

Council Chambers, 4:00 P.M.
Monday, September 21, 1959

Council met in regular session. Present on roll call 8: Anderson, Bratrud, Goering, Humiston, Perdue, Porter, Price and Mayor Hanson. Absent 1, Easterday. Easterday coming in at 4:25 P.M.

Mr. Anderson moved that the minutes of the meeting of September 14, 1959 be approved, as submitted. Seconded by Mr. Perdue. Roll call: Ayes 7; Nays 1, Humiston (not voting); Absent 1, Easterday.

Mayor Hanson advised that he wished to call a twenty minute recess at this time to conclude the discussion on certain budget matters that must be resolved, before the Preliminary budget can be adopted.

Council reconvened at 4:25 P.M. Mr. Easterday coming in at this time.

Mayor Hanson explained that before proceeding with the agenda there were some service awards to be presented at this time.

Mr. Rowlands advised that last year the City Council made it possible to give recognition to City employees who have worked for the City for many years. Mr. Rowlands presented certificates and pins to Albert P. Larsen of the Public Works Dept. and Charles More of the Fire Dept. who have had forty years of continuous service. He also presented thirty-five year pins and certificates to Myrtle Van Bervers of the Police Dept, Floyd Harbin of Public Works Dept., Gladys Mase of the Police Dept, Clarence Potter of the Fire Dept and Orla Sines of the Public Works Dept. Two additional thirty-five year awards were to have been presented to Lyman Stenberg and Harry Markoff of the Public Works Dept, both of whom were unable to be present.

Mayor Hanson congratulated each recipient and wished them many more years of service to the City.

HEARINGS AND APPEALS:

This is the date set for hearing on the vacation of East I Street between East 26th and 27th Streets. (Petition of Oscar Kretschmar)

Mr. Buehler, Planning Director, advised that the Planning Commission recommended approval of this vacation at their regular meeting held August 18, 1959, and that the Public Works Dept., Light and Water Divisions had no objections to this vacation. 258
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It was moved by Mr. Bratrud that the Council concur in the recommendation of the Planning Commission, and that the proper Ordinance be drawn vacating the area. Seconded by Mr. Easterday and carried: Ayes 9; Nays 0; Absent 0.

This is the date set for the hearing on the vacation of So. 10th Street between Winifred and Bantz Blvd. (Petition of William Schultz)

Mr. Buehler, Planning Director, explained that this was originally a petition to vacate both sides of South 10th Street plus the portion that abuts Bantz Blvd. The State Highway Dept. advised the City that they may need additional right-of-way on Bantz Blvd. at this location; therefore the Planning Commission recommends that only the fifteen feet area adjacent to the Petitioner's property be vacated at this time, and the balance be held in abeyance until action by the State Highway Dept. has been completed. 258
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It was then moved by Mr. Bratrud that the recommendation of the Planning Commission be accepted and that the proper Ordinance be drawn vacating only the north 15 feet of North 10th Street between the west line of Winnifred Street and the east line of the alley between Highland and Winnifred Street, abutting lot 12 Block 18, Woodlawn Addition. Seconded by Mr. Andersen. Motion carried: Ayes 9; Nays 0; Absent 0.

RESOLUTIONS:

Resolution No. 15876:

BY PRICE:

Awarding contract to George Hadsen Company on their bid of \$2,410.75 for L I D 4445, being the only bid received.

It was moved by Mr. Andersen that the Resolution be adopted. Seconded by Mr. Easterday.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15877:

BY FORFEIT:

Authorizing and directing the proper officers of the City to execute an agreement between the City and Pierce County for the joint improvement of East 72nd Street from the center line of McKinley Avenue to the east City limits of Tacoma.

It was moved by Mr. Easterday that the Resolution be adopted. Seconded by Mr. Bratrud.

Mr. Rowlands advised that the County and City each will pay approximately one-half of the cost of this improvement. The City's share will come from the Bond Fund, he added.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15878:

BY PERDUE:

Authorizing the proper officers of the City to enter into a Termination Agreement with the Northern Pacific Railway Company for the removal of spur trackage on 11th & Dock Streets.

It was moved by Mr. Perdue to adopt the Resolution. Seconded by Mr. Bratrud.

Mr. Rowlands advised that this spur track is in the area of the Dravis Engineering Company at 11th & Dock Streets, and was not needed by the Railroad Co. If this is removed the property would be more usable and will provide more automobile parking facilities.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15879:**BY HANSON:**

Authorizing the proper officers of the City to execute and deliver a real estate contract to Leo and Anna Allotta for the sum of \$1,080.00 for property located on the southeast corner of No. 37th and Baltimore Street.

It was Moved by Mr. Perdus that the Resolution be adopted. Seconded by Mr. Bratrud.

Mr. Rowlands advised the following eight Resolutions are the result of the sale of property by the City at a Public Auction. The City will derive a profit from each sale, he added.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15880:**BY ANDERSON:**

Authorizing the proper officers of the City to execute and deliver a real estate contract to Leo and Anna Allotta for the sum of \$730.00 for property located at the southwest corner of No. 37th and Bennett Streets.

It was moved by Mr. Anderson that the Resolution be adopted. Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15881:**BY BRATRUD:**

Authorizing the proper officers of the City to execute and deliver to Leo and Anna Allotta a real estate contract for the sum of \$2,625.00 for property located on the west side of Baltimore and on the east side of Bennett Street and between No. 37th and No. 35th Streets.

It was moved by Mr. Anderson that the Resolution be adopted. Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15882:**BY HANSON:**

Authorizing the proper officers of the City to execute and deliver a real estate contract to Leo and Anna Allotta for property located on the east side of Harmon between No. 18th and No. 11th Streets for the sum of \$3,800.00

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It was moved by Mr. Anderson that the Resolution be adopted, Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15883:

BY PRICE:

Authorizing the proper officers of the City to execute and deliver a real estate contract to Gust and Frances Erickson for property located on the west side of Bennett between No. 37th and No. 35th Streets for the sum of \$350.00.

It was moved by Mr. Bratrud that the Resolution be adopted. Seconded by Mr. Anderson.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15884:

BY EASTEDAY:

Authorizing the proper officers of the City to execute and deliver to W. S. Erspaner and R. L. McGinn a real estate contract for property located on the east side of Ferdinand between No. 47th and No. 48th Streets for the sum of \$2,000.

It was moved by Mr. Anderson that the Resolution be adopted. Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15885:

BY ANDERSON:

Authorizing the proper officers of the City to execute and deliver a real estate contract to Mayer and Peterson, Inc., for property located on the east side of Park Avenue near So. 94th Street for the sum of \$975.00.

It was moved by Mr. Anderson that the Resolution be adopted. Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Resolution No. 15886:

BY GOERING:

321 Authorizing and directing the proper officers of the City to execute and deliver to Harry and Melora Tracy a local improvement assessment deed for the sale of property located on the west side of Huson between No. 47th and No. 48th Street for the sum of \$600.00.

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It was moved by Mr. Anderson that the Resolution be adopted. Seconded by Mr. Bratrud.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

Mr. Rowlands advised there was another Resolution that has been prepared and should be considered at this meeting which does not appear on the agenda.

Dr. Humiston moved to suspend the rules in order to take up Resolution No. 15887 which was not on the agenda. Seconded by Mr. Easterday and carried: Ayes 9; Nays 0; Absent 0.

Resolution No. 15887:

BY EASTERDAY:

Awarding contract to Lige Dickson Company in the amount of \$11,925 for the grading of 550 feet south of So. 19th Street to So. 28th from Cheyenne to approximately 400 feet east for a baseball and parking area.

It was moved by Mr. Easterday that the Resolution be adopted. Seconded by Mr. Anderson.

Mayor Hanson advised that this Resolution covered the low bid on the removal of the peat from a portion of the Baseball Park area.

Mr. Rowlands explained that bulldozers were at the site today and have begun clearing out the area. It is hoped to begin the grading by Saturday of this week.

Mr. Anderson added that the reason Mr. Dickson could give as low a bid as this was because he had the correct type of equipment for this particular job.

Adopted on roll call September 21, 1959
Ayes 9; Nays 0; Absent 0.

FIRST READING OF ORDINANCES:

Ordinance No. 16423:

Amending Section 6.68.010, 220, 270 and 280 of the Official Code of the City relating to Business and Occupation Taxes. Read by title. 272

Mr. Rowlands explained that this was the first reading of the Ordinance which was carried over from last week. One of the principal changes was the omission from page 5 of Section (h) which exempted the tax on liquor. It definitely would make it possible to collect a Business and Occupation Tax on liquor.

Dr. Humiston said this is the first time that it is actually levying it by deleting them as an exception. He asked how much the tax would be?

Mr. Rowlands said it would be 1/10th of 1% on one mill.

Mayor Hanson pointed out that this was the first reading of the Ordinance and it involves the imposition of 1/10th of 1% "B and O" tax on those engaged in the business of selling beer and wine.

Mr. Anderson said he had received quite a number of calls on this Ordinance and he believed that the Council should go into the matter very thoroughly before the Ordinance is passed, and that both sides of the story should be heard.

Mayor Hanson said that was the purpose of the first reading, as they anticipate to allow anyone to be heard on the matter as it is something, he believes, that the Council should proceed cautiously on, and know the whole story before any action is taken.

Dr. Humiston asked that since the deletion of paragraph (h) on the last page would automatically impose the 1/10th of 1% tax on the sale of beer and wine, he asked that that section be read.

Mr. Francis Chapin, Assistant City Attorney, read section (h) as follows: "(h) Amounts derived from the sale of liquor as the term is defined in the Revised Code of Washington."

Dr. Humiston asked what effect the other underlined changes made in the Ordinance.

Mr. Chapin explained that the portions underscored were inadvertently omitted when the Ordinance was last amended, and, he said, that is the reason they are inserted at this time.

Mr. Rowlands pointed out that representatives of the Tavern Owners Association were in his office last week to register their disapproval of the proposal. He said they felt the 1/10th of 1% would work a hardship on some of the Taverns, chiefly if the distributor or wholesaler as well as the manufacturer would not try to pass the tax on to the tavern operators. He said that is one thing that may or may not happen but they did make that point.

He said the grocery stores pay 1/10th of 1% tax on everything sold, with the exception of beer and wine. Another thing that was pointed out was that he was not sure that the proposition would be legal. Mr. McCormick, City Attorney, and his staff believe it is legal, and obviously this whole question came about during the preparation of the 1960 budget while trying to find additional funds by which the budget could be balanced. That is the principal reason, and also to be consistent by what other people are paying. Mr. Row

Dr. Humiston asked how much money was involved in this estimate?

Mr. Rowlands advised that approximately \$125,000 or \$150,000 was involved.

Mayor Hanson asked if the tax would be 1/10th of 1% on the sales to the manufacturer and also the sales to distributors and to the retailers?

Mr. Rowlands replied that the same principal applied to that of the grocery or any other business; the manufacturer and retailer and distributor all bear this tax. Mr. Rowlands said he believed that was true as far as the state tax was concerned. He said he believed there was a 4 mill tax now being paid by the manufacturer and retailers and that we are talking about 1 mill versus the State's 4 mills.

Dr. Humiston asked, for instance, where some beer was manufactured at Carling's and they sell it for a unit price to taverns and they pay this 1/10th of 1%, now who would pay the 1/10th of 1% - "the company?" Then, in the taverns, it is retailed out by the glass and you would get 1/10th of 1% or whatever his gross was of just plain delivering it, and he would pay 1/10th of 1% as it went by him.

Mr. Rowlands said this was correct.

Mr. Anderson asked that if we were putting a tax such as this on some of our wholesalers, it would not be fair competition, would it? He said that Safeway Stores do not sell to their own stores, because they do not pay that 1/10th of 1%.

Mayor Hanson said they eliminate one step and some of the stores are the manufacturers to begin with and they do eliminate paying the tax in the middle.

Dr. Humiston said he thought there was some possible errors in treating certain people slightly different.

Mr. Rowlands said this same principal is in effect, with regard to the grocery stores, such as the West Coast Grocers; they would be the wholesaler and would be taxed for shipments to the Red and White Stores and Hunt & Mottet and this happens to be a relief pressurage stamp for such a company as the Safeway.

Mr. Anderson asked if there was a rush for this tax or were they first again?

Mr. Rowlands said as far as he knew no other City had the tax, but there was an opinion about five or six years ago, which lead the people to believe that it was not legal.

Mr. Gaisford said they actually put a tax on a keg of beer.

Dr. Humiston asked when that was.

Mr. Gaisford said around 1944 or 1945.

Dr. Humiston asked if the basic law was not changed.

Mr. Gaisford said that it had not, but there was an attorney general's opinion, by letter.

Mr. Rowlands said that Mr. McCormick wished to talk on the matter.

Mr. McCormick said he believed Mr. Gaisford had something else in mind. He said Mr. Chapin has made quite an exhaustive research on this matter, as well as the other Assistant Attorney's. If the Council wishes, they could give their findings on the matter, or if desired, they could reduce it to writing for their information, or whatever they wish.

Dr. Humiston said he wished a conclusion, himself.

Mr. Chapin, Assistant City Attorney, advised that they have the Attorney General's Opinion and a copy of the Statute. This Statute indicates that you may not impose any taxes on the transaction on the sale of liquor. Now, he said, we are imposing what is a business and occupation tax/ on the sale of liquor itself but, on the privilege of engaging in the business. We feel that this distinction will be of the ultimate importance. Mr. Chapin advised that the business and occupation tax is not a sales tax.

Mayor Hanson said they would proceed with the hearing on this. He said there were a number of people who would like to express themselves as the hearing progresses and he would appreciate refraining from repetition as much as possible, although it is impossible at times.

Mayor Hanson advised that he had received a call from Roy Neir who is the spokesman for the Tavern Owners Association, and asked if he would like to speak first.

"Honorable Mayor and members of the City Council. My name is John Fleming, a practising attorney in Seattle. I am here this afternoon on behalf of the Brewers Institute, the Tavern Owners Association and the Class H Licensees. I would like to say that I personally, and I know that all of our clients are most sympathetic with your problems, and understand the real pressing need that there is for the adoption of the revenue statute. I feel that I have something that will stand in Court against the Council this afternoon, because there are some serious problems connected with it. I think the implications have already come out here. I would like to say first of all, that the statement that was stated by the City Attorney, I challenge and I dare say is not understood, and I don't believe there is a distinction, and I think there will be a disastrous result if you adopt an Ordinance based upon that distinction which I honestly believe you don't understand. There are two reasons we have-----"

Dr. Humiston, at this time interrupted to ask what distinctions it was that he believed the Council did not understand?

Mr. Fleming replied that the Assistant City Attorney was asked why the Statutes which prevent this City from adopting a license tax or excise tax from producing revenue. The City Attorney was asked why then is this statute legal. The answer was "This is not a tax on the sale, it is a tax on the right to do business." In other words this is not a sales tax, but a "right to do business tax." If there is any, that is strictly a screen. Let me read you the words in the Statute and you can decide for yourself and then I will read you some very brief words from the Supreme Court in interpreting this Statute and interpreting this point. Then there are three Attorney General Opinions which are very strong on this point. The wording in the Statute in the first sentence is as follows: The title is "Pre-emption of Field by State-Exemption." "No County or Municipality shall have power to license the sale of or impose an excise tax upon liquor as defined herein or to license the sale of or

distribution thereof in any manner." Those are very strong words and the Supreme Court of our State has said that when this City, the City of Tacoma, in appearing as "amici curial" this precise issue in the leading Brewery case, the City of Tacoma intervened and attempted to convince our Supreme Court that it should enable the City of Seattle to adopt this same tax. The Supreme Court said in enjoining the City of Seattle from charging a license fee of \$500 for Operators and a \$2.00 fee per keg, the Supreme Court said you can't do it. On this point that was just raised by your Attorney, the Supreme Court says as follows: "There can be no question, in our opinion, that the so-called additional fee, including the fee of \$2.00 per barrel constitutes an excise tax. That they are called fees for a license is immaterial." The character of the Ordinance is determined by its incidence and its obvious purpose. It is apparent by the provisions of the Ordinance that these additional fees are imposed, not for the purpose of paying the cost of regulation in the exercise of the City's taxing powers, but with the production of revenues, under the exercise of the powers of the tax. And such and to that extent, at any rate, it constitutes an imposition of an excise tax. Now there is no question in the Attorney General's opinion that the City of Tacoma cannot impose an excise tax or a revenue producing tax on the sale of beer, wine or liquor. Let me read to you his conclusions. I realize it is late and there are many issues to take up here, but let me read one sentence from his latest opinion which was April 7, 1959. Which is exactly the same point from the Prosecuting Attorney in Colville in Stevens County. "It is our conclusion that municipal corporations do not have the power to impose a business tax upon taverns and 'H' licensed premises."

This is one of two or three opinions which followed in 1934 from the Attorney General, and have always been consistent. Now there is a reason for this, and I don't think that any one of you really understand, but when you do understand that there are more taverns that have gone out of business in this City, so I am told, than any other City in the State in the past few years you will understand. Taverns that were purchased a few years ago for \$20,000 can be purchased now for \$2500 or \$5000. This is a serious problem here, and is a serious problem anywhere. One of the reasons is, that this area has been taxed for many many years. It has been regulated and this City of Tacoma receives money from the Liquor Board; it receives money from the State, from taxes which are collected by the State and returned to the various municipalities. This is one of the reasons why the Attorney General said that it is not fair for the Municipalities to impose a direct tax upon the tavern, on the distributors and upon the Brewery. I might point out to you there is no direct distribution from the Brewery to the taverns. So this tax that you are proposing touches three elements. This is a devastating tax in a business which is heavily taxed and is almost taxed out of existence, at the present time.

Now, there are two basic reasons why we are appearing and suggesting that the Council not adopt this portion, but delete that relating to beer, wine and liquor. In substance we are asking the Council that beer, wine or liquor not be taxed. First of all because it is an unfair tax; it is a disastrous tax for the business operators themselves, which, including the Breweries, constitute a substantial part of the economy of this City. It is a heavy tax, it is a burdensome thing. Secondly it is clearly illegal. There is no power in the City to levy this tax and it will be challenged. This is something that I believe should be considered because Seattle attempted to do this same thing and it was necessary to have the matter litigated. It happened to be my partner, Henry Ivers, who represented the Brewery Institute in that case. There is no question in the Supreme Court's mind that a business tax may not be levied in this area because the statute says it can't. There is also no question on the part of the Attorney General. I might say to make sure about this, I went down to the Attorney General's office this afternoon and also to the Liquor Board's office and I checked filings to make sure there were no late opinions. There is an informal letter regarding this Statute in general. But, it certainly would not be a basis of adopting this Ordinance. I submit to you, ladies and gentlemen of the Council that

it would be a very grave mistake to adopt this Statute. Thank you."

Mr. Bratrud said that perhaps the letter from the Attorney General's office should be read.

Mr. McCormick: Mr. Mayor and members of the Council. First, I would like to say that as far as this act is concerned undoubtedly it will be challenged. And the right of the City to impose this tax undoubtedly will finally be determined by the Courts. The precise question has not been decided by our Supreme Courts, and I think you will agree with me. The Seattle case was specifically upon the imposition of a tax of a license to do business, to sell liquor, and so on. This is an occupation tax on the privilege of engaging in business. To show you the difference between them, our legislature has set forth in words insofar as this tax is concerned - compare it with the prohibition in regard to the sale of motor vehicle fuel. In that prohibition our legislature specifically included in this tax and they said that the tax herein levied is in lieu of any excise, privilege or Occupational Tax, upon the business of manufacturing, selling or distributing motor vehicle oil, and we have especially excluded that from this statute from our own business as it has always been excluded. That language is entirely missing from the prohibition against taxing the sale of liquor or licensing the privilege of selling liquor. You can see that insofar as that, the Council has no power to impose a direct sales tax on the sale of liquor. We clearly concede that the City Council has no power to impose a direct licensee fee for the purpose of regulating the sale of liquor, that is pre-empted. But we do not concede that this question has been determined by the Supreme Court, of the right of the Cities to impose, as it does on other businesses, a tax to measure the revenue from that right on the gross proceeds of the sale. That is the basis upon which our office has given this opinion. No doubt it will not be finally determined until after it is taken to the Supreme Court. Insofar as the Attorney General's opinion is concerned, there was only one opinion and that was in 1953, Opinion No. 53-55-2, dated April 7, 1953.

After our office made an exhaustive survey of this question, the various cases were collected by Mr. Comfort, who was then in my office, and were sent to the Attorney General, asking that they revise or repudiate the opinion which Mr. Eastvold, had given out while he was in office, on the basis that it was not a correct opinion and if not, they can take into consideration the cases and the arguments which we present. They reviewed that and the Attorney General, under date of February 3, 1959, apparently wrote the letter which this gentleman has reference to. They do not give opinions, as most of the Councilmen and Legislators know, to Municipalities. They can only give them to the officers of the State itself. He states in the letter that "I frankly do not know why such an opinion was written by this office. We, of course, have neither the authority nor the responsibility to advise Municipalities and it would appear that an opinion of our office that attempts to limit the taxing authority of Municipalities is a gratuity. May I say, in this informal letter, that those of us who have examined this opinion have considerable doubt about its validity. We are slow, however, to overrule opinions of this office unless there is a clear and present need for such action. This clear and present need, of course, does not appear in your inquiry. Certainly the removal of this opinion would not ipso facto open the door to the imposition of such taxes. A Municipality, if it deems it advisable to impose such taxes, is surely going to impose them in the face of an opinion by this office with which it disagrees, if the Municipality desires to impose such a tax. In the end result the whole matter is one that will involve the action of the Courts in any event and frankly it would appear that there is nothing that our office can do either to assist you or to impede you." That is the Attorney General's letter.

Mayor Hanson asked if there were any other questions, or if anyone else would like to address the Council on this questions.

Mr. Howard Lee asked that if this Ordinance passes and assuming that the manufacturer will be taxed and the distributor will be taxed, are we leaving the door

open for the distributor from Thurston County to bring down his beer that he hasn't paid a tax on. He asked that the Council give that some consideration.

Mayor Hanson said he believed that had been considered.

Mr. McCormick said that Section 6.68.220 provides that it shall be levied upon and there shall be collected from every person as hereinafter provided, for the act or privilege of engaging in business activities within the City, whether his office or place of business be within and/or without the City. We have taken the position here that any outside firm that has trucks, delivers, sells and carries on a business within this City is taxable under this Ordinance.

Mr. Porter said he believed Mr. McCormick to say that you do tax a distributor that has a business some place else and that you do not tax a manufacturer or a brewer that is located in another City. In other words there are three taxes imposed on Carling Brewery, that of manufacturing, selling and distributing

Mr. Perdue commented that the same thing might happen if the manufacturer was in Seattle and sold in this City. Whereas, for instance, the manufacturer here of "drawer pulls" sold them to Hunt and Mottet - he would have to pay a tax; Hunt and Mottet would have to pay a tax when they sold them to the retailer and the retailer would have to pay a tax when he sold them to a consumer, it acts as the same thing.

Mrs. Price asked Mr. Fleming if there was a business and occupation tax collected by the State on the breweries, etc.

Mr. Fleming replied that this type of business was more heavily taxed by the State than any other business that he knew of, which includes the brewery, distributor, taverns, the licensee and the Class H licensee. They all were originally taxed quite heavily. It is shocking as to the amount of taxes on these industries. I am not prepared to give these figures at the present time. This is the only justification for the State Legislature to say that Municipalities cannot tax for revenue purposes such as excise tax or a license tax. The Supreme Court has ruled on that and it doesn't make any difference if you say it is for the privilege of being in business. You just can't tax for revenue purposes; it has been litigated already, because of the reason that the State of Washington is already giving Tacoma money from that fund.

Mayor Hanson said it seems to him that there is an additional element in the definition of excise tax and it isn't merely the act of obtaining revenue.

Mr. Fleming said that the law on this is rather fundamental. There are two kinds of taxes, one is "Originator Taxes," and this City does have the right to tax some regulator measures in this area and on occasions even have police powers. Licensing merely pays for the cost of the regulations that are probably legal, but not if you call it a license and the fee is so high. When the real purpose is to get money, such as the City of Seattle is trying to do, then that is an excise tax. There are only two kinds of regulatory taxes, and revenue taxes are the only reason the Council has for raising or levying taxes. To make regulations or to get money. You can't smoke-screen and call it anything else; it won't work. The statutes of the Supreme Court rules you can't take money inasmuch as the area is already covered by the State.

Mayor Hanson asked if there were any further questions, or would anyone else like to speak on the subject, or any comments from the members of the Council.

No one else wishing to talk on the matter, the Ordinance was placed in order of final reading, and the Council proceeded with the next order of business.

Ordinance No. 16424:

Vacating the north 10 feet and the south 10 feet of No. 33rd Street from the west line of Orchard to its termination at the west line of Lupton's Second Addition. Read by title and placed in order of final reading. (Frank J. Brennan, Petitioner)

Ordinance No. 16425:

Vacating the west line of Madison Street from the south line of No. 32nd to the north line of the alley between No. 31st and No. 32nd Streets. Read by title and placed in order of final reading. (Petition of Ann Johnson)

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297Ordinance No. 16426:

Authorizing the condemnation of property from Pacific Avenue to Broadway between So. 9th to So. 13th Streets for the construction of a moving sidewalk and pedestrian right of way. Read by title.

Mr. Rowlands explained that a report has been submitted on the four most likely locations of constructing the pedestrian way, midway through the long block, roughly what would be 10th and 12th Street and between Pacific and Broadway; specifically between Pacific and Commerce, and Commerce and Broadway at 10th and 12th. In using 10th Street it will use the Stationer's building, and by going between Broadway and Commerce it will use the Weisfield's Building. Over on 12th Street, two old dilapidated theatres are involved, The Cameo Theatre between Pacific and Broadway and the Blue House between Broadway and Commerce. These buildings have been checked by the appraisers and also by our own Building Inspectors.

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This Ordinance is up for first reading which would authorize the Attorney's office to proceed with the acquisition of rights of way. I might also add that Mr. Pearson is now accepting calls on these particular sites and he is, also under the original provisions of his contract with the City, in a position to provide the Council with the cost for the ramp, etc.

Mr. Pearson, who was present, said he would try to answer any questions that might arise. As far as the ramps are concerned, if the Council is not familiar with what their prices are, all eight ramps will run close to \$250,000. There will be one ramp up and one ramp down at each of the locations. In the instance of the Weisfield's Store, we will have to build while business is going on as usual. As far as the others are concerned, I would guess it would run in the neighborhood of \$35,000 on each of the three locations, not including Weisfield's. On the Weisfield's location there are so many contingent things that enter into that are hard to determine. For instance how much space is going to be occupied by this, how much disruption there is going to be, how much we have to hold up, how much we have to excavate in the building of the moving stairs; and because of the confined quarters, it makes it very difficult to guess. I would like to have a little more time on that phase of it.

Mr. Rowlands asked if this includes one tube for both the up and down ramp.

Mr. Pearson said that figure includes the lighting and the carrying of the utilities, such as the carrying of electricity etc., to the lighting and also to the operating machinery; and also any drainage that would be necessary to take care of the machinery pits and the rest of the utilities for the construction.

Dr. Humiston asked if these escalators will be covered?

Mr. Pearson replied that they would. As a matter of fact the Building Dept. has come to the conclusion that since you are building within a building you would have to have the same separation as is required for fire rating, which would be the two sides and the top and must be a four hour fire rating.

Mr. Rowlands asked if the property would run approximately 15 to 20 feet in that neighborhood.

Mr. Pearson said to get it fairly concise, it will be approximately 13 feet wide by 11 feet high.

Mr. Anderson asked if they had sufficient funds for the project or are we going to have to raise more money.

Mr. Rowlands advised that this should come within the amount of money contemplated in the bond issue.

Mrs. Goering asked why one of the rights-of-way is about twice as wide as the other.

Mr. Rowlands replied that in order to get the property at the right location there is bound to be some residual value, and in order to get 13 or 15 feet you are going to have to take down a whole building.

~~Mr. Pearson said that the wiring in several of these instances, facing the building, is a 40 foot average in length, and if you take part of it out you have to supply a wall all the way on to take care of what you cut out of it and which I think would be economic and sound.~~

Mr. Rowlands said there were further comments to be made on damages that might be made to the property. If the two garages are constructed there is a possibility of working out a proposition with the corporation to furnish part of the property we do not need for the ramp.

Mayor Hanson said that as it was described to him, they are taking unfair advantage of the corporation and possibly an explanation should be made as to why the reason for it.

Mr. Rowlands said that the building which houses the Cameo Theatre has been in rather major disreputable condition for approximately two or three years, as he has known it, and he believed that the upper stories should be removed because it constitutes a real hazard and is dangerous. He said this has been discussed with the owners of the property who have been aware of the problem for many years.

Mayor Hanson asked if there were any further questions. If not, the Ordinance would be placed in order of final reading and the Council would proceed with the next order of business.

Ordinance No. 16427:

Authorizing the condemnation of the property for the construction of a bridge or viaduct and for the construction and reconstruction of So. M Street between Center and South Tacoma Way. Read by title.

Mr. Bratrud asked how was the Yakima Avenue Bridge progressing.

Mr. Rowlands advised that they have met with an underground drainage problem or stream which they are trying to overcome. He said the Public Works Dept. is to submit a recommendation sometime this week on some method of bridging the area. The Ordinance was then placed in order of final reading.

FINAL READING OF ORDINANCES:

Ordinance No. 16420:

Adopting a program of "Safe Driver Awards" in recognition of the safe operation of the City-owned motor vehicles by employees of the City. Read by title and passed.

Adopted on roll call: Ayes 9; Nays 0; Absent 0.

Ordinance No. 16421:

Amending the Official Code of the City relating to zoning by adding a new section to be known as Sec. 13.06.130 (8) to include the S. E. corner of So. 9th and K Streets in the "C-2" Commercial District. Read by title and passed.

Roll call: Ayes 9; Nays 0; Absent 0.

Ordinance No. 16422:

Amending the Official Code of the City relating to zoning by adding a new section to be known as Sec. 13.06.120 (11) to include the S. E. corner of So. 38th and J Streets in the "C-1" Commercial District. Read by title and passed. 271

Roll call: Ayes 9; Nays 0; Absent 0.

UNFINISHED BUSINESS:

The Director of Public Works presents the Assessment roll for the cost of the improvement of L I D 1987 for sanitary sewers in So. 84th Street from J to Sheridan; Sheridan from So. 84th to So. 78th; also in D from So. 88th to So. 92nd, and from D to C, south to 92nd Street. 49. 352

The Director of Public works presents the Assessment roll for the cost of the improvement in L I D 2291 for grading and placing an oil mat surface on East F and East G Streets from East 84th to East 86th Streets. 8 352

The Director of Public Works presents the Assessment roll for the cost of the improvement in LID 2303 for an oil mat surface on So. 40th from Pine to Cedar and on the west side of Pine from 40th Street north 120 feet. 36. 352

The Director of Public Works presents the Assessment roll for the cost of the improvement in L I D 2304 for grading and an oil mat surface on Ferdinand from No. 41st to No. 42nd Streets. 36 352

Mr. Anderson moved that October 27, 1959 at 4:00 P.M. be fixed as the date for hearing on the above Assessment rolls. Seconded by Mr. Easterday and carried: Ayes 9; Nays 0; Absent 0.

This is the date set for the adoption of the 1960 Preliminary Budget. 276

Mayor Hanson explained that before adopting the Preliminary Budget he had received requests from two citizens concerning the tax on amusements.

Mr. Arthur Adams, owner of the Roller Skating Rink, who was present, asked that the Council exempt his Roller Skating Rink from paying the City Admission Tax on the first 50cents of any admission, the same as was granted earlier to the theatres.

Mr. Easterday asked Mr. Adams if the attendance at the roller bowls had dropped off the same as at the theatres.

Mr. Adams replied that it had.

Mayor Hanson advised that inasmuch as figures were not available as to the amounts paid in taxes to the City by the different roller rinks, the discussion on the reduction on the tax will be postponed. He explained that Mr. Adams would be notified what the Council's decision is when the final Budget is adopted.

Mr. Rowlands brought up MC-273 - License Fees for Vending Machines. He said by licensing vending machines, it was figured that approximately \$10,000 could be raised. He said that in checking with the Municipal Finance Officers Association, it was found there were various combinations of this tax that were used throughout the nation.

Mr. Anderson asked if "B & C" Tax or a license was paid on the vending machines at the present time.

Mr. Rowlands advised that they paid the 1/10th of 1% tax if merchandise such as cigarettes were sold over the counter instead of through a vending machine.

In other words if cigarettes are sold through a vending machine the "B & O" tax does not apply.

Mr. Anderson asked if there was a license required on vending machines by either the County or State or if anyone on the staff or Council had discussed this matter with the owners of the machines.

Mr. James Warden, operator of the Canteen Service Company of Tacoma, said he understood that the tax would be paid on the gross sales and not on the contents of the machine and asked if this were correct.

Mr. Rowlands replied that it was.

Mr. Warden said that several years ago they had to eliminate all of their one cent vending machines and recently had to convert all five cent candy vending machines to ten cents because they could not afford to pay a man \$125.00 per week to make the collections and to fill the machines. He explained that statistics from Price and Waterhouse, and independent auditing firm, showed that the national average per ten cent vending machine was \$492 per annum. He said the average of 123 machines from his company averaged only \$244.40 which is much lower than the national average.

Price and Waterhouse also reported that the national merchandise vending machine profit averaged only 2.86% profit in 1958 and in 1957 it was 3.33%, and in comparison he said that by taking the average of the 123 machines in his company and multiplying it by 2.86% it figures to only \$50.99 per machine per annum. Then deduct the \$10 per machine for the license fee on a ten cent machine. He added that no vending machine operator in Tacoma could afford to pay this tax.

Dr. Humiston said he did not think this to be a fair tax inasmuch as they have to pay 1/10th of 1% on the merchandise, then if this tax is imposed an additional fee is collected for each machine.

Mr. Bratrud said he was in accord with Dr. Humiston's opinion and he also objected to this tax which he believes is unjust.

Mrs. Price explained that an operator had called her and had explained the various taxes that were imposed on vending machines. She then requested that this be explained to the Council members.

Mr. Paul Murphy of Yakima, a representative of the Washington State Automatic Retail Association, was present and explained that this was an unpopular tax because it is unfair. He said this tax has been repealed in many places; in fact nineteen States originally had this tax and to date only five States now have it. He said the average profit on a cigarette machine is \$19.00 per annum and then the City is proposing a \$25.00 license fee, which would make a loss on each machine of \$6.00 per year.

Mr. Anderson advised that he was convinced with their discussion and moved that the license fee for vending machines be eliminated. Seconded by Mr. Porter.
Motion carried: Ayes 9; Nays 0; Absent 0.

Mr. Rowlands explained that many meetings have been held with the various departments and representatives on the budget and would like to bring the Council up to date on what had transpired.

It was necessary to eliminate \$720,000, primarily from the Water Department budget. After some discussions with the Library and Park Board the Preliminary Budget figure now totals \$35,223,689. In all probability this total would have to be decreased before the final budget is adopted, he added.

Dr. Humiston explained, he was concerned that the City was looking for more taxes each year, while the normal tax revenue is increasing proportionately with the gross annual product.

Mayor Hanson stated that Tacoma is caught in the national urbanization trend. Besides taking care of its present problems it must prepare for the future. The per capita tax revenues of the various Washington cities are far below the national average, he added.

Mr. Perdue leaving at this time.

Mr. Harley Hoppe, President of "Overtaxed, Inc.", suggested several ways in which the City could save funds. One, the City could cut down on the number of persons taking "trips" on behalf of the City; also be requiring that all expense vouchers be substantiated by duplicate receipts to be audited by the Finance Department. He also stated that money could be saved by cutting down on "extravagance."

Mr. Easterday advised that he had hoped Mr. Hoppe could pinpoint certain items in the budget that could be cut or eliminated.

Mr. Hoppe advised that he could not, at the present time, suggest any changes but that his Organization would go over the budget and make some suggestions at a later meeting.

After further discussion it was moved by Mr. Anderson to adopt the Preliminary Budget in the amount of \$35,223,689.00. Seconded by Dr. Humiston and carried: Ayes 8; Nays 0; Absent 1, Perdue.

NEW BUSINESS:

Association of Washington Cities - District meeting Bulletin #2 of September 9, 1959. Placed on file.

ITEMS FOR FILING IN THE OFFICE OF THE CITY CLERK:

Report from the Personnel Dept. for the month of August 1959.

Report from the Tacoma Police Dept. for the month of August 1959.

Report from the Director of Finance for the month of August 1959.

COMMENTS:

Mr. Robert Evans, a member of Allied Arts, advised that his organization was a "clearing house" for the different organizations desiring to obtain the "Old City Hall" for various uses. He said the Allied Arts Board and the entire membership desire more time to consider this matter. He said a month was not sufficient time to study the various proposals and asked for a two to six months postponement. Mr. Evans asked that Dr. Arthur Anderson be given an opportunity to speak on their behalf. 276
51:45
51:51

Dr. Anderson stated they are not sentimentalists or are not motivated by pure historical interests, but are looking for something that is practical and of use to the City.

It has been suggested that the building be used for a Chemical and Science Museum, or even a Maritime or Marine Museum.

He also said that it has been suggested that an extension unit from the University of Washington be established to give professional courses which are not now given by other schools in the City; such courses as Science, Medicine, Law, Engineering and perhaps some phases of business. He said he has contacted the President of the University of Washington and several other Directors who have all given him "their blessing" in creating in Tacoma an "extension unit" from the University of Washington.

Mr. Easterday then moved that action on the demolition of the "Old City Hall" be deferred until the third Monday in March of 1960 (March 21, 1960). Motion seconded by Mr. Bratrud and carried: Ayes 8; Nays 0; Absent 1, Perdue.

There being no further business to come before the meeting, upon motion duly seconded and passed, the meeting was adjourned at 7:10 P.M.

Ben Hanson
Mayor of the City Council

Attest:

Jessie Mector
City Clerk