

CITY COUNCIL MINUTES

City Council Chambers
Tuesday, July 28, 1970 - 7 P.M.

The meeting was called to order at 7:00 P.M. In the absence of Mayor Johnston, Deputy Mayor Cvitanich presided.

Present on roll call 8: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary and Zatkovich. Absent 1: Mayor Johnston.

Deputy Mayor Cvitanich announced there is an important meeting being held at the Dept. of Public Utilities auditorium on the subject of oil exploration in Puget Sound and added it was incumbent on the City Council to recess in order to publicly state its views at that meeting.

Mrs. Banfield moved to recess the Council meeting for one hour so as to attend the meeting at the Utilities Building. Seconded by Mr. O'Leary. Motion carried.

Council recessed for one hour.

The Council meeting reconvened at 8 P. M. All members present.

The Flag Salute was led by Mr. Finnigan.

Mayor Johnston asked if there were any omissions or corrections to the minutes of the meeting of June 30th, 1970.

Mrs. Banfield moved that the minutes of June 30th be approved as submitted. Seconded by Mr. O'Leary. Voice vote was taken and motion carried.

RECERTIFICATION OF RECALL:

Mrs. Melton, City Clerk, asked Mayor Johnston if she could at this time distribute a recertification of the names on the recall petitions before continuing with the regular order of the agenda.

Mayor Johnston moved that the rules be suspended to allow the City Clerk to distribute the recertification to the Council members. Seconded by Mr. Finnigan.

Mr. Zatkovich said, he was sorry, but due to a conflict of interest he would have to be excused.

Mr. Dean remarked that he finds himself in the same position as having advice to the effect that this would be a conflict of interest, therefore, he can in no way participate in any action which would relate to this matter.

Mayor Johnston said that he could be excused.

Mayor Johnston asked the clerk to call for a roll on the suspension of the rules.

Ayes 4: Finnigan, Herrmann, Jarstad and Mayor Johnston.

Abstaining 3: Banfield, Cvitanich and O'Leary.

Absent 2: Dean and Zatkovich.

Mayor Johnston declared the motion passed.

Mr. Cvitanich challenged the ruling of the chair stating it would require five votes to carry the motion. He asked for a legal opinion.

Mr. Hamilton referred to Section 2.10 of the City Charter which states "An ordinance and Resolution shall require an affirmative vote of at least five councilmen for passage."

Mayor Johnston asked if a motion to suspend the rules would require the same.

Mr. Hamilton read Rule 8 of the Council Rules as follows: "No rule shall be suspended except by a vote and the majority of the Council members present at the meeting, and a motion to suspend the rules is not debatable." Therefore Mr. Hamilton said it was not a majority ruling.

Mayor Johnston asked Mr. Hamilton what could be done at this point.

Mr. Hamilton suggested since the clerk has announced they were available, she can hand each of the members a copy, and they would have been duly served.

Mr. Cvitanich said he would go back to his original point of order that this item is not properly before the Council as it is a departure from the established agenda, and since a vote has been taken to suspend the rules and failed, there is nothing before the Council at this time except hearings and appeals.

Mayor Johnston proceeded with the regular order of the agenda.

HEARINGS & APPEALS:

a. This is the date set for hearing for vacation of a portion of Homestead Avenue and a portion of the alley lying immediately to the east, south of East 60th St. to Pipeline Road. (Petitioned by Golden Ridge, Inc.)

Mr. Buehler, Planning Director, explained that a portion of the alley south of East 60th and a portion of the Plat on the south side of 60th Street which appears on the agenda will be discussed at the same time as they pertain to the same area and will be confirmed by Resolution No. 20823 on this same agenda. He explained the owners of the two areas plan to build six more building sites.

Mr. O'Leary asked if the land west of the alley would be all in one ownership.

Mr. Buehler explained it will and the owner will have potential for additional building sites besides the ones being planned. He added all conditions of the preliminary plat have been met to the satisfaction of all departments.

Dr. Herrmann moved to concur in the recommendation of the Planning Commission to approve the vacation. Seconded by Mr. Finnigan, Voice vote was taken. Motion carried unanimously.

b. This is the date set for hearing for vacation of a portion of a roadway serving the Salmon Beach area crossing private properties and extending from No. 51st northwesterly to Mildred St. (Petitioned by City Council)

Mr. Buehler explained the present action is being initiated in order to clear the titles in the property involved. He added it had not been possible to reach the Salmon Beach area in some areas unless the vacation was granted. He said there are no objections to the vacation.

Mr. Finnigan moved to concur in the recommendation of the Planning Commission to approve the vacation. Seconded by Mr. O'Leary, Voice vote was taken. Motion carried unanimously.

c. This is the date set for hearing for Final Plat Approval of Swan Creek No. 2 and replat of a portion of the Plat of Homestead Park, south side of East 60th St. between the Pipeline Rd. and Roosevelt Ave.

Mr. Finnigan moved to concur in the recommendation of the Planning Commission to

approve the Final Plat. Motion seconded by Mr. Civtanich. Voice vote was taken and the motion carried unanimously.

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The City Planning Commission recommending denial of the petition submitted by Lewis L. Clark for rezoning of both sides of South 52nd between F.A.I. #5 and So. Alaska Street from an "R-2" to an "R-4-I-PRD" District.

Mr. O'Leary moved to concur in the recommendation of the Planning Commission that the rezoning be denied. Motion seconded by Mrs. Banfield. Voice vote was taken. Motion carried.

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PETITIONS:

Grace Baptist Church requesting rezoning of NE corner of Vassault and No. 23rd St. from "R-1" and "R-2" District to an "R4L-PRD".

Referred to the City Planning Commission.

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RESOLUTIONS:

Resolution No. 20800 (postponed from the meeting of July 21st)

Rescinding Resolution No. 20732 regarding the access report of State Route #16 as the Town of Fircrest has advised the Council it has some concern with particular reference to the proposed intersection in the vicinity of So. 19th & Orchard Sts., and wishes to meet with the Council for further study on the matter.

Mr. Finnigan moved that the resolution be adopted. Seconded by Mr. O'Leary.

Mayor Johnston said he was aware that a meeting was held at Fircrest and asked if any of the councilmen who had attended could give a report.

Mr. Zatkovich reported Mr. Dean, Mr. Jarstad and himself had attended the meeting and that the Town of Fircrest is concerned with an overpass to a school which the children would be using.

Mr. Dean, being advised by Mayor Johnston that he could discuss only the west side of Route 16, said the Fircrest residents are concerned getting from 19th Street and Orchard to Fircrest and off the freeway to Fircrest coming from both directions. He said there will be approximately 700 students involved. He added the City Council had been invited to the Fircrest meeting out of courtesy inasmuch as the discussion included the Tacoma area.

Mayor Johnston asked if the Fircrest people had received any assurance from the Highway Dept. that the overpass for the students would be part of the program.

Mr. Dean replied they had received a definite negative answer from the Highway Dept.

Mr. Jarstad pointed out that the section of highway involved will be one of the last to be constructed and would not be in operation before five years whereas the high school will be in operation in two years. The 700 students from Fircrest will have to travel across Bantz Blvd., plus a recreational development and additional pedestrian traffic. It was suggested at the Fircrest meeting that the City Council work with the City Traffic Engineer to provide some type of crosswalk prior to the building of the freeway as there would be about three years of problems before the completion of the freeway.

Mr. O'Leary asked if Mr. Anderson, Assistant City Engineer, could advise the Council what could be done to insure an overpass.

Mr. Anderson said he had talked to Mr. Kerlake, who had agreed there was a need for some kind of facility to get students across the area and that perhaps there would be a crosswalk at the appropriate time. He thought it advisable for the City, the town of Fircrest and the State Highway Dept. to keep working on the project, and that if there is a problem the engineering department will advise the Council. He added when the school opens, if there is a need for a temporary structure, it could be considered at that time.

Mr. Finnigan moved that the resolution be removed from the agenda. Seconded by Mr. O'Leary. Voice vote was taken and the motion carried.

The Resolution was removed from the agenda.

Resolution No. 20806

Calling a special election for Sept. 15, 1970 submitting to the electorate a proposal amending the Charter to provide for a Mayor and Council form of Government.

Mrs. Banfield moved that the resolution be adopted. Seconded by Mr. O'Leary.

Mr. O'Leary asked that Mr. Hamilton, Acting City Attorney, explain Section 2.13 on page 6 of the Resolution in regard to Ordinances and the Mayor's power to veto.

Mr. Hamilton said ordinarily the Mayor would not vote except in cases of tie and in specified ordinances, but would have a right to exercise a veto power once the Council had adopted an ordinance. He should be given one right, the same as any other Councilman to approve or disapprove the ordinance. He added that is the reason for the insertion of the proposed particular language.

Mrs. Virginia Shackelford, Tacoma citizen, asked if she could comment on all the resolutions on charter amendments as a group. She said she was in favor of the Mayor being able to appoint personnel with the approval of the Council as stated in Section 2.7, this will insure a better balanced government. She made a suggestion to Resolution 20813 concerning the Independent Audit and asked if the Council would approve inserting "Council shall provide for an annual audit survey report and analysis" instead of the word "or analysis". She thought the comparative analysis is very important. She also recommended the City Attorney, City Treasurer and Finance Director should each be elective instead of appointive, because they would then answer to the people, particularly in the case of the City Attorney. She also favored a full-time council.

Mr. O'Leary asked if it would be possible to have a full-time council at a specified salary and let the people set the salaries.

Mr. Hamilton, Acting City Attorney, said it could be placed on the ballot, but that the council at some later date would have authority under the State law, by ordinance to set its own working hours and salaries, not withstanding any Charter provision to the contrary. He said it could be done and remain effective, but could later be changed under state law notwithstanding that limitation.

Mrs. Shackelford said she understands the Council cannot set its own salaries, but why it could not be put on the ballot for the people to vote on the salaries.

Mayor Johnston said, as Mr. Hamilton had explained, it is possible but would then only stay in effect as long as the Council permitted.

Mr. Hamilton pointed out that an elective official cannot increase or decrease his own salary during his current term of office.

Mr. Cvitanich said he did not think the proposals should be considered as a package, as some members have amendments they wish to recommend on individual resolutions.

Mrs. Ruby Knowlen, 3915 No. 38th Street, said the Charter Committee favors a full-time council and the City Attorney only be an elected position.

Mr. O'Leary said he was not clear on Mr. Hamilton's answer regarding putting salaries on the same election ballot. He asked if four members were carried over, and two were elected, those two would receive \$12,000 a year and the remaining four would only be receiving \$25 a week or, if all six positions will have to be put up for election at that time.

Mr. Hamilton replied that all six seats would not have to be put on the ballot at once, but if the electorate rather than the council would set the salaries, then all of the councilmen on the effective date would receive the same salary. He added the constitutional prohibition is only against an elective official's fixing his own salary during his own term of office.

Mr. O'Leary asked if the Council submitted an amendment of \$12,000 for each Councilman and \$16,000 for a Mayor as an amendment to the Charter and all present Councilmen voted on it, would they not be voting for their own salary.

Mr. Hamilton said that is the problem--it would be setting the salaries until this Council or some subsequent Council decided to change it by ordinance.

Mr. Dean asked if the form of government were changed, would it not be a different Council and therefore change the status?

Mr. Hamilton advised he did not frankly know the answer to Mr. O'Leary's question, but asked if Mr. McCormick, Acting City Manager, would give an opinion.

Mr. McCormick agreed with Mr. Cvitanich saying the propositions should each be considered separately. He added the fixing of salaries had been discussed and possibly could be constitutional and possibly not. He pointed out the constitution had been amended within the last two or three years and State officials' salaries can now be fixed each year by the Legislature. The amendment did not authorize, but specifically prohibited, the increase or decrease of an elective official's salary by the body or person who fixes his own salary. He explained that is why the legislative members cannot fix their own salaries.

Mr. McCormick said the question arose as to whether or not the Council could provide that this be a full-time job and what the compensation would be. However, there would be a grave constitutional question on the raising of salaries because the Council members themselves would be passing on an amount of money in a resolution being presented to the people. He added there is a State law on this and this has been a provision with regard to the Councilmen and the Mayor, which states, "the compensation and time to be devoted to the performance of the duties of a Councilman shall be as fixed by ordinance". It does not matter how many times the Council fixes the salary or the people vote on it. Prior to the election in 1971, if the Council then wanted to change the salary, they can irrespective of what the people vote on this Charter. He added State law specifically overrides the Charter and grants directly and states the compensation as above mentioned.

Mr. O'Leary asked if under Paragraph 2.3, the compensation and time were fixed by ordinance and prior to the 1971 election, the Council was on full time at a blank amount of pay, would it affect only the incoming Councilmen, also would the incumbents receive \$25 a week to the end of their term.

Mr. McCormick said it would be up to the Council to put what amount they wish in the ordinance. He said the same situation happens in most elected offices and that some are paid one salary and some another until they are eventually the same. He added the way to attain a full-time Council is to provide for a complete election of the entire Council. He said he understood from the committee that they did not want a complete new Council, but wanted continuity of government and new members to stand election along with everyone else. He added it could be arranged so that all terms would expire upon the adoption of the new proposals, also, the salaries could be set at the time, but that would not prohibit the newly elected Council from changing it later. He said nothing permanent could be put into the charter which could not be changed later on.

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Mr. Cvitanich said he felt one thing should be decided at a time, whether they want a Council-Mayor form of government or a full-time Council.

Mr. McCormick said he wished to state he has acted completely on an impartial basis on the matter of the form of government. He re-drafted the amendments as instructed when he was City Attorney. The reason some did not want this question of salaries and working hours in the proposition at this time as it might jeopardize the entire proposition of changing from a Council-Manager to the Mayor-Council form of government.

Mr. O'Leary said he thought the people should be given the opportunity to vote on a full-time Council which he has favored for quite a few years and that would provide a higher salary and serve the City more efficiently.

Mr. McCormick said perhaps a statement could be inserted to indicate there shall be a full-time Council. What he is trying to say is the Council can change it later on but future Councils cannot be bound by a Charter which is in conflict with the state law.

Mr. Cvitanich asked Mr. McCormick if he was saying the people could be given a right to vote, as an advisory vote on a full-time Council and then establish the full-time or part-time Council by City ordinance.

Mr. McCormick replied there could be a separate advisory vote that would have no binding effect on the City Council, but said it would be difficult to tell whether the people voted on that particular part or the entire change.

Mr. Cvitanich moved that the resolution be amended on Page 1, Section 1, line 5, by changing the Mayor-Council Plan to Council-Mayor Plan also any where else it appears in the resolution. Seconded by Mr. Finnigan. Voice vote was taken. Motion carried.

Mr. Hamilton asked that Resolution No. 20806 be amended on Page 1, delete Article IV, Section 4.6 in two places and Page 11, delete Section 4.6 in its entirety. Page 18, first paragraph, first sentence, amend 1976 to 1971.

Moved by Mr. O'Leary that the amendments be approved. Seconded by Mr. Cvitanich. Motion carried.

Mayor Johnston asked if there were any other amendments recommended.

Mr. Cvitanich said in reviewing the resolution, the Council has departed from the committee's original recommendation and he thought three more aspects should be discussed: (1) City Attorney being elected or appointed; provision relating to the independent audit and also Mr. O'Leary's amendment to delete the word "lease" relative to the disposal of any City property without a vote of the people. Mr. Cvitanich said he thinks the City should be in a position where it could lease a portion of its property, for example at the Airport, whereas by law the charter reads the City is prohibited from leasing.

Dr. Herrmann said under the Council-Manager Plan, there is a certain amount of continuity. That Mayors and Councils could come and go, but administrative heads did remain which present some stability in government, along with the department heads under his control. This removes this from that type of stability and puts the chaos in the City Attorney's office and puts it into every other department in the City. Also, if the Attorney is elected, nothing would preclude his bringing in all his own personnel which would result in complete chaos in the legal department. He felt it would be much better that the Mayor make the appointment with Council confirmation and then the Attorney would be serving the will of the people and the Council, as the Council is elected by the public.

Dr. Herrmann further added the public certainly has a right to vote on the amendments but he felt it would be a step backward to go to a Mayor-Council form. Dr. Herrmann agreed that the salaries for Councilmen are not adequate.

Mr. Cvitanich said it is true that the problem of operating under the present charter is where one person has the right to hire and fire department directors. Therefore, their performance is not responsive to the needs. He thought the people of the community should have a voice in the selection of the department heads.

Mr. McCormick said he would like the Council to fully understand what Section 3.4 "Appointments by Mayor" on page 9 means. There is now 80 appointive positions whereas some Councilmen feel it should only apply to department directors.

Further discussion took place regarding the appointment of various other officials.

Mr. Cvitanich said this is the responsibility of the department directors, but that no member of the Council is in a position to judge the ability of those persons.

Mr. Cvitanich moved to amend Section 3.4, line 5, page 9, by adding: "all department directors" after the words "City ordinance" and to delete the balance of the paragraph. Seconded by Mr. O'Leary.

Mr. McCormick recommended adding the words "or such other appointive officers that may be hereafter designated by the City" or something in that nature, after "all department directors", in case any were designated in the future by the City Council.

Mr. Hamilton said he thought the recommendation being made takes too much out of the ruling. He recommended leaving in the words "under his jurisdiction" or else it would be a conflict with the Utility Department.

Mr. Cvitanich said he would add that to his amendment.

Dr. Herrmann said the amendment improves the provision, but pointed out that under the appointment provision, a Mayor and a majority of Council elected to office could proceed with political patronage, without any reference to ability or qualifications, to appoint department heads merely because they became involved in the campaign or contributed money, etc. This would not provide any continuity, which was provided under the Council-Manager form.

Mayor Johnston asked Mr. McCormick if, as consultant to the committee discussions, they had ever called in any of the department heads to get their viewpoint or the Civil Service board members or the Mayor.

Mr. McCormick said he was not a member of the committee in question, but had attended as an attorney. He did not know for sure whether the committee had invited anyone else to attend. He said the meetings had started last December and have been held twice a month, but he did not recall any outsiders being there and couldn't say that they were or were not invited.

Mr. Finnigan said a meeting had been arranged a week ago to discuss the charter amendments, but only four members of the Council had been able to attend and there had not been time to go over them as thoroughly as they desired and still able to get them on the September ballot. The four members thought a November ballot would be a proper time. He explained a meeting had hurriedly been called on a Friday afternoon, to be held at 9:00 the following morning, but only four members were able to attend that meeting. He said these conditions have caused inadequate familiarity with the amendments on the Council's part. Therefore, he thinks more consideration should be given to the amendments in order to be fair to the public. He added the resolutions should be postponed until the November ballot.

Mr. Cvitanich commented, he did not feel anyone could criticize the thought and effort that went into this proposal that was drafted by the committee and appointed by the former Mayor. By having a great number of additional meetings would not solve the problems any better than discussing them at this time.

Dr. Herrmann said the committee appointed by the former Mayor had not been as representative as he thought it could be. It was not a committee of freeholders, but merely a committee approved by the Council. These recommendations have come through a biased committee whose minds were made up beforehand, and what the former Mayor and Council wanted. There never was an overwhelming vote in favor of Council-Manager form of government, but was only voted in by a narrow margin. He is hopeful the public will take a very close look at the recommendations, if this proposal is put on the ballot.

Mr. O'Leary reminded the public that no prior Council has offered alternatives such as these amendments on City government at any previous elections. He said the Council wants to offer something sound and basic as an alternative to the Manager form of government.

After further discussion, Mayor Johnston called for the roll on Mr. Cvitanich's motion to amend Section 3.4, page 9, by adding the words "all department directors" and to delete the balance of the paragraph. Seconded by Mr. O'Leary. Voice vote was taken. Motion carried.

Mr. Cvitanich called Council's attention to the Personnel Director being answerable to the City Manager and also serving as a member of the Civil Service Board, which is a separate elective position. He asked if there could be some amendment in the first section of the resolution whereby the Civil Service Commission could make a recommendation regarding the position and to be confirmed by the Council.

Mr. Lewis Hatfield, Chairman of the Civil Service Board, said he had discussed this subject with the Deputy Mayor as the present system was a problem. He said the recommended change would be more workable which would put the Personnel Director in a more neutral status if they were appointed in the manner Mr. Cvitanich outlined. He said the Board is charged with making the personnel rules and the Personnel Director interprets them; therefore, if the Mayor appointed the Personnel Director and other department heads, his allegiance in his job would be to the Mayor. There are times when the Personnel Director has to make some decisions which may cause ire to some other department heads, who could call in the Personnel Director to make a re-interpretation. In other words, he could not serve two or three interests. He thinks the Civil Service Board should make a recommendation to the Council. Mr. Hatfield said he has discussed this with other Council members also.

Mr. Hamilton recommended an amendment to Section 6.13 by adding the words "only upon the recommendation of the Civil Service Board" after the words "with the approval of the Council by resolution".

Mr. Cvitanich moved for such an amendment. Seconded by Mr. Zatkovich. Voice vote was taken. Motion carried.

Mr. O'Leary moved to amend Section 6.8, Political Activity, on the first line by inserting the words "except elected officials" after the words "in the City service". Seconded by Mr. Cvitanich.

Dr. Herrmann said he would like to see the entire section removed from the charter, as he thinks it leads to discrimination.

Mr. Jarstad said the question has come up in this regard to school employees who have run for state legislature and there is a possibility of City employees doing likewise. He thought this should be discussed and a section be included in the resolution. He added cities need representation in the State Legislature and schools have approved teachers to go to Olympia to participate.

Mr. O'Leary speaking for such a section in the charter said he feels it is needed because no one knows how the Council may be constituted in the future. He added it would be a very powerful tool if some politician could control all the city workers as a block of voters; therefore, the section should be left in as a measure of eliminating such an occurrence.

Dr. Herrmann said this resolution setting up a Council-Mayor form of government, with the authority by charter provisions authorizing the firing and hiring of department heads would certainly constitute machine politics.

Mayor Johnston called for the roll on Mr. O'Leary's amendment concerning political activity as stated in Section 6.8. Ayes 7: Banfield, Cvitanich, Dean, Jarstad, O'Leary Zatkovich and Mayor Johnston. Nays 2: Finnigan and Herrmann. Motion carried.

Roll call was taken on the Resolution, as amended, resulting as follows:

Ayes 5: Banfield, Cvitanich, Dean, O'Leary and Zatkovich.

Nays 4: Finnigan, Herrmann, Jarstad and Mayor Johnston. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20807

Submitting a proposed charter amendment relative to initiatives and referendum procedures.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mrs. Banfield.

Mr. Cvitanich thought the legal department should give a brief explanation on this resolution.

Mr. Hamilton, Acting City Attorney, said this is a housekeeping resolution which would provide for the insertion of a precinct number, which is mandatory, so that people will be informed at the time they sign the petitions. It also provides for the insertion of the special election provision for referendum procedures, which is not contained in the existing charter.

Mr. Cvitanich said he wished to remind the listening audience that last November those who had campaigned stated they would give the people of the community an opportunity to vote on the form of government, and asked them to carefully look back on the statements made by the candidates and recheck their own sound logical decisions at that time.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the chairman.

Resolution No. 20808:

Submitting a proposed charter amendment relative to the City Planning Commission.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Hamilton explained this resolution provides for certain changes somewhat more substantial than mere housekeeping. The terms of the members of the Planning Commission are reduced from six to three years; the ex-officio members remain the same, but their right to vote is given to the representative member of the City Council only. It also makes mandatory that five members of the Commission must be present to transact business.

Mayor Johnston said, having served on the Planning Commission, he feels the nature of the work and the type of responsibility of the members suggests that five years is an appropriate term. He sees no advantage in a three year term, and due to the type of responsibility and nature of the work of the professional men appointed to the Commission it is difficult to get a quorum at the meetings. He feels the ex-officio members such as the city engineer or the person appointed from the Utilities Dept. always vote in the best interests of the City. He thinks the appointed members who serve on the Planning Commission should be considered as a quorum.

Mayor Johnston moved to delete the last sentence of the last paragraph of the resolution, which pertains to a quorum. Motion seconded by Mr. Finnigan.

Mr. Jarstad suggested that perhaps it would be proper to word the motion that the ex-officio members should be non-voting members.

Mayor Johnston said his thinking is the Planning Commission shall promulgate and adopt rules of procedure necessary for the proper conduct of its business and they should determine their own quorum.

Mr. Cvitanich said this is a committee recommendation and that Mr. Museck has also been on the Planning Commission for many years and has an excellent insight on the problems. He added he sees no harm in this recommendation.

Mr. Finnigan felt this is an improper move. He said it has been very difficult to get five members to attend a Planning Commission meeting at one time. He added if members serve without compensation, they should not be expected to attend every meeting. He feels to have an adequate commission, there should be nine members who serve for five years and each should be a voting member.

Roll call was taken on the motion to delete the paragraph at the end of the resolution, resulting as follows: Ayes 4: Finnigan, Herrmann, Jarstad and Mayor Johnston. Nays 5: Banfield, Cvitanich, Dean, O'Leary and Zatkovich. Motion failed.

Roll call was taken on the resolution, resulting as follows:

Ayes 5: Banfield, Cvitanich, Dean, O'Leary and Zatkovich.

Nays 4: Finnigan, Herrmann, Jarstad and Mayor Johnston.

The Resolution was declared passed by the Chairman.

Resolution No. 20809

Submitting a proposed charter amendment relative to the Tacoma Humane Society.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. O'Leary.

Mr. O'Leary asked to have these provisions explained.

Mr. Hamilton said the present charter reads the Council is authorized and directed to enter into a new contract with the Humane Society. The proposed amendment would authorize a contract with the Society, with any similar or authorize the establishment of a City Pound by the City itself--three different alternatives; whereas the present charter permits only one contract.

Mr. O'Leary asked if this contract would be up for bid each year or every so often.

Mr. Hamilton said he did not think this was the intent.

Dr. Herrmann asked which society would constitute a "similar society".

Mr. O'Leary said he believes there is a State law the first Humane Society, or first patrol division in the area, has the initial police powers. Any other organization under this contract would be unable to have the same police powers as the Humane Society. He asked that this be clarified.

Mr. Joe Betzendorfer, Jr., attorney and one of the directors of the Humane Society, replied that Mr. O'Leary was correct and that the Tacoma Humane Society had been incorporated as a non-profit organization under the Washington State laws in 1901 and have the exclusive right. He said he had been asked, however, by the directors of his society to oppose this resolution. The first contract with the City had been made in 1951. In 1954 and 1955, the facilities were declared by their president to be inadequate and he requested improvements to be made from money donated to the Humane Society. The directors then put in \$22,000 of improvements after which the contract was effected under the City management. Since that date the Society has invested over \$90,000 which was received in bequests, donations, etc. With the City's permission the three expansions have been made since that date. In 1968, the facilities were appraised at approximately \$140,000 and is located on City property. There are also plans for repairs and expansion amounting to \$20,000 in addition. He said the reasons for their opposition are: The directors of their society would be reluctant to put more money into their facilities if a possibility existed whereby the contract could be given to another similar organization. A change in the contract or management of the operation might tend to eliminate the many bequests which have been made to the Humane Society. If the resolutions were passed, the society would have no way of making their opposition known to the public. He said they need the necessity of security for the money they have spent, but at the same time realize they are only under contract to the City and could be cancelled.

Mr. Archie Fidler, Executive Director of the Humane Society, commented the Pierce

County Animal Welfare Association is the only other such organization in the county and they are not very active.

Mr. Cvitanich said there is some question about the City's right to subsidize the operation as they have in the past and the resolution would clarify that condition. He said some people assume the City is planning to terminate the contract, but such is not the case. Mr. Cvitanich continued the City had appropriated \$15,000 a short time ago and reached the point of having many questions of the City's involvement regarding the Humane Society's employees and what the future would entail. He said the way the conditions of the contract are at present limits subsidization.

Mr. McCormick said in fairness to the committee, he felt compelled to advise the Council why he was in favor of the change proposed. He said it had been recommended in 1968 also. Mr. McCormick read Chapter 3.10 of the City Charter and pointed out that at the time it was written the fees collected by the society had been insufficient so the fees were raised several times. If the contract were cancelled, the charter would prevent entering into another contract nor could the City operate its own humane society. He said the committee on this amendment does not intend changing the present arrangement, but did not want to be bound by this contract in the event the City at some future time is not satisfied with the contract or the service or wanted to sell the property.

Mr. Lewis Hatfield, representing the union employees said the employees were concerned in the event the City cancelled the contract, they would take over the operation and the employees would then work for the City. He said the society workers were career dedicated people and if any other similar organization were to take it over and inasmuch as the present Humane Society is under a union contract as to hours and pay, another firm could take over and not abide by the union rules. The employees thought if the operation were not being operated properly, the City would take it over and they would then be working under City management.

Mr. Jarstad moved that the resolution be amended in Section 3.10 by striking out the words "or any similar society organization" after the words "enter into contract with the Tacoma Humane Society". Also after the words "granting to such society" strike out the words "or organization". Seconded by Mr. O'Leary.

Mr. Jarstad pointed out this would give the Humane Society confidence and yet the contract could be cancelled if so desired at any later date, but the City would still be in control.

Mr. Dean said he would also like to mention to Mr. Hatfield that the Council had upgraded the employees recently. This shows the Council is behind them as the funds had been approved by the Council.

Mr. McCormick pointed out also that the City's right to subsidize has also been clarified inasmuch as this resolution specifically authorizes the City to subsidize the improvement, operation and maintenance of the facilities.

Roll call on the amendment was taken as follows: Ayes 6: Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston. Nays 3: Banfield, Cvitanich and Dean. Motion carried.

Roll call on the resolution, as amended, was taken as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The amended resolution was declared passed by the Chairman.

Resolution No. 20810

Submitting a proposed charter amendment relative to the elections of candidates and statement of qualifications.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. O'Leary.

Mr. Hamilton explained that Section 5.2 of the resolution would bring the charter provision into conformity with existing state statutes by changing the election dates from February and March to September and November.

He explained that Section 5.3 attempts to resolve a problem of eligibility of a candidate at the date of filing. Section 5.4 relates to numbered positions and this resolution adopts the state statute which was subsequent to the present charter. Section 5.6 revises some ambiguities in the present charter now providing that a candidate who makes both the primaries and the finals can have such a Statement of Qualification if he so desires.

Mr. Hamilton pointed out this resolution provides that at the time of filing, they shall also pay a \$50 printing fee.

Roll call was taken on resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20811

Submitting a proposed charter amendment relative to welfare benefits to elective and non-elective officers and employees.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. O'Leary.

Mr. Hamilton explained the revised provision permits the admissibility of elective officials into the City Retirement System and certain other benefits such as group life insurance, etc.

Mr. Fred Van Camp, Civil Service League member, remarked that under Section 6.11 of the charter, it does not provide any pay for the Civil Service Board and asked if any consideration had been given to that matter.

Mr. McCormick stated they had discussed whether the Civil Service Board should be remunerated and then in comparing this Board to the numerous other Boards, no action was taken. He said if the Council desires, they could make an amendment under this proposition.

Mr. Zatkovich said there is a difference between the Civil Service and the other Boards, in that the Civil Service Board is elective and the other appointed.

Mr. Zatkovich moved that the members of the Civil Service Board members be compensated at the rate of \$25.00 per meeting. Seconded by Mr. Jarstad.

Dr. Herrmann commented that if this were put through, it would be establishing a precedent for other Boards and Commissions.

Mr. Dean asked Mr. Van Camp if he thought compensation would be of benefit to the service they are giving now. He asked if this matter had been brought up to his group or was it Mr. Van Camp's suggestion.

Mr. Zatkovich commented the Civil Service Board has many meetings and he thought they should be compensated.

Mrs. Banfield mentioned that the Park Board members are elected and are not compensated.

Roll call was taken on the amendment as follows: Ayes 2: Jarstad and Zatkovich.

Nays 7: Banfield, Cvitanich, Dean, Finnigan, Herrmann, O'Leary and Mayor Johnston.

Motion failed.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20812

Submitting a proposed charter amendment relative to arbitrations in accordance with State law.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Hamilton explained that the present charter purports to make arbitration binding upon the City and this constitutes unlawful delegation of authority; therefore this resolution makes the charter provision conform to the law.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20813

Submitting a proposed charter amendment relative to the Independent Audit.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mrs. Banfield.

Mrs. Banfield moved to amend the resolution under Section 7.14 of the charter to change "or analysis" to read "and analysis" in the second line. Roll call was taken on the motion, resulting as follows: Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston. Nays 0. Motion carried.

Roll call was taken on the amended resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20814

Submitting a proposed charter amendment relative to taxation and indebtedness in accordance with the State law.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Hamilton explained that the prior provision related to first-class cities; whereas this provision relates to all the cities.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20815

Submitting a proposed charter amendment relative to filing claims against the City according to State law.

Mr. O'Leary moved that the resolution be adopted. Seconded by Mr. Cvitanich.

Mr. Hamilton explained this is another provision to bring the charter in conformance with the State law. The present charter requires the filing of a claim within 60 days; whereas the State law has been amended twice since that time and is now 120 days.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20816

Calling for a special election for September 15, 1970 and submitting to the electorate nine propositions for charter amendments.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. O'Leary.

Roll call was taken on the resolution, resulting as follows:

Ayes 8: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 1: Finnigan. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20817

Authorizing the execution of an Access Roadway Easement to the Bonneville Power Administration within the Green River Watershed.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Dean.

Mr. J. Cockrell, Superintendent of City Light Division, explained this is a housekeeping resolution which was inadvertently omitted from a condemnation act passed in 1965 which provides for a right-of-way 80 feet long and 20 feet wide to connect with the service road leading to the power line right-of-way.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20818

Authorizing the execution of an agreement for CATV Occupancy of Joint Poles between the City of Tacoma and Pacific Northwest Bell Telephone Co.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mrs. Banfield.

Mr. J. Cockrell, Superintended of City Light Division, explained this is a three part agreement-- Exhibit "A" being joint pole agreement between the City and the telephone company to allow joint ownership of poles; the second concerning cable TV joint occupancy and the third part sets the compensation for the City Light and the telephone company for the occupancy.

Mr. Finnigan asked if the City had any desire to provide the labor for supervising the installation by the other companies.

Mr. Cockrell said the telephone company will do the work and the City will be paid for engineering and supervision at \$1.50 per pole per year on jointly owned poles and the entire \$4.00 per pole per year on wholly owned poles and that in turn will be charged to the cable TV company. He said any time there has to be a change prior to the occupancy by the CATV company, that will be paid separately to the City or the telephone company depending on the work involved.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20819

Authorizing the sale of used automotive equipment by public auction.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Cockrell commented this was a program started in 1969 to sell surplus vehicles used by the Light Department. By this procedure, they will receive 25% more than estimated by a trade-in.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20820

Authorizing the sale of junk insulated copper wire to Pacific Iron & Metal Co. on its bid of \$22,962.00.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. O'Leary.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20821

Authorizing the sale of miscellaneous surplus equipment to various high bidders and that the bid of Items 10 & 11 be rejected for the reason they were too low.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Dean.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20822

Awarding contract to Woodworth & Company on its bid of \$75,610.39 for LID 4905-06-21.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20823

Approving the Final Plat of Swan Creek No. 2 located south side of East 60th between Pipeline Road & Roosevelt Ave.

Mr. Dean moved that the resolution be adopted. Seconded by Dr. Herrmann.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20824

Fixing Tuesday August 25th at 7 P.M. as the date for hearing for the vacation of the alley lying between Trafton & State Sts. approx. 100 feet south of So. Tacoma Way to vacated Wright Ave. (Petition of Funes & Oziel, etal)

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Finnigan.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20825

Fixing Tuesday August 25th at 7 P.M. as the date for hearing for the vacation of the N.W. corner of So. 19th and Prospect Sts. (Petition of Norman Jardeen, etal)

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Finnigan.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20826

Fixing Monday August 24th at 4 P.M. as the date for hearing for L I D 4948 for paving on So. 8th from Stevens to Verde and from So. 9th to 10th St.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Finnigan.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20827

Fixing Monday August 24 at 4 P.M. as the date for hearing for L I D 3706 for sanitary sewers in the alley between Prospect & Wapato Streets from So. 49th to So. 51st.

Mr. Cvitanich moved that the resolution be adopted. Seconded by Mr. Finnigan.

Voice vote was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

Resolution No. 20828

Submitting a proposed charter amendment relative to disposal of Utility Properties.

Mr. O'Leary moved to suspend the rules to take up Resolution No. 20828.

Seconded by Mr. Cvitanich. Motion carried.

Mr. O'Leary moved that the resolution be adopted. Seconded by Mr. Zatkovich.

Mr. Hamilton explained that this resolution pertains to Section 4.6 which the Council deleted from Resolution No. 20806 by vote this evening and decided to make a separate resolution.

Roll call was taken on the resolution, resulting as follows:

Ayes 9: Banfield, Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 0. Absent 0.

The Resolution was declared passed by the Chairman.

FIRST READING OF ORDINANCES:

Ordinance No. 19167

Creating a Working Fund Advance for the Garbage and Refuse Division in the sum of \$100.00.

The Ordinance was placed in order of final reading.

Ordinance No. 19168

Amending Chapter 13.06 of the Official Code by adding Sec. 13.06.100-2 to include property in the area bounded by So. 19th; J and So. 17th & So. I Sts. in an "R-5-T" District. (Petition of St. Joseph Hospital)

The Ordinance was placed in order of final reading.

FINAL READING OF ORDINANCES:

Ordinance No. 19166

Amending Chap. 13.06 of the Official Code relative to Parking areas of businesses "T" and "TM" districts and screening requirements.

Roll call was taken on the ordinance, resulting as follows:

Ayes 8: Cvitanich, Dean, Finnigan, Herrmann, Jarstad, O'Leary, Zatkovich and Mayor Johnston.

Nays 1: Banfield. Absent 0.

The Ordinance was declared passed by the Chairman.

UNFINISHED BUSINESS:

The Director of Public Works presents the assessment rolls for the following:

L I D 6870 for street lighting at intersections in the vicinity of No. 31st to No. 34th from Madison to Tyler Streets.

L I D 6871 for intersection lights in the area between 6th Ave. and So. 12th Street from Junett St. to Puget Sound Ave.

L I D 6892 for intersection lights, North Whitman St. from View Ridge Drive (North 37th St.) to No. 45th St.; North 46th St. from Vassault St. to Frace St.

Mr. Finnigan moved that the date of hearing be set for Monday, August 24th, at 4 P. M. Seconded by Mr. Cvitanich. Voice vote was taken. Motion carried.

* * * * *

Mr. O'Leary said he had been in Seattle to see Mr. Thomas H. Mercer, Regional Director of the O.E.O., as directed previously by the Council and they were too busy to see him. He, therefore, sent a letter to invite them to the meeting this evening to explain the status of the project in Tacoma. He added he received a telegram from Mr. Mercer stating that Tacoma's application is under consideration and that any comment by them at this time would be premature. Mr. O'Leary commented he will pursue the matter further.

* * * * *

Mr. O'Leary reported an ordinance relating to trucks parking on the wharfs had been postponed from last week, and that he had met with the Coast Guard, the truckers and Fire Dept. and they had come up with a liberal ordinance.

He said he had also been instructed to talk with the Port on their taking over the Harbormaster's job, as there is a resolution to come before the Port shortly. He said they are sympathetic and he thinks progress is being made on the matter.

* * * * *

Mayor Johnston requested the City Clerk to distribute the Recertifications and the Recall to the Council members.

When the Recertification was being distributed, all five members of the Council absented themselves from the Council Chambers.

Mayor Johnston asked the Clerk to mail the Recertifications to the five Councilmen by registered mail.

Mr. Jarstad asked, on behalf of the four Council members remaining, the Attorney what the Council should do at this point so as to avoid breaking any laws.

Mr. Hamilton advised that under the statutes it is the responsibility of the officer with whom the petitions are filed, upon the completion of the canvass, or supplemental canvass, to certify those results to this body, which the Clerk is now doing. Not less than 10, nor more than 15 days from the completion of that canvass, it is incumbent upon this Council to call an election not less than 30 nor more than 60 days from the date of the call, he added.

* * * * *

Mr. Jarstad asked since there is not a quorum, should the meeting be adjourned.

Mr. Hamilton advised the Council was not now in a position to take any action tonight as far as the Recall was concerned and under the provision of the Charter, since there is not a quorum, all they could do is to adjourn.

* * * * *

Mayor Johnston expressed his regret to those persons who still wished to speak to the Council and declared the Council adjourned.

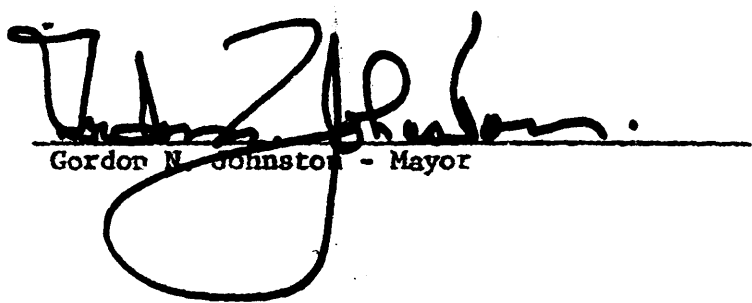
Mr. Raymond Roland, 1620 E. Columbia Street, said he would like to speak regardless of the full Council not being present. He referred to an ordinance passed a year or so ago which taxed each home owner 75¢ per month as a bus subsidy. He said he had two houses on one piece of property, with one vacant and because the light meters are turned on in both houses, he is being billed twice on the bus tax.

He said he would like someone to look into this matter as he feels he is being unfairly taxed and there are others in the same position.

Mayor Johnston asked Mr. Roland to return next week to present his objection.

Mr. Roland said he had already brought the matter to the legal department, but they had ruled against him. Mayor Johnston said he would look into the matter further.

Meeting adjourned at 12:35 A. M., July 29th, 1970.


Gordon N. Johnston - Mayor

Attest: 
Josephine Melton - City Clerk

A VERBATIM TRANSCRIPT

of

DISCUSSION on RECERTIFICATION of RECALL

Part: Page 1, City Council Minutes for July 28, 1970

Requested by Mr. Cvitanich.

- Mrs. Melton: Mr. Mayor, before we proceed with the agenda, I do have a Recertification of the Petition on the Recall I wanted to submit to the Council members.
- Mr. Cvitanich: That is out of order, Mr. Mayor. I move a suspension of the rules.
- Mayor Johnston: I move a suspension of the rules to let Mrs. Melton distribute to the council her recertification of the petition.
- Mr. Finnigan: I will second it.
- Mr. Zatkovich: I am sorry, but due to a conflict of interest I will have to excuse myself.
- Mayor Johnston: I guess we could get an opinion from Mr. Hamilton. We have before us a motion to suspend the rules to accept the recertification, and the roll has been called for.
- Mr. Dean: I find myself in the same position as having advice that this is a conflict of interest, and therefore I can in no way participate in any action which would be relative to this, and calling for a suspension of the rules would put me in the same position, Sir.
- Mayor Johnston: You are excused. Call the roll, please.
- Mrs. Melton: (Calling roll) Mrs. Banfield.
- Mrs. Banfield: I abstain.
- Mrs. Melton: Mr. Cvitanich.
- Mr. Cvitanich: I abstain.
- Mrs. Melton: Mr. Dean.
- Mr. Dean: I abstain for the previous mentioned reason.
- Mrs. Melton: Mr. Finnigan.
- Mr. Finnigan: Aye.
- Mrs. Melton: Dr. Herrmann.
- Dr. Herrmann: Aye.
- Mrs. Melton: Mr. Jarstad.
- Mr. Jarstad: Aye.

Mrs. Melton: Mr. O'Leary.

Mr. O'Leary: I abstain.

Mrs. Melton: Mr. Zatkovich -- Absent.

Mrs. Melton: Mayor Johnston.

Mayor Johnston: Aye.

Mayor Johnston: I rule that the suspension of the rules is in order and you may pass out the certifications.

Mr. Cvitanich: I challenge the ruling of the chair, your Honor.

Mayor Johnston: The motion carried by a vote of 4 to 0.

Mr. Cvitanich: It would have to be five -- I think there is a provision in our Charter which states If we could get a legal opinion

Mayor Johnston: Mr. Hamilton.

Mr. Hamilton: I think the section you refer to is 2.10 which reads as follows: "Any ordinance and resolution shall require an affirmative vote of at least five councilmen for passage, and the 'ayes' and 'nays' shall be taken and entered upon the journal.

Mayor Johnston: Is a motion on a suspension just the same as on a resolution or an ordinance?

Mr. Hamilton: Rule 8 reads as follows, "No rule shall be suspended except by a vote and the majority of council members present at the meeting, and a motion to suspend the rules is not debatable.

Mayor Johnston: Then your opinion is that, the motion failed.

Mr. Hamilton: It was not a majority ruling.

Mayor Johnston: Then I think Mrs. Melton should be advised by council that if she cannot deliver the recertification at this council meeting--- can she hand deliver them tomorrow, or what procedure should she follow?

Mr. Hamilton: All that is required is that she, having announced they were available here, hand one to each member at this time, and they have been duly served.

Mayor Johnston: Would you do that, Mrs. Melton.

Mr. Cvitanich: Then I go back to my original point of order -- that this is not properly before us because it is a departure from the established agenda. And if this is a suspension of the rules to consider this

item, and the motion failed, we have nothing before us but Hearings and Appeals.

Mr. Herrmann: I move we don't suspend the rules, but hear this Recertification.

Mayor Johnston: Due to the unusual nature of this situation, I will rule that Mrs. Melton hand out the Recertifications.

Mr. Cvitanich: I challenge the ruling of the chair.

Mr. Jarstad: I would like to hear from Mr. Hamilton. None of us have been through this before. Aren't we legally, as councilmen, unless we have a conflict of interest, supposed to accept this -- or do we have any part in it?

Mr. Hamilton: Under the state statute under recall proceedings, once the canvass has been finally completed, it is incumbent upon the canvassing officer to present the certification to the legislative authority. Now, all that she need do is to present it to you. Whether you wish to accept it or not is something else, but under the statute once you are aware of it and know it is available -- once you have seen it -- then you are charged with the responsibility of having seen it. In my judgment, at least, you cannot by affirmative or evasive action get away from accepting it if it is presented to you.

Mayor Johnston: One additional question -- is it necessary that it be presented at a meeting of the legislative body?

Mr. Hamilton: Let me read RCW 29.82.100: "If, at the completion of the canvass and count, it is found that a petition for recall bears the requisite number of signatures of certified legal voters, the officer with whom the petition is filed, shall certify the proposition to the proper authority which shall fix a date not less than ten nor more than fifteen days after the conclusion of the canvass, for calling a special election to determine whether or not the officer charged shall be recalled and discharged from his office. "

Mayor Johnston: Then your advice is that once she has announced that the petition has been recertified, she can hand it out, is that your advice?

Mr. Cvitanich: I will go back to my original point of order, that this is not properly before us. You entered a ruling, and I challenge the ruling of the Chair, and the only thing we have before us is the Hearings and Appeals --- and we have the challenge of the ruling of the Chair, as a matter of fact.

Mayor Johnston: It has been seconded. The ruling of the Chair has been challenged with regard to my directions to Mrs. Melton. Call the roll on

Mr. Cvitanich: State the question, please.

Mayor Johnston: A 'yes' vote is to deny the decision of the chair directing Mrs. Melton to pass out the recertification.

Mr. Cvitanich: Point of order, Mr. Mayor -- if you read the rules, I think you will find it doesn't ask you to editorialize. It merely asks you to state how shall the question be put -- 'yes' or 'no', and you state what; and that's it.

Mayor Johnston: I have an unusual way of stating my point A 'no' vote is to confirm the position of the chair. Call the roll, please. I ruled that Mrs. Melton should pass out the recertification, and that decision has been challenged. A 'yes' vote is to deny the ruling of the Chair, and a 'no' vote is to confirm it. Call the roll, please.

Mrs. Melton: Mrs. Banfield.
Mrs. Banfield: Aye.

Mrs. Melton: Mr. Cvitanich.
Mr. Cvitanich: Aye.

Mrs. Melton: Mr. Dean.
Mr. Dean: Aye.

Mrs. Melton: Mr. Finnigan.
Mr. Finnigan: No.

Mrs. Melton: Dr. Herrmann.
Dr. Herrmann: No.

Mrs. Melton: Mr. Jarstad.
Mr. Jarstad: Aye.

Mrs. Melton: Mr. O'Leary.
Mr. O'Leary: Aye.

Mrs. Melton: Mr. Zatkovich.
Mr. Zatkovich: Aye.

Mrs. Melton: Mayor Johnston.
Mayor Johnston: No.

Mrs. Melton: We have six 'ayes' and three 'no's'.

Mayor Johnston: Then the challenge of the Chair was upheld six to three.

Mr. Cvitanich: Mr. Mayor, I would ask that this total portion regarding the recall be inserted, verbatim, into the minutes.