember Thomasson, to amend Section 4, (1)(d) of the draft ordinance to read: "The MFTE shall only be available for a maximum of "200" residential units *per year after the approval date . . .* " Motion FAILED 2 to 4 with Councilmembers Kaplan, Pina and Scott and Mayor Sheckler opposed.

A FRIENDLY Amendment was accepted by the maker and seconder of the original motion to strike the word "applicant" in Section 4(5) and insert the words: *property owner(s)*.

A FRIENDLY Amendment was accepted by the maker and seconder of the original motion to amend Section 7 (1) by striking first two words "Any applicant" and insert the words: *Any property owner(s)*.

A FRIENDLY Amendment was accepted by the maker and seconder of the original motion to suggested Amendment 14 from the Police Department being inserted between Section 4(3) and Section 4(4) of the draft ordinance.

Mayor Pro Tem Sherman felt this legislation if passed, will cost the City in the short and long term. He further questioned the financial figures as supplied and felt it will cost the City about \$3 million to provide development fee services for this project, and stated it has already cost the City about \$1.3 million in transportation impact fees. He also noted that providing services for Parks and Recreation and the Police are going to add to the impact.

At 11:13 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Mayor Sheckler to continue the meeting to 11:20. Motion passed 5 to 1 with Mayor Pro Tem Sherman opposed.

Mayor Pro Tem Sherman stated the City cannot cover the cost of the budget by taxing everyone currently in the City to the hilt. He noted Council is having a special retreat this weekend to try to take care of a current \$1.5 million shortfall.

At: 11:19 p.m. **MOTION** was made by Mayor Sheckler, seconded by Councilmember Kaplan to extend the meeting to 11:30 p.m. Motion passed 4 to 2 with Councilmember Thomasson and Mayor Pro Tem Sherman opposed.

Mayor Pro Tem Sherman questioned how Council can ask staff to take decreases in salary, or ask the public for a Parks and Recreation Levy when we are losing money by giving a property tax exemptions to this development or other potential developments. In conclusion, he advised he will not support the legislation.

**VOTE ON MAIN MOTION:** Motion passed 4 to 2 with Councilmember Thomasson and Mayor Pro Tem Sherman opposed.

Mayor Sheckler read the ordinance by title into the record.

#### **NEW BUSINESS**

#### **Draft Ordinance No. 09-002 Special Events - 1<sup>st</sup> Reading**

ED NOTE: Due to the lateness of the hour this item was not discussed and was moved to April 2<sup>nd</sup>.

#### **NEXT MEETING DATE**

Mayor Sheckler announced there will be a special meeting on Saturday, March 28<sup>th</sup> and the next regular meeting will be a study session on April 2, 2009.

#### **ADJOURNMENT**

At 11:26 p.m. Mayor Sheckler declared the meeting adjourned.

Respectfully submitted,

Denis Staab, City Clerk