

September 18, 2017

West Des Moines City Council Proceedings  
Monday, September 18, 2017

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Monday, September 18, 2017 at 5:30 PM. Council members present were: R. Messerschmidt, J. Mickelson, J. Sandager, K. Trevillyan, and R. Trimble.

City Clerk Ryan Jacobson noted staff is recommending the agenda be amended to reflect Item 5(a) Jordan Creek Business Park being continued to October 16, 2017 and Item 6(b) Businessolver Development Agreement being continued to November 13, 2017.

On Item 1. Agenda. It was moved by Trimble, second by Sandager approve the agenda as amended.

Vote 17-529: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 2. Public Forum

Julie Stauch, 4712 Westwood Drive, expressed concerns about ongoing discussions regarding the potential regionalization of water utilities in the Des Moines metro. She noted at a public meeting, a consultant referred to “key issues” but did not specify the issues he was referring to, so she requested clarification on those issues. She also requested clarification on how the various parties will be involved in the process, and she expressed concerns that the process is being rushed, and she would like to see the water professionals drive the timeline.

Mayor Gaer stated the water utilities are driving the process, and he encouraged Ms. Stauch share her concerns and questions with the West Des Moines Water Works Board.

On Item 3. Council/Manager/Other Entities Reports:

Council member Mickelson reported he attended a meeting of the Development and Planning Subcommittee, where discussion was held on a proposed Glen Oaks high rise development. He stated approximately 25 residents spoke in opposition to the proposed development, so the subcommittee directed the developer to work on building support among the residents before bringing it back for consideration. He also reported he hosted a meeting of the State Historical Society of Iowa Board of Trustees at Historic City Hall in Valley Junction, and it was a great opportunity to showcase our community to that group.

Council member Messerschmidt reported he attended a meeting of the West Des Moines Water Works Board, where discussion was held on the ongoing process of exploring regionalization for water utilities. A report was also given on water rates, and West Des Moines Water Works has

the lowest rates in the Des Moines metro area.

Mayor Gaer reported he was asked to chair the committee that is exploring the potential regionalization of water utilities in the Des Moines metro. He noted one of the primary reasons for considering regionalization at this time is due to projections showing a future shortfall in water production, so the group is seeking a solution to make up that water shortfall at the lowest cost while maintaining high quality.

On Item 4. Consent Agenda.

It was moved by Sandager, second by Trimble to approve the consent agenda as presented.

- a. Approval of Minutes of September 5, 2017 Meeting
- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:
  - 1. Apple Corps, L.P., d/b/a Applebee's Neighborhood Grill & Bar, 6190 Mills Civic Parkway - Class LC Liquor License with Sunday Sales - Renewal
  - 2. Thawee Wathana, LLC, d/b/a BananaLeaf Asian Bistro, 5515 Mills Civic Parkway, Suite #140 - Class LC Liquor License with Sunday Sales - Renewal
  - 3. CEC Entertainment, Inc. d/b/a Chuck E. Cheese's #958, 1431 22nd Street - Class BB Permit with Sunday Sales - Renewal
  - 4. Des Moines Golf and Country Club d/b/a Des Moines Golf and Country Club, 1600 Jordan Creek Parkway - Class LC Liquor License with Carryout Wine, Sunday Sales, and Outdoor Service Privileges - Renewal
  - 5. Ingersoll Liquor & Beverage Co., d/b/a Ingersoll Wine Merchants, 1300 50th Street - Class LE Liquor License with Carryout Wine, Carryout Beer, and Sunday Sales - Renewal
  - 6. KRG JCS, LLC d/b/a Joe's Crab Shack #10739, 130 South Jordan Creek Parkway - Class LC Liquor License with Sunday Sales and Outdoor Service - New
  - 7. Justice League of Food d/b/a The Kitchen, 111 South 11th Street - 5-Day Class BB Beer Permit with Outdoor Service for Thrive Church Food Truck 5K - September 30, 2017
  - 8. Parenting Way, Inc. d/b/a Parenting Way, Inc. - Five-Day Class B Beer Permit with Outdoor Service for Concert Event (Jammin' in the Junction) in the 400 Block of Railroad Place, October 7, 2017
  - 9. InterMountain Management, LLC d/b/a TownePlace Suites, 125 South 68th Street - Class LB Liquor License with Sunday Sales - Renewal
- d. Approval of Special Event Lane Closure and Off-Site Event Parking - Food Truck 5K, September 30, 2017
- e. Approval of Professional Services Agreement - Raccoon River Park Boathouse - Schematic Design
- f. Approval of Change Orders:
  - 1. 2016 Durable Pavement Markings Program, #2

September 18, 2017

2. Fox Creek Trunk Sewer Extension, #3
- g. Approval of FY 2016-17 Iowa Department of Transportation City Street Financial Report
- h. Order Construction - Mills Civic Parkway, South Jordan Creek Parkway to South 81st Street
- i. Approval of Professional Services Agreements:
  1. Booneville Road Bridge Replacement over Sugar Creek
  2. Grand Avenue Stormwater Pumps
  3. Housing Needs Assessment
- j. Establish Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property - Raccoon River Drive Bridge Replacement near South Jordan Creek Parkway
- k. Approval of Amendment No. 1 to Development Agreement - KCL Engineering, LLC
- l. Establish Consultation Meeting and Public Hearing - EP True Urban Renewal Area
- m. Approval and Acceptance of Purchase Agreements and Property Interests - Project Osmium Public Infrastructure

Vote 17-530: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(a) Jordan Creek Business Park, Village View Drive between South 60th Street and South 64th Street - Specific Plan Amendment to Allow SIC 4225 "Self-Service Storage Facility - Interior Unit Access with no Outside Storage Yard" as a Permitted Use, initiated by Rueter & Zenor Company and Rueter Corporation (Continued from July 10, 2017, August 7, 2017, August 21, 2017, and September 5, 2017)

It was moved by Trevillyan, second by Mickelson to continue Item 5(a) Jordan Creek Business Park Specific Plan Amendment to October 16, 2017

Vote 17-531: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(b) Cobb Property, 9450 Booneville Road - Consistency Zone approx. 12.7 acres from 'Unzoned' to Residential Single Family, initiated by the City of West Des Moines

It was moved by Trimble, second by Messerschmidt to consider the second reading of the ordinance.

Vote 17-532: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

September 18, 2017

It was moved by Trimble, second by Messerschmidt to approve the second reading of the ordinance.

Vote 17-533: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trimble, second by Messerschmidt to waive the third reading and adopt the ordinance in final form.

Vote 17-534: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(c) Amendment to City Code - Title 9 (Zoning) - Update Definitions and Regulations Pertaining to Accessory Structures, initiated by the City of West Des Moines

It was moved by Messerschmidt, second by Trimble to consider the second reading of the ordinance.

Vote 17-535: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Messerschmidt, second by Trimble to approve the second reading of the ordinance.

Vote 17-536: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Messerschmidt, second by Trimble to waive the third reading and adopt the ordinance in final form.

Vote 17-537: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(d) Amendment to City Code - Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions) - Amend Definitions of Family to Comply with Code of Iowa, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Trimble to consider the second reading of the ordinance.

Vote 17-538: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

September 18, 2017

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Trimble to approve the second reading of the ordinance.

Vote 17-539: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trevillyan, second by Trimble to waive the third reading and adopt the ordinance in final form.

Vote 17-540: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(e) Amendment to City Code - Title 9 (Zoning), Chapter 6 (Commercial, Office and Industrial Zoning Districts) - Allow SIC 3843 (Dental Equipment and Supplies) as a Permitted Use in the Office District, initiated by Char Properties, LLC

It was moved by Messerschmidt, second by Trimble to consider the second reading of the ordinance.

Vote 17-541: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Messerschmidt, second by Trimble to approve the second reading of the ordinance.

Vote 17-542: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Messerschmidt, second by Trimble to waive the third reading and adopt the ordinance in final form.

Vote 17-543: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(f) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 1 (Official Traffic Controls) - University Avenue and 98th Street, initiated by the City of West Des Moines

It was moved by Trimble, second by Messerschmidt to consider the second reading of the ordinance.

September 18, 2017

Vote 17-544: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Messerschmidt to approve the second reading of the ordinance.

Vote 17-545: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trimble, second by Messerschmidt to waive the third reading and adopt the ordinance in final form.

Vote 17-546: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(g) Amendment to City Code - Title 8 (Building Regulations), Chapter 2 (Building Codes), Article A (Building Codes), Section 29 (Rental Housing) - Amend Definitions of Family to Comply with Code of Iowa, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Messerschmidt to consider the second reading of the ordinance.

Vote 17-547: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Messerschmidt to approve the second reading of the ordinance.

Vote 17-548: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trevillyan, second by Messerschmidt to waive the third reading and adopt the ordinance in final form.

Vote 17-549: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider Mercy Clinic, 1525 and 1535 Grand Avenue - Amend the Comprehensive Plan Land Use Map

September 18, 2017

from Single Family Residential to Office and Change the Zoning Designation from Residential Single Family to Office, initiated by RB WDM Grand, LLC. He asked for the date the notice was published and the City Clerk indicated the notice was published on September 1, 2017 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 5-0, with two members absent, the Plan and Zoning Commission recommended City Council approval of the comprehensive plan amendment and rezoning request.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Trevillyan to adopt Resolution - Approval of Comprehensive Plan Amendment.

At the request of an audience member, Mayor Gaer reopened the public hearing.

Gale Logsdon, 1404 Mountain Avenue, stated this area has had issues with flooding in the past, and she expressed concerns about this proposed development potentially worsening any future flooding.

Mayor Gaer asked if there were any additional public comments; hearing none he declared the public hearing closed.

Brian Hemesath, Interim City Engineer, stated staff will ensure the site complies with the City's stormwater requirements as part of the site plan process.

Vote 17-550: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trimble, second by Trevillyan to consider the first reading of the ordinance.

Vote 17-551: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Trevillyan to approve the first reading of the ordinance.

Vote 17-552: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 6(b) Agreement for Private Development, initiated by Businessolver.com, Inc.

September 18, 2017

It was moved by Messerschmidt, second by Trimble to adopt Motion - Continue Public Hearing to November 13, 2017.

Vote 17-553: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 6(c) Mayor Gaer indicated this was the time and place for a public hearing to consider 2017 Asphalt Trail Renovation Project, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on September 8, 2017 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to Grimes Asphalt and Paving.

Vote 17-554: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(a) Quail Park Woods, 4101 Grand Avenue - Subdivide Property into Nine Lots for Residential Estate Development and One Street Lot, initiated by Neighborhood Builders, LLC

It was moved by Trimble, second by Trevillyan to adopt Resolution - Approval and Release of Final Plat, subject to the applicant complying with all applicable City Code requirements.

Vote 17-555: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(b) 610 South 51st Street Plat of Survey, 610 South 51st Street - Create Two Parcels for Transfer of Ownership, initiated by Hy-Vee, Inc.

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval and Release of Plat of Survey, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 17-556: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(c) Amendment to City Code - Title 5 (Police Regulations), Chapter 2 (Criminal Code), Section 14 (Fireworks) - Regulate the Use of Consumer and Display Fireworks, initiated

by the City of West Des Moines (Continued from September 5, 2017)

Mayor Gaer stated the City Council adopted an ordinance in May 2017 that allowed the use of fireworks from 4:00 p.m. to 10:00 p.m. on July 4<sup>th</sup> only. The proposed ordinance being considered tonight would prohibit the use of fireworks at any time.

Nadir Mehta, 226 57<sup>th</sup> Court, spoke in support of the proposed ordinance to prohibit the use of fireworks, citing concerns about the stress fireworks cause for his service dog. He also expressed concerns that fireworks were used outside of the allowed timeframe this past July

Jordan Shaw, 205 80<sup>th</sup> Street, Unit 104, spoke in support of the proposed ordinance to prohibit the use of fireworks, citing concerns that fireworks were used outside of the allowed timeframe, and the noise disturbed his quality of life and terrified his dog. He also expressed concerns about the challenges for law enforcement to enforce the current ordinance.

Jan Jones, 5536 Westwood Drive, spoke in support of the proposed ordinance to prohibit the use of fireworks, citing concerns that her military experience in combat zones makes fireworks very stressful for her and the noise made it difficult for her young children to sleep. She also expressed concerns that an air quality alert was issued for central Iowa on July 5<sup>th</sup>, presumably due to the heavy usage of fireworks the night before.

Gerald Harn, 1055 60<sup>th</sup> Street, spoke in support of the proposed ordinance to prohibit the use of fireworks by individuals, however he also stated he would like to see community fireworks displays continue.

Mayor Gaer clarified that the proposed ordinance prohibiting the use of fireworks would only apply to individuals, and community events will still have the ability to obtain permits for fireworks displays.

Kimberly Bougher, 130 25<sup>th</sup> Court, spoke in opposition to the proposed ordinance to prohibit the use of fireworks, because she was not bothered by others using them. She also stated she believes the use of fireworks was particularly high this year because this was the first year of it being legal, and she expects that the usage will decline in future years. She stated she would like to see July 3<sup>rd</sup> added as an additional day that the use of fireworks would be legal.

Harry Bougher, 1945 Ashworth Road, spoke in opposition to the proposed ordinance to prohibit the use of fireworks, as he enjoyed using them safely to celebrate the Independence Day holiday with his family. He stated he believes that prohibiting the use of fireworks will not stop their use, as they have been used illegally in prior years.

Randy Kellar, 3915 Western Hills Drive, spoke in support of the proposed ordinance to prohibit the use of fireworks, citing concerns about lingering smoke from fireworks creating visibility issues near his home, which sits near a four-way-stop intersection.

September 18, 2017

It was moved by Trimble, second by Messerschmidt to consider the first reading of the ordinance.

Council member Messerschmidt inquired about how the Police Department manages the enforcement of fireworks.

Council member Trimble responded the Public Safety Subcommittee held discussion on the enforcement at their last meeting. He stated the challenge for our police officers is that before the new state law, it was illegal to possess fireworks, so if an officer saw fireworks, it was easier to charge them for the possession. Now that the state law allows the possession of fireworks, an ordinance prohibiting the use of fireworks would require that a person be seen setting them off in order to issue a citation. He also noted the proposed ordinance would reduce the fine from \$625 to \$250, because it is believed that some police officers were not comfortable issuing a \$625 fine for the use of fireworks.

Jim Barrett, Interim Police Chief, reported there was a 200 percent increase in fireworks complaints from 2016 to 2017. Of those complaints, 70 percent were cases where the police officers were unable to locate the source of the fireworks, and the remainder were cases where the police officers advised them of the law but did not issue a citation. He agreed with Council member Trimble's comments that the ordinance was difficult to enforce this year, given the circumstances where it was legal to purchase and possess them and the use of fireworks was legal for one day only, but he stated that citations should be issued when appropriate regardless of the fine.

Council member Messerschmidt expressed a desire for better enforcement of the ordinance in the future, and he hopes that citations are written because they send a message to residents that the City is enforcing the ordinance.

Council member Trimble stated the current ordinance to allow the use of fireworks was intended to be a compromise between both sides on the issue. He reported his informal poll of residents resulted in a fairly even split of 51.6 percent supporting a ban on the use of fireworks, while 48.4 percent support the use of fireworks. Since a majority of the people he heard from support a ban on fireworks, he will vote in support of the proposed ordinance tonight.

Council member Trevillyan stated a majority of the people he has heard from support the use of fireworks continuing, including some veterans with posttraumatic stress disorder. He suggested that those that want fireworks banned should talk to the Iowa Legislature about changing the law to ban them statewide. He also stated that the lingering smoke was a result of weather conditions with no wind, and if the fireworks use could be spread over multiple days, it wouldn't be so highly concentrated during one day. He agreed with Ms. Bougher's comment that the use of fireworks was particularly high this year because this was the first year of it being legal, and he also expects that the usage will decline in future years. He stated he doesn't believe an ordinance to ban the use of fireworks will change anything, so he will not support the proposed ordinance

tonight.

Council member Mickelson stated he appreciates that the state law allows the use of fireworks statewide but also gives local control. He stated the use of fireworks can be a good fit in some rural communities around the state, but a community like West Des Moines, which is relatively densely-populated, is not a great fit for such an activity, so he will vote in support of the proposed ordinance tonight.

Vote 17-557: Messerschmidt, Mickelson, Sandager, Trimble ... 4 yes  
Trevillyan ... 1 no

Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Messerschmidt to approve the first reading of the ordinance.

Vote 17-558: Messerschmidt, Mickelson, Sandager, Trimble ... 4 yes  
Trevillyan ... 1 no

Motion carried.

On Item 7(d) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 5 (Special Restricted No Parking Areas) - Western Hills Drive, 39th Street to 40th Street, initiated by the City of West Des Moines

It was moved by Trimble, second by Messerschmidt to consider the first reading of the ordinance.

Vote 17-559: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Messerschmidt to approve the first reading of the ordinance.

Vote 17-560: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 8(a) Amendment to City Code - Title 2 (Boards and Commissions), Chapter 1 (Plan and Zoning Commission) and Title 9 (Zoning), Chapter 1 (Entitlements - Process and Procedures) - Modify Requirements for Referral of Comprehensive Plan and Zoning Amendments - City Initiated - Referred to Plan and Zoning

September 18, 2017

On Item 9 - Other Matters: none

The meeting was adjourned at 6:30 p.m.

Respectfully submitted,

---

Ryan T. Jacobson, CMC  
City Clerk

ATTEST:

---

Steven K. Gaer, Mayor