

AGENDA
REGULAR MEETING
DES MOINES CITY COUNCIL

April 5, 2012 - 7:30 p.m.

CALL TO ORDER - Mayor Kaplan

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC:

At this time the audience is invited to comment on any topic to bring it to Council's attention. Please sign in prior to the meeting and limit comments to three minutes or less.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

HCC 50th Anniversary – Dr. Jack Birmingham

CONSENT CALENDAR

- | | |
|---------|---|
| Page 2 | Item 1: APPROVAL OF MINUTES
<u>Motion</u> is to approve minutes from the regular meeting of March 22, 2012 |
| Page 7 | Item 2: MEMORANDUM OF AGREEMENT FOR SOUTHWEST KING COUNTY
ECONOMIC DEVELOPMENT INITIATIVE BUSINESS ATTRACTION PROGRAM

<u>Motion</u> is to approve the Memorandum of Agreement concerning the Southwest King County Economic Development Initiative Business Attraction Program with Highline Community College and the cities of Des Moines, Normandy Park, SeaTac, Tukwila, King County and the Port of Seattle for support of the 2012 SKCEDI Business Attraction Program, and authorize the City Manager to sign the agreement substantially in the form as submitted. |
| Page 17 | Item 3: HCC 50 th ANNIVERSARY PROCLAMATION

<u>Motion</u> is to approve the Proclamation recognizing the 50 th Anniversary of Highline Community College. |
| Page 19 | Item 4: JOINT RESOLUTION FORMALLY RECOGNIZING THE HIGHLINE
COMMUNITIES COALITION |

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Item 3: HCC 50th ANNIVERSARY PROCLAMATION

Motion is to approve the Proclamation recognizing the 50th Anniversary of Highline Community College.

Item 4: JOINT RESOLUTION FORMALLY RECOGNIZING THE HIGHLINE
COMMUNITIES COALITION

Motion is to authorize entering into the Joint Resolution to formally recognize the Highline Communities Coalition in collaboration with the Cities of Burien, SeaTac, and Normandy Park

and the Highline School District and to authorize Mayor Kaplan to sign said resolution substantially in the form as submitted.

EXECUTIVE SESSION

Pending Litigation RCW 42.30.110 (1)(i)

OLD BUSINESS

1. Second Reading of Bond Ordinance – LTGO Refunding Bonds 2012
Staff Presentation: Finance Director Paula Henderson
2. Amendments to City Council Rules of Procedure - Draft Resolution No. 12-029 and Draft Ordinance No. 12-030
City Council Discussion

NEXT MEETING DATE – April 12, 2012, City Council Study Session

ADJOURNMENT

MINUTES

**REGULAR MEETING
DES MOINES CITY COUNCIL**

March 22, 2012 - 7:30 p.m.

CALL TO ORDER - Mayor Kaplan called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE – The flag salute was led by Councilmember Sheckler.

ROLL CALL

Present were Mayor Dave Kaplan; Mayor Pro-Tem Matt Pina; Councilmembers Dan Caldwell, Melissa Musser, Jeanette Burrage, Bob Sheckler and Carmen Scott.

Staff present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager Lorri Ericson; Assistant City Attorney Tim George; Planning Building and Public Works Director Grant Fredricks; Finance Operations Manager Cecilia Pollock; Harbormaster Joe Dusenbury; Parks Recreation and Senior Services Director Patrice Thorell; Assistant Director of Utilities and Environmental Engineering Loren Reinhold; Planning Manager Denise Lathrop CIP Project Manager Scott Romano; Economic Development Manager Marion Yoshino; Policy Analyst Sue Anderson; City Clerk Sandy Paul

COMMENTS FROM THE PUBLIC:

Forrest Jones, 2025 South 231st, spoke about stopping pornography in Des Moines and asked for City Council assistance.

Gene Achziger, 28708 Redondo Drive South, spoke in support of a *Cape Cod* design element proposed for inclusion in the Marina District Design Guidelines.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Reported that the Municipal Facilities Committee met at Beach Park on March 22 and reviewed unfinished projects in the Park's facilities
- Reported that the Marina Planning Stakeholder's Group has met. A second meeting will take place Monday March 26

Councilmember Sheckler

- Quoted from his book *The 776 Stupidest Things Ever Said*.

Mayor Pro-Tem Pina

- Commented on a note received from Fire Chief Al Church and he thanked fire personnel for their excellent service and dedication
- Met with Councilmember Musser and the Highline Communities Coalition. He called the group a 'think tank'. A joint resolution will be presented to the City Council on April 5.

Councilmember Musser

- Thanked Councilmember Scott for taking over the Municipal Facilities Committee meeting when she got stuck at work

- Stated she left the Highline Communities Coalition meeting held on March 15 thoroughly energized
- The Marina/Business Park Group will tour the Park and Marina on Monday, March 26
- No sports report because spring sports have started but spring has not

PRESIDING OFFICER'S REPORT

- Attended SKTBD meeting regarding allocation of money for local and joint projects through the Puget Sound Regional Council

ADMINISTRATION REPORTS

- City Manager Piasecki reported that this week's Council agenda packet is digitized and available electronically
- Presentation on Healthy Des Moines – Katy Bell, Seattle King County Public Health, Policy Analyst Sue Anderson, and Parks Recreation Senior Service Patrice Thorell presented a program on the accomplishment of the Healthy Des Moines project, which began two years ago as the HEAL Grant. The City Council joined the presenters to receive an award. Photos were taken.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the regular meetings of March 1, 2012

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks **\$620,541.77**

Payroll fund transfers in the total amount of \$ **420,876.80**

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are **\$1,041,418.57**

Item 3: TRANSPORTATION GATEWAY PROJECT: 216TH AVE S RIGHT-OF-WAY
ACQUISITION: PARK (FORMERLY HESS) PARCEL #70

Motion 1: to rescind Des Moines City Council Motion, Consent Calendar Item #5, approved during open public on December 8, 2011, to purchase property from Douglas and Lynette Hess.

Motion 2: to approve the purchase 280 square feet of land from Hea Sook Park in the amount of \$1201.20, a 275 square foot Slope Easement in the amount of \$294.94 and Statutory Evaluation Allowance in the amount of \$150 for a grand total of \$1,646.00 (*rounded to nearest dollar*) plus closing costs, and further authorize the City Manager to sign the Statutory Warranty Deed, Slope Easement, Construction Easement, and Real Property Voucher substantially in the form as submitted and accept the right of way on behalf of the City of Des Moines.

Item 4: TRANSPORTATION GATEWAY PROJECT: 24TH AVE S RIGHT-OF-WAY
ACQUISITION: MANGRUM – PARCEL #14

Motion is to purchase 450 square feet of land from estate of Carl Mangrum in the amount of \$4,347.00, a 150 square foot Slope Easement in the amount of \$362.25; compensation for improvements of \$675 and a \$200 administrative settlement for a grand total of \$5,584. (*rounded to nearest dollar*), plus closing costs, and further to authorize the City Manager to sign the Statutory Warranty Deed, Slope Easement, Construction Easement & Right of Entry

and Real Voucher Property Agreement substantially in the form as submitted and accept the right of way on behalf of the City of Des Moines.

Item 5: BARNES CREEK 223RD CULVERT: CONTRACT AWARD; HIGHLINE WATER DISTRICT IIA; TETRA TECH CONSULTANT AMENDMENT

Motion 1 is to approve the interlocal agreement with Highline Water District for the inclusion of the District's water main replacement as part of the South 223rd Culvert Replacement Project and further to authorize the City Manager to sign said agreement substantially in the form as attached.

Motion 2 is to move to award the construction contract for the South 223rd Culvert Replacement to MVG, LLC in the amount of \$190,881.50, plus a 10% contingency and further to authorize the City Manager to sign said contract.

Motion 3 is to move to supplement the existing consultant contract with Tetra Tech, Inc., to include construction management services, in the amount of \$32,369.00, bringing the total amount of the contract to \$312,741.00, authorize the City Manager to approve additional supplements as necessary up to \$4,000.00 for the entire contract, and to authorize the City Manager to sign said supplement substantially in the form as attached.

Councilmember Sheckler moved to adopt the Consent Agenda as presented; Mayor Pro-Tem Pina, second. The motion passed, 7-0.

Regarding Consent Agenda Item 4, Mayor Kaplan reported that during the period when the City was working with Carl Mangrum, who was ill, he became unable to sign papers and passed away before the right of way acquisitions could be completed. The family produced power of attorney to accept the City's offer. Following recommendations of the Right of Way consultant, the executors reproduced the documents so that those papers could be signed in a timely manner. Mayor Kaplan extended the City's condolences to the family.

EXECUTIVE SESSION

The Council recessed for Executive Session at 8:10 p.m. for approximately 10 minutes to discuss a litigation settlement per RCW 42.30.110 (1)(i). The Council meeting reconvened at 8:20 p.m.

NEW BUSINESS was discussed prior to OLD BUSINESS to accommodate the schedule of Lindsay Sovde, an outside contractor.

1. First Reading of Bond Ordinance – LTGO Refunding Bonds 2012
The Staff Presentation was by Lindsay Sovde, Seattle NW Securities, the City's bond underwriter. The City of Des Moines is seeking to refinance bonds issued in 2002 for a savings in interest and debt service of \$20k annually.

Councilmember Caldwell moved to pass Draft Ordinance No. 12-034 providing for the sale and issuance of Limited Tax General Obligation Refunding Bonds, 2012 (issue size depends upon market pricing), to provide funds to advance refund the City's Limited Tax General Obligation and Refunding Bonds, 2002, to a second reading for enactment on April 5, 2012.

OLD BUSINESS

1. Marina District Design Theme Policy Discussion
Planning Manager Denise Lathrop provided information and photographic examples of the look of the Cape Cod style, and provided a reminder of the work the Council has already done to retool the Des Moines Municipal Code (DMMC) to provide flexibility for the Marina District.

Following discussion, Councilmember Sheckler moved to establish a 'Cape Cod' design theme for the Marina District Neighborhood; Mayor Pro-Tem Pina, second. The motion passed 5-2. Councilmembers Scott and Burrage voted *no*.

Councilmember Sheckler moved to remand the Design Guidelines to the Economic Development Committee for additional work and to address potential challenges and Councilmember concerns; Councilmember Musser, second. The motion passed, 7-0

NEXT MEETING DATE – March 29, 2012, City Council Regular Meeting

ADJOURNMENT

There being no further business to come before the City Council, Mayor Pro-Tem Pina moved to adjourn; Councilmember Sheckler, second. The motion passed 7-0.

Respectfully submitted,

Sandy Paul CMC
City Clerk

Consent Agenda Item #2

AGENDA ITEM

SUBJECT: Memorandum of Agreement for the Southwest King County Economic Development Initiative Business Attraction Program

ATTACHMENTS:

1. Memorandum of Agreement, SKCEDI Business Attraction Program, 2012

AGENDA OF: April 5, 2012

DEPT. OF ORIGIN: Economic Development Manager

DATE SUBMITTED: March 27, 2012

CLEARANCES:

[X] Economic Development Manager 

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose:

The purpose of this agenda item is to request City Council approval of a renewal of the Memorandum of Agreement (MOA) Concerning the Southwest King County Economic Development Initiative (SKCEDI) Business Attraction Program (BAP) that was approved last year, for a three year period. The MOA provides for the payment of \$3,000 annually, subject to appropriation, by Des Moines, Normandy Park, SeaTac, Tukwila and the Port of Seattle for development and support of SKCEDI's Business Attraction Program (BAP). Funds will be administered by Highline Community College. The City appropriated \$7,500 for the SKCEDI BAP in 2009, \$7,500 again for 2010, and \$3000 for 2011.

Suggested Motion:

"I move to approve the Memorandum of Agreement concerning the Southwest King County Economic Development Initiative Business Attraction Program with Highline Community College and the cities of Des Moines, Normandy Park, SeaTac, Tukwila, King County and the Port of Seattle for support of the 2012 SKCEDI Business Attraction Program, and authorize the City Manager to sign the agreement, substantially in the form as submitted."

Background:

The City of Des Moines was a founding partner of the Southwest King County Economic Development Initiative (SKCEDI) in 1998 dedicated to collaboration related to the economic development of Southwest King County and to working together to address the economic development issues common to its members. The Small Business Development Center (SBDC) is one example of this type of cooperation and it has been kept solvent and effective since its inception in large part due to each partner's commitment to funding that is a part of each partner's involvement. That funding commitment is an investment in the community and in area-wide economic development.

SKCEDI's Business Attraction Program (BAP) was initiated in 2007 with funds from the U.S. Economic Development Administration (EDA), and EDA funds pay for Highline Community College staff support of the BAP. SKCEDI partner funds pay for non-staff cost of the BAP.

Authorized uses of the funds include, but are not limited to, the following:

- Develop and implement a revised regional marketing strategy in support of economic development that fits with partnership goals.
- Develop and produce relevant information products in support of the marketing strategy.
- The associated costs for advertisements of the BAP in trade publications, local business journals, and other relevant publications.
- The associated costs for implementing strategic sponsorships and/or trade show participation with relevant industry trade organizations.
- The associated costs of developing and implementing special BAP events. Costs to cover include venue and food, advertising, speaker fees, supplies and materials, and miscellaneous items.
- Other activities related to business development, attraction, and retention in the Seattle Southside region.

The MOA provides for \$3,000 in City funding for 2012. Des Moines' funds, when combined with those of EDA and the other parties, and in-kind contributions by Highline Community College and King County, allow the SKCEDI partners to provide the required EDA match while developing and maintaining a true business attraction program that would not be financially feasible if individual cities had to pay to develop and maintain such a program on their own.

The MOA as approved in 2011 provided for automatic renewal of the agreement for a maximum term of three (3) years contingent on the availability of funds by all parties.

Alternatives:

(None applicable)

Financial Impact:

The 2012 contribution for \$3,000 is provided for in the 2012 miscellaneous memberships adopted budget.

Recommendation/Conclusion:

Staff recommends approval of the Memorandum of Agreement.

Concurrence:

The Legal and Finance Departments reviewed and concurred with the Memorandum of Agreement in 2011.

**MEMORANDUM OF AGREEMENT
CONCERNING
THE SOUTHWEST KING COUNTY ECONOMIC DEVELOPMENT
INITIATIVE
BUSINESS ATTRACTION PROGRAM
2012**

This Agreement is made by and among Highline Community College and the Cities of Burien, Des Moines, Normandy Park, SeaTac, and Tukwila; King County; and the Port of Seattle; collectively, referred hereafter as the "Parties."

RECITALS

- A. The Southwest King County Economic Development Initiative (SKCEDI) has been in existence since 1998. It was formed by the cities of Burien, Des Moines, Normandy Park, SeaTac, and Tukwila, the Port of Seattle, Highline Community College and King County to further the economic development of Southwest King County. The Southwest King County Chamber of Commerce is an affiliate member of SKCEDI.
- B. In 2010-12, Highline Community College obtained a grant from the U.S. Economic Development Administration (EDA) in the amount of \$100,000 to produce a Business Attraction Program (BAP) through SKCEDI. This grant represents continued funding for the project started in 2007.
- C. The goal of the BAP is to combine the resources of SKCEDI in order to attract businesses and developers to the Southwest King County subregion.

AGREEMENT

1. Matching funds for the EDA grant to be used for production of the BAP in 2012 are to be derived from the contributions of Burien, Des Moines, Normandy Park, SeaTac, Tukwila, and the Port of Seattle in the amount of \$3,000 per partner per year for a total of \$18,000 per year. King County and Highline Community College are providing in-kind contributions that may include staff participation and input for the BAP.
2. The SKCEDI Executive Committee will be responsible for approving the final Business Attraction Plan. The development of the Plan will be reviewed by the SKCEDI Steering Committee on a regular basis. A Program Coordinator will be responsible for guiding the production of the Plan and for reporting on its progress to both the Executive and Steering Committees.
3. All BAP matching funds will be administered by Highline Community College for the purpose of developing and implementing BAP activities.
4. Highline Community College will establish an account to pay for authorized uses of the matching funds.
5. Authorized uses of the funds include, but are not limited to, the following:
 - Hiring a marketing/program consultant to update the Seattle Southside Business Attraction Program interactive website and implement regional marketing strategies.
 - The associated costs for advertisements of the BAP in trade publications, local business journals, and other relevant publications.
 - The associated costs for implementing strategic sponsorships and/or trade show participation with relevant industry trade organizations.
 - The associated costs of developing and implementing special BAP events. Costs to cover include venue and food, advertising, speaker fees, supplies and materials, and miscellaneous items.
 - Other activities related to business development, attraction, and retention in the Seattle Southside region.
6. Highline Community College and the BAP Coordinator will provide a report on the uses of the contributed funds at the monthly Steering Committee meetings.
7. Other cities and counties of the state of Washington may become parties to this Agreement as long as they agree to abide by all the terms and conditions of the Agreement. Incorporation of another city or county into this Agreement requires the approval of Highline Community College but does not require the written consent of any other city or county currently a party to the Agreement.

8. Nothing contained herein is intended to, nor shall be construed to, create any rights in any person or entity not a signatory to this Agreement, or to form the basis for any liability on the part of the Parties, or their officials, employees, agents or representatives, to any person or entity not a signatory to this agreement.
9. This Agreement contains the entire agreement of the Parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
10. This Agreement may be amended only by an instrument in writing, duly executed by all Parties except as allowed under provision 7 of this Agreement.
11. This Agreement shall be automatically renewed each year after December 31 for a maximum term of three years contingent on the availability of funds by all Parties unless amended as stipulated in Section 10, above.
12. The BAP grant from the U.S. Economic Development Administration will be used to cover staff salaries and benefits and related program expenses.
13. If any matching funds remain after completion of the Business Attraction Plan and implementation of the Plan, the Parties signing this agreement will determine the distribution of said funds.
14. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts. The signatures to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document.

In witness whereof, the Parties have entered into this Agreement effective as of the date last written on the signature page.

HIGHLINE COMMUNITY
COLLEGE

By: L. Y. R.

Printed Name: _____

Title: _____

Date: 2/2/12

CITY OF BURIEN

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF DES MOINES

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF NORMANDY PARK

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF SEATAC

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF TUKWILA

By: _____

Printed Name: _____

Title: _____

Date: _____

PORT OF SEATTLE

By: _____

Printed Name: _____

Title: _____

Date: _____

INTERAGENCY AGREEMENT

Between

STATE OF WASHINGTON

HIGHLINE COMMUNITY COLLEGE

and

CITY OF DES MOINES

THIS AGREEMENT is made and entered into by and between **HIGHLINE COMMUNITY COLLEGE, PO BOX 98000 MS 99-101, DES MOINES, WA 98198**, hereinafter referred to as "**HIGHLINE COMMUNITY COLLEGE**," and the **CITY OF DES MOINES, 21630 11TH AVE S, DES MOINES, WA 98198** hereinafter referred to as the "**CITY OF DES MOINES**".

IT IS THE PURPOSE OF THIS AGREEMENT to provide partnership and support for the community through the efforts of the Small Business Development Center and to provide complimentary business development services and resources to small to medium sized businesses.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

To provide partnership and support for the community through the efforts of the Small Business Development Center and to provide complimentary business development services and resources to small to medium sized businesses.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on **January 1, 2012**, and be completed on **December 31, 2012**, and will be renewed automatically on an annual basis unless terminated as specified in the termination clause of this agreement by either party.

PAYMENT

Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have estimated that the cost of accomplishing the work herein will not exceed **\$ 10,000.00 annually**. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded.

BILLING PROCEDURE

Highline Community College shall submit invoices **automatically on an annual basis**. Payment to the **Highline Community College Foundation** for approved and completed work will be made by warrant or account transfer by the **City of Des Moines** within 30 days of receipt of the invoice. Upon expiration of the contract, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

RECORDS MAINTENANCE

The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of

both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by **Highline Community College**. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This contract is entered into pursuant to and under the authority granted by the laws of the state of

Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and
- c. any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

INDEMNIFICATION

Each party to this agreement will be responsible for the negligent acts or omissions of its own employees, officers, or agents in the performance of this Agreement. Neither party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

WAIVER

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

Highline Community College:

Communications contact person shall be the Economic Development Programs Coordinator, James Peyton, Highline Community College, PO Box 98000 MS 99-101, Des Moines, WA 98198.

Billing contact person shall be Crystal Kitterman, Highline Community College, PO Box 98000 MS 99-101, Des Moines, WA 98198.

City of Des Moines:

Communications and billing contact person shall be Tony Piasecki, City Manager, 21630 11th Ave S, Des Moines, WA 98198

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington

Highline Community College

...

City of Des Moines

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM ONLY:

____ day of _____, 200__

ROB MCKENNA

Attorney General

By: _____

Senior Assistant Attorney General

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Proclamation

ATTACHMENTS: None

FOR AGENDA OF: April 5, 2012

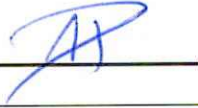
DEPT. OF ORIGIN: Economic Development

DATE SUBMITTED: March 27, 2012

CLEARANCES:

[X] Economic Development 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is request that the City Council acknowledge Highline Community College on the celebration of their 50th Anniversary.

Suggested Motion

"I move to approve the Proclamation recognizing the 50th Anniversary of Highline Community College."

Background and Discussion

The establishment of Highline Community College represents a significant event in the history of the Highline area, resulting from the efforts of a Highline School District citizens' committee that formed in 1959. The college began in 14 portable classrooms, and is now located on a beautiful 80-acre hilltop location in the City of Des Moines.

Today Highline Community College makes a substantial contribution to the economy of the City and the surrounding region, educating over 18,000 students per year, and enabling them to develop the skills that contribute to and build the prosperity of the area's business community.

Highline Community College partners with the City in the South King County Economic Development Initiative, making an in-kind contribution of staffing and office space in an accessible central location that is extremely beneficial to the partnership.



City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, Founded in 1961, Highline Community College is celebrating its 50th anniversary during the 2011–2012 school year; and

WHEREAS, Highline Community College is nationally and internationally recognized as a premiere community college, a reputation earned through development of an institutional culture that values innovation, globalization of curriculum and community participation; and

WHEREAS, Highline Community College was established as the first community college in King County, and is today the second largest of the state's 34 community and technical colleges, and one of the most diverse public institutions of its kind in the United States; and

WHEREAS, the establishment of Highline Community College represents a significant event in the history of the Highline area, resulting from the efforts of a citizens' committee that formed in 1959. The college began in 14 portable classrooms, and is now located on a 80-acre hilltop overlooking the beautiful Puget Sound and the Olympic Mountains, an unrivaled location in the City of Des Moines; and

WHEREAS, Highline Community College makes an invaluable contribution to the economy of the City of Des Moines, and the Highline region, by increasing an individual's lifetime earning capacity; improving employee job skills with education and training; and providing resources for dislocated workers, the under-employed, and unemployed; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

That the City of Des Moines congratulates Highline Community College on the 50th Anniversary of its founding as an institution of educational excellence; and that the City will endeavor to provide assistance where desired to ensure that Highline Community College will enjoy ever greater success in the years to come, on its path to yet another 50 years of outstanding achievement.

Signed this 5th day of April, 2012

DAVID KAPLAN, MAYOR

Consent Agenda Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Highline Communities Coalition

FOR AGENDA OF: April 5, 2012

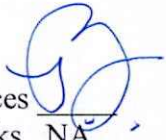
ATTACHMENTS:

1. Joint Resolution formally recognizing the Highline Communities Coalition

DEPT. OF ORIGIN: Parks, Rec. & Sr. Services

DATE SUBMITTED: March 29, 2012

CLEARANCES:

- ☒ Legal 
- ☐ Finance NA
- ☐ Marina NA
- ☒ Parks, Recreation & Senior Services 
- ☐ Planning, Building & Public Works NA
- ☐ Police NA
- ☐ Courts NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to request Council's approval for a Joint Resolution to formally recognize the Highline Communities Coalition (HCC), a collaborative made up of the Cities of Burien, SeaTac, and Normandy Park and the Highline School District.

Suggested Motion

Motion: "To authorize entering into the Joint Resolution to formally recognize the Highline Communities Coalition in collaboration with the Cities of Burien, SeaTac, and Normandy Park and the Highline School District and to authorize Mayor Kaplan to sign said resolution substantially in the form as attached."

Background

In 2007, Councilmember Rose Clark, City of Burien, and School Board President Bernie Dorsey, Highline School District, began meeting monthly on Saturday mornings and soon decided that their jurisdictions should be exploring ways to work together since they served the same communities. After a few months, they invited electeds from SeaTac (Mia Gregerson), Normandy Park (Shawn McEvoy), and

Des Moines (Matt Pina) to the meetings. The collaborative moved forward as the Highline Communities Coalition (HCC) to continue to discuss issues related to vibrant Highline communities.

In 2010, the HCC (Cities of Des Moines, Burien, SeaTac and Normandy Park and Highline School District) each applied for grant funding from Seattle-King County Dept. of Public Health to change policies, systems and environments to promote vibrant and livable Highline communities.

From 2010-2012, each of the Cities and the School District received grant funding from Seattle-King County Dept. of Public Health and worked together to successfully achieve grant deliverables targeting over 12 policy areas for healthier Highline citizens and communities.

Discussion

The mission of the HCC is to develop sustainable relationships to maximize resources and services to support thriving families, schools, and communities. The coalition will continue to meet regularly to discuss characteristics of vibrant communities and identify where the coalition can collaborate to leverage collective resources efficiently and effectively and gain new resources for the betterment of Highline citizens.

Examples of characteristics of vibrant communities that the HCC is targeting include and are not limited to: 1) Community events and traditions that encourage social interaction and sharing; 2) community awareness, attachment, education, and involvement that encourages everyone; and 3) safe, clean, well-lit connected neighborhoods that encourage mobility, interaction, physical activity, and play.

The HCC will develop consistent policies and leverage resources to promote regional vitality. A Joint Resolution strengthens the coalition's capacity to create vibrant Highline communities where residents, families, and schools thrive.

Alternatives

- 1) Authorize the resolution.
- 2) Do not authorize the resolution.

Financial Impact

The HCC will make the most efficient and effective use of existing resources and continue to seek new resources to work toward its mission. There will not be a negative financial impact to the City.

Recommendation and Concurrence

Mayor Pro Tem Matt Pina and Councilmember Melissa Musser are leaders representing the City of Des Moines on the HCC and support the Joint Resolution.

The Resolution aligns with the 2012 updates to the Des Moines Comprehensive Plan Chapter 12: Healthy Des Moines Element, goal 12-01-01 that states - Participate in the Healthy Highline Communities Coalition to coordinate with surrounding communities to improve access to physical

activity and healthy foods, and facilitate the long-term implementation of the Healthy Des Moines Initiative. Note: Since Chapter 12 was added to the Des Moines Comprehensive Plan, the coalition has changed its name to the Highline Communities Coalition, to reflect a broad range of focus areas for the coalition.

The Healthy Des Moines Technical Advisory Committee made up of City Departments (Parks, Recreation & Senior Services; Planning, Building & Public Works; Police); the Highline School District; and Community members met to support the sustained work of the Healthy Des Moines Initiative and the HCC.

JOINT RESOLUTION

A RESOLUTION formally recognizing the Highline Communities Coalition, committing to sustained participation, and giving reasonable consideration to all efforts brought forward by the group.

WHEREAS, in the spirit of cooperation and with the intent of maximizing the benefits to the citizens of the Highline Community; and

WHEREAS, the Highline Communities Coalition (HCC) is a voluntary collaborative made up of elected representatives from the Burien, Des Moines, Normandy Park, and SeaTac City Councils and the Highline School District School Board; and

WHEREAS, it is the intent for the HCC to meet several times per year to discuss potential areas where our municipalities can cooperate by leveraging our collective resources for the betterment of our citizens; and

NOW, THEREFORE, WE HEREBY RESOLVE as follows:

1. The Highline Communities Coalition is formally recognized; and the jurisdictions below are committed to sustained participation and will give reasonable consideration to all efforts brought forward by the group.

DATED this _____ day of _____, 2012.

**JOINT RESOLUTION
FORMALLY RECOGNIZING HIGHLINE COMMUNITIES COALITION**

Signature Page

Joan McGilton, Mayor
City of Burien



Dave Kaplan, Mayor
City of Des Moines



Angelica Alvarez, President
Highline School Board



Clark Brant, Mayor
Normandy Park



Tony Anderson, Mayor
SeaTac



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Sale and issuance of \$2,745,000* Limited Tax General Obligation Refunding Bonds, 2012 to advance refund the City's Limited Tax General Obligation and Refunding Bonds, 2002.

*Preliminary, subject to change.

ATTACHMENTS:

1. Draft Ordinance No. 12-034

FOR AGENDA OF: April 5, 2012

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: March 29, 2012

CLEARANCES:

☒ Legal-Bond Counsel

☒ Finance ph

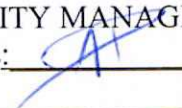
☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☐ Planning, Building & Public Works N/A

☐ Police N/A

☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this report is to seek City Council approval of Draft Ordinance No. 12-034 providing for the sale and issuance of \$2,745,000* Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the Limited Tax General Obligation and Refunding Bonds, 2002.

*Preliminary, subject to change.

Suggested Motion

Motion: "To move to enact Draft Ordinance No. 12-034 providing for the sale and issuance of \$2,745,000* Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the City's Limited Tax General Obligation and Refunding Bonds, 2002."

*Preliminary, subject to change.

Background

First reading of Draft Ordinance No. 12-034 was approved by the City Council on March 22, 2012.

Discussion

Final approval of Draft Ordinance No. 12-034 will authorize the issuance of \$2,745,000* Limited Tax General Obligation Refunding Bonds, 2012. In conjunction, therewith, the City Council authorizes execution of purchase agreement with purchaser, Seattle-Northwest Securities Corporation to purchase all of the bonds, and execution of Escrow Agreement with Escrow Trustee.

*Preliminary, subject to change.

Alternatives

None.

Financial Impact

As discussed previously, the financial impact provides for present value savings of \$140,000.

Recommendation

Staff recommends that the City Council authorize the issuance of \$2,745,000* in Limited Tax General Obligation Refunding Bonds, 2012, by adopting Draft Ordinance No. 12-034.

*Preliminary, subject to change.

Concurrence

The Municipal Facilities Committee and Finance Department both concur with this action.

FINANCE DEPARTMENT'S FIRST DRAFT, 03/19/2012

DRAFT ORDINANCE NO. 12-034

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the incurrence of indebtedness; providing for the sale and issuance of \$_____ Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation.

WHEREAS, pursuant to Ordinance No. 1312, the City has heretofore issued and sold the 2002 Bonds, of which \$2,795,000 in aggregate principal amount is currently outstanding, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to defease all or a portion of the 2002 Bonds pursuant to a refunding plan adopted by the City, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to redeem the 2002 Bonds maturing on and after December 1, 2014, in whole or in part, at any time on and after December 1, 2012, at a redemption price of par plus accrued interest to the date fixed for redemption, and

WHEREAS, all of the outstanding 2002 Bonds mature on and after December 1, 2014, and

WHEREAS, undertaking a refunding plan to advance refund and defease all of the outstanding 2002 Bonds to their earliest redemption date on December 1, 2012, will effect a debt service savings to the City, and

WHEREAS, pursuant to chapter 39.53 RCW, the City is authorized to sell and issue, without an election, limited tax

general obligation bonds of the City to refund the 2002 Bonds, and

WHEREAS, the City deems it to be in the best interest of the City that the City incur indebtedness and issue and sell its limited tax general obligation refunding bonds for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan, and

WHEREAS, the incurrence of such indebtedness will not cause the total indebtedness of the City incurred without the assent of the voters of the City to exceed the limitations set forth in chapter 39.36 RCW, and

WHEREAS, the Purchaser has offered, by way of the Purchase Agreement, to purchase such limited tax general obligation bonds upon the terms and conditions set forth below; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec 1. Definitions. Unless the context otherwise requires, the terms defined in this Section, for all purposes of this Ordinance (including the recitals hereto) and of any ordinance supplemental hereto, shall have the meanings herein specified; words importing the singular number include the plural number and vice versa:

(1) "Annual Debt Service" means, in any year, that year's total of principal and interest requirements for the then-outstanding Bonds or Parity Bonds, as the context may require (except the principal maturity of any Bonds or Parity Bonds issued as term bonds), plus any mandatory sinking fund or mandatory bond redemption requirement for such Bonds or Parity Bonds for that year.

(2) "Authorized Officer" means the City Manager and the City Finance Director, acting alone or in combination.

(3) "Average Annual Debt Service" means, in any year, the sum of the remaining Annual Debt Service of the then-outstanding

Bonds, divided by the number of years such Bonds are scheduled to remain outstanding.

(4) "Beneficial Owner" means, with respect to any Bond, the Person named on the records of the Custodian as having the right, without a physical certificate evidencing such right, to transfer, to hypothecate and to receive the payment of the principal of, premium, if any, and interest on such Bond as the same becomes due and payable.

(5) "Bond Principal and Interest Account" means the Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(6) "Bond Register" means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bonds.

(7) "Bond Reserve Account" means the Limited Tax General Obligation Refunding Bond Reserve Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(8) "Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation Refunding Bonds, 2012, the sale and issuance of which are authorized by this Ordinance.

(9) "Book-Entry Termination Date" means the fifth business day following the date of receipt by the Registrar of the City's request to terminate the book-entry system of registering the beneficial ownership of the Bonds.

(10) "City" means the City of Des Moines, Washington, a code city organized and existing under State law.

(11) "City Council" means the City Council of the City.

(12) "Closing" means the time on the Date of Issue when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

(13) "Code" means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

(14) "Custodian" means:

(a) The Depository Trust Company, New York, New York,
or

(b) any successor thereto engaged by the City to operate a book-entry system for recording, through electronic or manual means, the beneficial ownership of the Bonds, in which system no physical certificates are issued to the Beneficial Owners of the Bonds, but in which a limited number of physical certificates are issued to and registered in the name of the Custodian or its nominee, and delivered to the Custodian; provided, that such book-entry system operated by the Custodian may include the use of subsystems of recording the beneficial ownership of Bonds which are operated by parties other than the Custodian and the use of a nominee for the Custodian; and the term "Custodian," as used herein, includes any party operating any such subsystem.

(15) "Date of Issue" means the date on which the Bonds are issued and delivered to the Purchaser in return for payment of the purchase price therefor.

(16) "Escrow Agent" means U.S. Bank National Association, acting in its fiduciary capacity as Escrow Agent pursuant to the Escrow Agreement.

(17) "Escrow Agreement" means that certain Escrow Agreement, to be dated as of the Date of Issue, by and between the City and the Escrow Agent, in substantially the same form as the draft dated _____, 2012, a copy of which is on file with the City Clerk and is incorporated herein by this reference.

(18) "Escrow Obligations" means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

(19) "Future Parity Bonds" means all limited tax general obligation bonds of the City issued after the Date of Issue, for the payment of principal and interest on which the City has also pledged the Net Revenue.

(20) "Government Obligations" means "government obligations," as defined in chapter 39.53 RCW, as now in existence or hereafter amended.

(21) "Letter of Representations" means the Letter of Representations, between the City and the Custodian pertaining to the payment of the Bonds and the "book-entry" system for evidencing the beneficial ownership of the Bonds prior to the Book-Entry Termination Date.

(22) "Marina" means the small boat harbor and marina, including the Redondo facilities, owned and operated by the City.

(23) "Marina Improvement Projects" means capital improvements to the Marina, including, but not limited to, the improvements described in the marina master plan of the City.

(24) "Marina Revenue Fund" means that special fund of the City into which all Revenue of the Marina (except for earnings in any special fund for the redemption of revenue obligations of the Marina) shall be deposited.

(25) "Maximum Annual Debt Service" means the maximum amount of Annual Debt Service that shall become due in any future year on any outstanding Bonds or Parity Bonds, as the context may require.

(26) "MSRB" means the Municipal Securities Rulemaking Board.

(27) "Net Revenue" means the Revenue of the Marina less the Operating and Maintenance Expense.

(28) "Operating and Maintenance Expense" means all necessary operating expenses of the Marina, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of the Marina, but shall exclude depreciation, interest expense, and all general administrative expenses of the City.

(29) "Ordinance" means this Ordinance No. ____ of the City.

(30) "Owner" means the person named as the registered owner of a Bond on the Bond Register.

(31) "Parity Bonds" means, collectively, (a) the Bonds, (b) the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 2008A, and (c) any Future Parity Bonds.

(32) "Preliminary Official Statement" means the Preliminary Official Statement pertaining to the Bonds, dated _____, 2012.

(33) "Purchase Agreement" means the Bond Purchase Agreement for the Bonds by and between the City and the Purchaser, which written Purchase Agreement is on file with the City Clerk and is incorporated herein by this reference.

(34) "Purchaser" means Seattle-Northwest Securities Corporation.

(35) "RCW" means the Revised Code of Washington, as amended.

(36) "Refunding Plan" means the plan to advance refund and defease all of the outstanding 2002 Bonds, to fund a deposit to the Bond Reserve Account, and to pay the incidental costs and costs related to the sale and issuance of the Bonds, all as more particularly defined and described in the Escrow Agreement.

(37) "Registrar" means the fiscal agency of the State located in New York, New York (as of the Date of Issue, The Bank of New York Mellon), which fiscal agency is appointed from time

to time by the State Finance Committee pursuant to chapter 43.80 RCW.

(38) "Reserve Requirement" means the least of (1) 1.25 times the Average Annual Debt Service with respect to all outstanding Bonds; (2) Maximum Annual Debt Service with respect to all outstanding Bonds; or (3) 10% of the proceeds of the Bonds.

(39) "Revenue of the Marina" means all of the earnings and revenues received by the City from the maintenance and operation of the Marina, except government grants, proceeds from the sale of property, City taxes collected by or through the Marina, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Marina obligations (until commingled with other earnings and revenues of the Marina) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

(40) "Rule" means SEC Rule 15c2-12.

(41) "SEC" means the United States Securities and Exchange Commission.

(42) "State" means the State of Washington.

(43) "2002 Bond Redemption Date" means December 1, 2012.

(44) "2002 Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation and Refunding Bonds, 2002, currently outstanding in the aggregate principal amount of \$2,795,000.

Sec 2. Finding, purpose and description of Bonds. The City Council hereby finds that undertaking the Refunding Plan will be in the best interest of the City because it will effect a debt service savings to the City. To that end, the incurrence of indebtedness and the issuance of by the City of its "Limited Tax General Obligation Refunding Bonds, 2012" for the purpose of

obtaining part of the funds necessary to undertake the Refunding Plan are hereby authorized.

The Bonds shall be issued in the aggregate principal amount of \$_____. The Bonds shall be dated the Date of Issue; shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall bear interest at the rates and shall mature on December 1 in each of the years and in the principal amounts, all as set forth below:

Maturity Date (December 1)	Principal Amount	Interest Rate Per Annum
2012	\$	%
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent interest payment date to which interest has been paid or duly provided for, whichever is later, payable on December 1, 2012, and semiannually thereafter on December 1 and June 1 of each year to their maturity.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the Date of Issue, all Bonds maturing in the same maturity year and bearing the same initial CUSIP number shall be issued in the form of a single certificate, which certificate shall be registered in the name of the Custodian, or its nominee, and delivered to the Custodian. The Custodian shall hold each such Bond certificate in fully immobilized form for the benefit of the Beneficial Owners of the Bonds pursuant to the Letter of Representations, until the earliest to occur of either

(a) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof;

(b) the Book-Entry Termination Date; or

(c) the date the City determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the City is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this Section 2, the Custodian will be deemed to be the Owner of the Bonds for all purposes, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The City may terminate the "book-entry" system of registering ownership of the Bonds at any time (provided the City is not then in default of any payment then due on the

outstanding Bonds) by delivering to the Registrar: (1) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner's nominee on the Book-Entry Termination Date; (2) a list identifying the Beneficial Owners as to both name and address; and (3) a supply of Bond certificates, if necessary for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner's duly appointed agent, naming such Beneficial Owner or such Beneficial Owner's nominee as the Owner thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with Section 11 hereof.

Neither the City nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Sec 3. Place, manner and medium of payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar (or, if approved by the City Finance Director, by wire transfer) on or before the interest payment date, to the Owners, at the addresses for such Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. From and after the Book-Entry Termination Date, the principal of the Bonds shall be payable upon presentation and surrender of

the Bonds by the Owners at the principal corporate trust office of the Registrar.

Sec 4. No redemption; open market purchase. The Bonds shall not be subject to redemption prior to their scheduled maturity. However, the City reserves the right to purchase any or all of the Bonds on the open market at any time and at any price. All Bonds so purchased by the City shall be surrendered to the Registrar for cancellation.

Sec 5. Debt limit not exceeded. The City finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the City.

Sec 6. Debt service coverage covenant. The City covenants and agrees that it has established, maintains, and revises as necessary and collects such rental fees and charges for boat moorage and other Marina services furnished, sufficient to produce Net Revenue in each calendar year, which, together with other revenue available therefor, will be at least equal to 1.25 times the Annual Debt Service on the outstanding Parity Bonds in the year for which such debt service coverage ratio is being calculated.

Sec 7. Pledge of full faith, credit and resources and Marina revenue. The Bonds are limited tax general obligations of the City. The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, it will include in its budgets and make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City upon all property within the City subject to taxation in amounts which, together with the Net Revenue and any other money of the City legally available for such purposes, shall be sufficient to pay such principal and interest on the Bonds as the same shall become due. The City hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of principal and interest on the Bonds. The City hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the

principal of and interest on the Bonds shall be within and as a part of the tax levy permitted the City without a vote.

In addition, the City hereby irrevocably pledges the Net Revenue for the payment of principal and interest on the Bonds. The City hereby further irrevocably sets aside, pledges and appropriates to the payment of the principal of and interest on the Bonds a sufficient portion of the Net Revenue and each annual tax levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds. Such portion of the Net Revenue, taxes and other money to be used for such purposes shall be deposited into the Bond Principal and Interest Account of the Marina Revenue Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

Sec 8. Form of Bonds. The Bonds shall be wordprocessed, printed or lithographed on good bond paper in a form consistent with this Ordinance and State law.

Sec 9. Execution of Bonds. The Bonds shall be signed on behalf of the City with the facsimile or manual signatures of the Mayor and the City Clerk, and shall have the seal of the City impressed or a facsimile of such seal imprinted on the Bonds.

In case either or both of the officers who shall have executed any Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar or issued by the City, such Bond nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond also may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond such persons were not such officers of the City.

Sec 10. Authentication of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the City, to

authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance.

Only such Bonds as shall bear a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered under and are entitled to the benefits of this Ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Sec 11. Registration, transfer and exchange. The City covenants that, until all Bonds shall have been surrendered and cancelled, it will cause the Registrar to maintain a system of recording the ownership of each Bond that complies with the provisions of the Code. To that end, the Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The City and the Registrar, in its discretion, may deem and treat the Owner of each Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3 of this Ordinance, but such registration may be transferred as provided in this Section 11. All such payments made as provided in Section 3 of this Ordinance shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred or exchanged. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, transfer of any Bond shall be valid only if it is surrendered at the principal

corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee for such transfer (other than any taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

On and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment or maturity date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

Sec 12. Mutilated, lost, stolen or destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution for such mutilated, lost, stolen or destroyed Bond, all in accordance with law. If such mutilated, lost, stolen or destroyed Bond has matured, the City, at its option, may pay the same without the surrender of the original Bond. However, no such substitution or payment shall be made unless and until the applicant shall furnish:

(a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership of such original Bond, and

(b) such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Bond shall be furnished unless the applicant shall reimburse the City and the Registrar for their respective expenses in the furnishing of such substitute Bond. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this Ordinance with all other Bonds issued under this Ordinance.

Sec 13. Defeasance. The City may, at any time, defease all or a portion of the Bonds (the "Defeased Bonds"), as follows: if money and/or Government Obligations maturing at such times and bearing such interest as will provide, without any reinvestment, amounts sufficient to repay, redeem or retire the Defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account (the "Escrow Account") pledged irrevocably to the repayment, redemption or retirement of the Defeased Bonds, then all right and interest of the Owners of the Defeased Bonds in the covenants of this Ordinance and in the funds and accounts obligated to the payment of the Defeased Bonds shall cease and become void. The Owners of the Defeased Bonds shall have the right to receive payment of the principal of and interest on the Defeased Bonds only from the Escrow Account. The Defeased Bonds shall no longer be deemed to be outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine.

Sec 14. Sale of the Bonds. The Purchaser has presented the Purchase Agreement to the City pursuant to which the Purchaser has offered to purchase the Bonds upon the terms and conditions provided in the Purchase Agreement, which written Purchase Agreement is on file with the City Clerk and is incorporated in this Ordinance by this reference. The City Council finds that entering into the Purchase Agreement is in the City's best interest and therefore accepts the offer

contained in the Purchase Agreement and authorizes the execution of the Purchase Agreement by the City Manager.

Sec 15. Execution of documents; delivery of Bonds; temporary Bonds. The Bonds will be printed at City expense and will be delivered to the Purchaser at the Closing in accordance with the terms of the Purchase Agreement, together with the approving legal opinion of Gottlieb Fisher PLLC ("Bond Counsel"), Seattle, Washington, relative to the issuance of the Bonds. Bond Counsel has not been engaged to review or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and Bond Counsel's opinion shall so state. Bond Counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

If definitive Bonds are not ready for delivery by the Closing, the City Finance Director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this Ordinance with respect to the payment, security and obligation of such temporary Bonds as definitive Bonds authorized by this Ordinance. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners for definitive Bonds when the latter are ready for delivery.

The Authorized Officers are authorized and directed to execute and/or approve, as appropriate, all documents, including but not limited to, the final official statement pertaining to the Bonds, and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

Sec 16. Conditional call of 2002 Bonds for redemption. The City hereby calls the 2002 Bonds for redemption on the 2002 Bond Redemption Date at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date. Such call for redemption shall become irrevocable upon delivery of the Bonds to the Purchaser at the Closing; provided, however, that if the Bonds are not delivered to the Purchaser at the Closing, or if the Purchaser fails to pay the full purchase price therefor at the Closing for any reason, then this call of such 2002 Bonds for redemption shall be hereby automatically revoked and shall be null and void.

Sec 17. Escrow Agreement. The Escrow Agreement is hereby approved in order to accomplish the Refunding Plan. The Authorized Officers are authorized and directed:

(a) to execute and to deliver the Escrow Agreement, on behalf of the City, to the Escrow Agent on the Date of Issue, with such changes as are deemed by such Authorized Officer(s) as actually execute such document to be in the best interests of the City; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the City; and

(b) to cause the Escrow Agent to deliver notices of defeasance and redemption of the 2002 Bonds in accordance with the Escrow Agreement.

Sec 18. Acquisition of Escrow Obligations. The Authorized Officers shall, at or prior to the Closing, make appropriate arrangements for the payment for and delivery of any Escrow Obligations which are to be purchased in the open market pursuant to the Refunding Plan; and shall, prior to the Closing, deliver or cause to be delivered to the United States Bureau of Public Debt subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the initial cash to be provided to the Escrow Agent pursuant to the Refunding Plan, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and

including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

The Escrow Agent shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt shall be payable to the Escrow Agent. Such subscription may be amended as permitted by federal law.

Sec 19. Verification of sufficiency of escrow. The Authorized Officers are authorized and directed to obtain, prior to Closing, independent verification that, among other things, the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

Sec 20. Establishment of Bond Accounts. There is hereby created and established in the office of the City Finance Director special accounts for the Bonds in the Marina Revenue Fund to be designated as the "Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012" (the "Bond Principal and Interest Account") and "Limited Tax General Obligation Refunding Bond Reserve Account, 2012" (the "Bond Reserve Account"). Each such Bond account shall be held separate and apart from the other.

The accrued interest on the Bonds received by the City upon the sale of the Bonds, if any, shall be deposited into the Bond Principal and Interest Account in the Marina Revenue Fund and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Bond Principal and Interest Account shall be used by the City, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

The Bond Reserve Account is established in the Marina Revenue Fund for the purposes of securing the payment of the Bonds. At the Closing, the City will transfer and pay into the Bond Reserve Account:

(a) the sum of \$_____ derived entirely from sale proceeds of the Bonds, and

(b) the sum of \$_____, constituting all of the funds on deposit in the City's Limited Tax General Obligation and Refunding Bond Reserve Account, 2002, established pursuant to Ordinance No. 1312. The City covenants and agrees that it will set aside and pay into the Bond Reserve Account out of Revenue of the Marina or from any other money that the City may have available for that purpose such amounts so that by no later than December 31, 2012, there shall have been accumulated in the Bond Reserve Account an amount not less than the Reserve Requirement for the Bonds. The City further covenants and agrees that when the required amounts have been paid into the Bond Reserve Account in the Marina Revenue Fund, it will maintain an amount of money and assets in the Bond Reserve Account that will be equal to the Reserve Requirement.

In the event there shall be a deficiency in the Bond Principal and Interest Account to meet maturing installments of either principal or interest on any Bonds, such deficiency shall be made up from the Bond Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Bond Reserve Account by reason of any such withdrawal shall be made up from the Net Revenue or any other money legally available therefor (after providing for the required deposits to the Bond Principal and Interest Account).

Income from the investments in the Bond Principal and Interest Account shall be deposited in such account. Income from investments in the Bond Reserve Account shall be deposited in such account until the amount therein is equal to the Reserve Requirement, and any excess shall be deposited into the Bond Principal and Interest Account. Investments in the Bond Reserve Account shall be valued at fair market value and marked to market at least once each year. Investments in the Bond Reserve

Account shall not have maturities extending beyond five years. If the value of the money and investments in the Bond Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Bond Principal and Interest Account.

Sec. 21. Application of Bond proceeds. Proceeds from the sale of the Bonds in the amount of \$_____ (which is equal to the original aggregate principal amount of the Bonds, [plus][less] [net] original issue [premium][discount] of \$_____, less an underwriter's discount of \$_____) shall be applied as follows:

(a) the sum of \$_____ shall be deposited into the Bond Reserve Account;

(b) the sum of \$_____ shall be paid to the Escrow Agent, for application to the payment of the costs of advance refunding and defeasing all of the 2002 Bonds and paying the costs of issuing the Bonds; and

(c) the sum of \$_____ (the "rounding amount") shall be deposited into the Bond Principal and Interest Account for application to the payment of the interest first coming due on the Bonds.

Sec 22. Tax-exemption covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds which would cause any Bond to be an "arbitrage bond" within the meaning of section 148 of the Code.

The City further covenants that it will calculate or cause to be calculated, and shall rebate to the United States, all

earnings from the investment of Bond proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Bonds, plus income derived from such excess earnings, to the extent and in the manner required by section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance which would cause any Bond to be treated as a "private activity bond" (as defined in section 141(b) of the Code) subject to treatment under said section 141(b) as an obligation not described in section 103(a) of the Code, unless the tax exemption thereof is not affected.

The City hereby designates the Bonds as "qualified tax-exempt obligations," as defined in section 265 of the Code (relating to the partial interest expense deduction authorized for banks, thrift institutions and certain other financial institutions). The City covenants that it will not issue more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 2012, and authorizes and directs the Authorized Officers to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Sec 23. Preliminary official statement declaration. The City has been provided with copies of the Preliminary Official Statement. For the sole purpose of the Purchaser's compliance with SEC Rule 15c2-12(b)(1), the City "deems final" the Preliminary Official Statement, as of its date, except for the omission of information on offering prices, interest rates, selling compensation, delivery dates, ratings, and other terms of the Bonds dependent on such matters.

Sec 24. Undertaking to provide continuing disclosure. This section constitutes the City's written undertaking for the benefit of the Owners and Beneficial Owners of the Bonds

required by subsection (b)(5)(i) of Rule 15c2-12 of the SEC (the "Undertaking").

The City hereby agrees to provide or cause to be provided to the MSRB the following annual financial information and operating data (collectively, the "Annual Financial Information") for each prior fiscal year, commencing with the fiscal year ending December 31, 2011, on or before the last day of the seventh month following the end of such prior fiscal year:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by state law; which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the City, they will be provided (the "Annual Financial Statements");

(b) Principal amount of the Parity Bonds outstanding and the coverage calculation showing the ratio of Net Revenue to Annual Debt Service with respect to the Parity Bonds;

(c) Updated operating and financial data regarding the Marina, of the type found under the heading "The Marina" in the Preliminary Official Statement;

(d) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Moorage Rates," "City of Des Moines Guest Moorage Rates," "City of Des Moines Public Launching Rates" and "Current Length Distribution of Waiting List Vessels";

(e) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Marina Income Statement (Years ending December 31)" and "City of Des Moines Marina Statement of Net Assets (Years ending December 31)";

(f) Historical financial information (for the prior fiscal year only) of the type shown in the table in the Preliminary Official Statement entitled "Historical Assessed Valuation and Property Tax Collection Record";

(g) Historical financial information (for the prior fiscal year only and excluding overlapping debt information) of the type shown in the tables in the Preliminary Official Statement entitled "Debt Capacity Computation," "Debt Information" and "Bonded Debt Ratios";

(h) Historical financial information (for the prior fiscal year only) of the type shown in the Preliminary Official Statement under the headings "Pension System" and "Insurance Coverage";

(i) Any change in the auditing, budgetary process or investment policies of the City; and

(j) A narrative explanation of the reasons for any amendments to this Undertaking made during the previous fiscal year and the impact of such amendments on the Annual Financial Information being provided.

Items (b) through (j) shall be required only to the extent that such information is not included in the annual financial statements.

In its provision of such financial information and operating data, the City may cross-reference to any "final official statement" (as defined in the Rule) available to the public on the MSRB's internet web site or filed with the SEC.

If not submitted as part of the Annual Financial Information, then when and if available, the City shall provide its Annual Financial Statements, which shall have been audited by such auditor as shall be then required or permitted by State law, to the MSRB.

The City further agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business

days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of the Owners of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances of the Bonds;
10. Release, substitution or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City;
13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a

definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this Undertaking, the City advises with reference to item 14 above that there is no trustee for the Bonds.

The City also agrees to provide or cause to be provided to the MSRB, in a timely manner, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the seventh month following the end of such prior fiscal year.

The City agrees that all documents provided to the MSRB pursuant to this Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

The City may amend its obligations under, or waive any provision of, this Undertaking upon receipt of a favorable opinion of nationally recognized bond counsel or other counsel familiar with the federal securities law, or pursuant to a favorable "no-action letter" issued by the SEC. In the event of any amendment or waiver of the City's obligations under this Undertaking, the City agrees to describe such amendment in the Annual Financial Information for such fiscal year and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and its impact of the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change will be given in the same manner as for a material event, and (B) the Annual Financial Information for the fiscal year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

The City's obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance or payment in full of all of the then outstanding Bonds. This Undertaking, or any provision hereof, shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require this Undertaking or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the MSRB with copies of such opinion.

The right of each Owner or Beneficial Owner of Bonds to enforce the provisions of this Undertaking shall be limited to the right to obtain specific enforcement of the City's obligations under this Undertaking, and any failure by the City to comply with the provisions of this Undertaking shall not be a default with respect to the Bonds under this Ordinance.

The Authorized Officers are authorized and directed to take such further action on behalf of the City as may be necessary, appropriate or convenient to carry out the requirements of this Undertaking.

Sec 25. Additional covenant. The City covenants to the Owners that it will at all times as long as the Bonds are outstanding (a) maintain the Marina in good repair, working order and condition, (b) operate the Marina in an efficient manner and at a reasonable cost, and (c) establish, maintain and collect rentals, rates and charges for Marina services as may be necessary to provide for (1) the Operating and Maintenance Expenses of the Marina and (2) the deposits into the Bond Principal and Interest Account and the Bond Reserve Account.

Sec 26. Contract; severability. The covenants contained in this Ordinance shall constitute a contract between the City and the Owners of each and every Bond. The City unconditionally covenants that it will keep and perform all of the covenants of the Bonds and this Ordinance. If any one or more of the provisions of this Ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this Ordinance or the

Ordinance No. ____
Page 27 of 26

Bonds, and this Ordinance and the Bonds shall be construed and enforced as if such unconstitutional or invalid provision had not been contained in this Ordinance.

Sec 27. Effective date. This Ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2012, and signed in authentication thereof this ____ day of ____, 2012.

M A Y O R

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

Published: ____, 2012

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. ____, Adopted ____, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$_____ Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation

The full text of the Ordinance will be mailed without cost upon request.

SANDY PAUL, CMC
CITY CLERK

Published: _____, 2012

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendments to City Council Rules
Procedure

FOR AGENDA OF: April 5, 2012

DEPT. OF ORIGIN: Legal *DB*

ATTACHMENTS:

1. Draft Resolution No. 12-029, with
Attached Rules of Procedure
2. Draft Ordinance No. 12-030

DATE SUBMITTED: March 28, 2012

CLEARANCES:

- ☒ Legal
- ☐ Finance N/A
- ☒ Marina N/A
- ☒ Parks, Recreation & Senior Services N/A
- ☒ Planning, Building & Public Works N/A
- ☒ Police N/A
- ☒ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL *[Signature]*

Purpose and Recommendation

The purpose of this Agenda Item is to consider amendments to the City Council *Rules of Procedure* pursuant to chapter 4.12 DMMC and to amend DMMC 4.04.020.

Suggested Motion

First Motion: "I move to place Draft Resolution No. 12-029, amending the City Council *Rules of Procedure*, including the correction of scrivener and typographical errors within the current *Rules*, on the April 26, 2011 Council agenda for a second reading."

Second Motion: "I move to place Draft Ordinance No. 12-030, amending DMMC 4.04.020 by changing the City Council meeting time from 7:30 p.m. to 7:00 p.m. and limiting the time of each meeting to three hours unless extended by three-fourths of the Councilmembers present, on the April 26, 2012 Council agenda for a second reading."

Background

The last City Council *Rules of Procedure* were adopted on January 6, 2011. Since that date, some amendments have been requested by Councilmembers. These amendments also include as a housekeeping measure the correction of scrivener and typographical errors found in the current version.

Discussion

Members of the City Council are interested in amending the current City Council *Rules of Procedure* by changing the City Council meeting time to 7:00 p.m. from 7:30 p.m., deleting Rule 20 (d)(2) requiring the City Clerk to read the Consent Calendar in its entirety, amending Rule 20(q) to adjourn meetings at 10:00 p.m., and amending Rule 26 to allow that ordinances only require one reading. One reading of ordinances would eliminate the need to waive Rule 26(a) each time an ordinance is passed on first reading.

DMMC 4.12.030 provides that “[a]ny such amendment or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the Council agenda under the order of new business. A vote of the Council to adopt such a resolution shall occur at a subsequent regular meeting.”

Alternatives

The alternative would be to not adopt the proposed amendments, eliminating the need to adopt both Draft Resolution No. 12-029 and Draft Ordinance No. 12-030.

Financial Impact

None.

Recommendation

It is recommended that Council consider and move Draft Resolution No. 12-029 and Draft Ordinance No. 12-030 to second readings in order to amend the City Council *Rules of Procedure*.

DRAFT RESOLUTION NO. 12-029

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, adopting amendments to the *Des Moines City Council Rules of Procedure*.

WHEREAS, DMMC 4.12.10 provides that "rules of procedure governing and regulating meetings of the City Council shall be adopted in resolution form, and shall have the force of law," and

WHEREAS, DMMC 4.12.030 provides that the rules "...may be amended or new rules may be adopted by an affirmative vote of a least a majority of the whole membership of the Council," and

WHEREAS, DMMC 4.12.030 further provides that "...Any such amendment or new rule shall be submitted in resolution form at a regular meeting and shall be placed on the Council agenda under order of new business;" now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

The attached document entitled *Des Moines City Council Rules of Procedure, Updated _____, 2012*, is hereby adopted as the official *City Council Rules of Procedure* substantially in the form as attached and is effective immediately upon adoption.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2012 and signed in authentication thereof this ____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DES MOINES CITY COUNCIL

RULES OF PROCEDURE



Adopted Pursuant to DMMC 4.12.010

Updated 7/89
Updated 7/90
Updated 10/90
Updated 11/90
Updated 8/91
Updated 10/91
Updated 12/91
Updated 4/92

Updated 2/94
Updated 3/94
Updated 8/94
Updated 6/95
Updated 9/00
Updated 5/03
Updated 9/03
Updated 8/04

Updated 4/05
Updated 5/06
Updated 1/11, Res. 1140

Updated 4/5/12, Res.

DES MOINES CITY COUNCIL RULES OF PROCEDURE

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SECTION I COUNCIL MEETING - LOCATION

RULE 1. All meetings of the City Council shall be held at the location specified in DMMC 4.04.010. (Ord. 329 §1, 1973).

COUNCIL MEETING - TIME

RULE 2. The regular meetings of the City Council shall be held at the times specified in DMMC 4.04.020. (Ord. 1039 §1, 1993).

COUNCIL MEETINGS - OPEN TO THE PUBLIC

RULE 3. All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in RCW 42.30.110 or RCW 42.30.140. (Res. 525 §1, 1988).

ELECTION OF OFFICERS

RULE 4. Procedures for electing officers are as follows:

(a) Biennially, at the first meeting of the new Council, the members thereof shall choose a ~~presiding officer~~Presiding Officer from their number who shall have the title of Mayor. In addition to the powers conferred upon him/her as Mayor, he/she shall continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting shall select a Mayor from their number for the unexpired term. Following the election of the Mayor, there shall be an election for Mayor Pro Tempore. The term of the Mayor Pro Tempore shall run concurrently with that of the Mayor.

(b) The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations are then closed. The election for Mayor Pro Tempore shall be conducted by the ~~Mayor-elect~~newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Mayor Pro Tempore shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Mayor Pro Tempore may be waived by the vote of five councilmembers.

(c) Except when there is only one nominee, election shall be by written ballot. Each ballot shall contain the name of the Councilmember who cast it. Each succeeding ballot shall include the name of all Councilmembers nominated (unless they have withdrawn). Voting shall continue until a nominee receives a majority of the votes. The City Clerk shall publicly announce the results of the election by reading each ballot into the record, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Thereafter, the City Clerk shall record in the minutes of the meeting the manner in which each voting member of the Council cast his or her ballot.

(d) In the event the Council is unable to agree on a Mayor by majority vote of members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Mayor Pro Tempore; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney. Ties shall be resolved in a contest by chance. The office of Acting Mayor Pro Tempore shall be filled by the Councilmember who just previously served as Mayor Pro Tempore; or if such person is not a member of the Council, by the Councilmember with the next highest seniority. The Acting Mayor and Acting Mayor Pro Tempore shall continue in office and exercise such authority as is described in Chapter 35A.13 RCW until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Mayor Pro Tempore shall cease and terminate. (Res. 525 §1, 1988, amended by Res. 594 §1, 1989, amended by Res. 672, 1991, amended by Res. 754 §1, 1994, amended by Res. 1140, 2011, amended by Res. _____, 2012.)

PRESIDING OFFICER

RULE 5. The Mayor shall preside at meetings of the Council, and be recognized as the head of the City for all ceremonial purposes. The Mayor shall have no regular administrative or executive duties. In case of the Mayor's absence or temporary disability the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. When the Mayor Pro Tempore acts as Mayor by participating in preparation of a Council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Mayor Pro Tempore shall have authority only to approve the Council meeting agenda or study session worksheet as to form without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written. In case of the absence or temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the Council shall act as Mayor during the continuance of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedure.

(a) The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

(b) To promote a favorable image of the City and pursue resources that will benefit the community, the Mayor, or another Councilmember designated by the City Council, may take the lead in representing the Des Moines City Council to those from outside the community who are interested in joint ventures and efforts to bring economic development and investments to the City, including other local governments, regional organizations, and federal, state, and international government representatives. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Council.

(c) The Mayor, or another Councilmember designated by the City Council, is the spokesperson on actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

(Res. 525 §1, 1988, amended by Res. 961 §1, 2003, Res. 1140, 2011).

QUORUM

RULE 6. At all meetings of the Council four Councilmembers, who are present and eligible to vote, shall constitute a quorum for the transaction of business. A less number may adjourn from time to time, provided that written notice of said adjournment be posted on the exterior Council Chamber doors per RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes. (Res. 525 §1, 1988).

ATTENDANCE, EXCUSED ABSENCES

RULE 7. RCW 35A.12.060 provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes. (Res. 525 §1, 1988).

SPECIAL COUNCIL MEETINGS

RULE 8. It is the intent of the Des Moines City Council that the procedures of this Council Rule 8 are enforceable to the same extent as RCW 42.30.080, as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at RCW 42.30.080. Procedures for setting a special meeting are as follows:

(a) A special meeting may be called by the Mayor or any four members of the Council.

(b) Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.

(c) (1) The notice shall be delivered by mail, by electronic mail to an address designated by the receiver of the email, or personally to each Councilmember, the City Manager, and the business office of each local newspaper and radio and television station which has on file a written request for notice of special meetings. The notice must be delivered at least twenty-four (24) hours prior to the meeting.

(2) When email notice is given to Councilmembers, the City Clerk shall provide confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has made a standing written advance request to the City Clerk for such follow up telephone call. The City Clerk shall document the date and time of such follow up telephone call.

(d) The notices provided in this section may be dispensed with-in the circumstances provided by RCW 42.30.080; that is:

(1) As to any member who at, or prior to the time the meeting convenes files with the Clerk a written waiver of notice,

(2) As to any member who was actually present at the meeting at the time it convenes, and

(3) In the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. (Res. 525 §1, 1988, amended by Res. 788, 1995, amended by Res. 1011, 2006, amended by Res. 1140, 2011).

COUNCIL MEETING AGENDA

RULE 9. This rule specifies the method of preparation of a Council meeting agenda for meetings other than study sessions. The Presiding Officer, three (3) Councilmembers, or the City Manager may introduce a new item to the preliminary agenda. The Presiding Officer shall have the option of deleting any item, other than those items introduced by three (3) Councilmembers, from the preliminary agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda for a subsequent Council meeting. The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency. (Res. 525 §1, 1988, amended by Res. 961 §2, 2003, amended by Res. 1140, 2011).

STUDY SESSIONS

RULE 10. Regular Council meetings that are held during the first and third week of each month in accordance with Rule 2, may be designated as Study Sessions by the Presiding Officer. Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. Comments from the public, limited to the items of business on the Study Session agenda, may, at the discretion of the Presiding Officer, be allowed so long as the comments are in accordance with Council Rule 20(f). The purpose of Study Session discussions is to allow Councilmembers to be made aware of impending business and allow informal discussion of issues that might be acted on at a future meeting. These conditions will allow the Councilmembers to communicate informally about these impending issues. No final Council action shall be taken on ordinances and resolutions at Study Sessions. The City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall, for each item, contain the Discussion Item, the Discussion Item Moderator, and the Discussion Goal. After the proposed Council Study Session worksheet has been approved by the Presiding Officer, a copy of it along with any supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Council Study Session, except in an emergency.

During the Council Study Session the Discussion Item Moderator may: 1) introduce the subject and give background information; 2) identify the discussion goal; 3) act as facilitator to keep the discussion focused to the eventual discussion goal; 4) alert the Presiding Officer when it

is appropriate to call for a motion or other official direction of the Council. The Presiding Officer retains the option of assuming the function of the Discussion Item Moderator in order to keep the discussion properly focused. (Res. 525 §1, 1988, amended by Res. 659, 1991, amended by Res. 754 §2, 1994, amended by Res. 961 §3, 2003, amended by Res. 1140, 2011).

CITY MANAGER

RULE 11. The City Manager, as the chief executive officer and head of the administrative branch of City government or his/her designee, shall attend all meetings of the City Council, unless excused by the Presiding Officer or Council. The City Manager shall be responsible to the Council for the proper administration of all affairs of the City. The City Manager shall recommend for adoption by the Council such measures as he/she may deem necessary or expedient; prepare and submit to the Council such reports as may be required by that body or as the City Manager deems it advisable to submit; keep the Council fully advised as to the business of the City; and shall take part in the Council's discussion on all matters concerning the welfare of the City. In the event that both the City Manager and Assistant City Manager are unable to attend a Council meeting, the City Manager or Assistant City Manager shall appoint a key staff member to attend the meeting as the representative of City Administration. (Res. 525 §1, 1988, amended by Res. ___, 2012).

CLERK

RULE 12. The City Clerk shall be ex-officio Clerk of the Council and shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council. (Res. 525 §1, 1988, Amended by Res. 949, 2003, amended by Res. 1140, 2011).

SECTION II DUTIES AND PRIVILEGES OF MEMBERS

FORMS OF ADDRESS

RULE 13. The Mayor shall be addressed as "Mayor (surname)" or "Your Honor". The Mayor Pro Tempore shall be address as "Mayor Pro Tem (surname)". Members of the Council shall be addressed as "Councilmember (surname)". (Res. 525 S1, 1988).

SEATING ARRANGEMENT

RULE 14. Councilmembers shall occupy the respective seats in the Council Chamber assigned to them by the Mayor. (Res. 525 S1, 1988).

APPEARANCE OF FAIRNESS DOCTRINE

RULE 15. Appearance of Fairness Doctrine and its Application. (Res. 571 S1, 1989).

(a) Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." Zehring v. Bellevue, 99 Wn.2d 488 (1983).

(b) Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. RCW 42.36.010. Some examples of quasi-judicial actions which may come before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits.

(c) Obligations of Councilmembers, Procedure.

(1) Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. ~~If~~ If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

(2) Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

(3) The presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

(4) Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

(d) Specific Statutory Provisions.

(1) Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. RCW 42.36.040.

(2) A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. RCW 42.36.050.

(3) During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. RCW 42.36.060. (Amended Res. 1140, 2011).

DISSENTS AND PROTESTS

RULE 16. Any Councilmember shall have the right to express dissent from or protest against any ordinance or resolution of the Council and have the reason therefore entered in the minutes. (Res. 525 S1, 1988).

ADMINISTRATIVE INTERFERENCE BY COUNCILMEMBERS

RULE 17. Neither the Council, nor any of its committees or members shall direct or request the appointment of any person to, or his/her removal from, any office by the City Manager or any of his/her subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the City Manager and neither the Council nor any committee or member thereof shall give any orders to any subordinate of the City Manager, either publicly or privately; provided, however, that nothing herein shall be construed to prohibit the Council, while in open session, from fully and freely discussing with the City Manager anything pertaining to appointments and removals of City officers and employees and City affairs. (RCW 35A,13.120) (Res. 525 S1, 1988, Amended by Res. 1140, 2011, amended by Res. _____, 2012).

SECTION III COUNCIL PROCEDURES

RULES OF ORDER

RULE 18. Rules of order not specified by statute, ordinance, or resolution shall be governed by the most recent edition of Robert's Rules of Order.

(a) **Courtesy.** Members of the Council, in the discussion, comments, or debate of any matter or issue, shall be courteous in their language and demeanor and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall at all times confine their remarks to those facts which are germane and relevant, as determined by the ~~presiding officer~~ Presiding Officer, to the question or matter under discussion.

(b) **Interruption.** No member of the Council shall interrupt or argue with any other member while such member has the floor.

(Res. 525 S1, 1988, Amended by Res. 618 1990, amended by Res. 1140, 2011).

MOTIONS

RULE 19. All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

(a) **Rule 19(a) – Speaking to Motion.** No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council Members present at the time the motion is before the Council. After the motion is put and before the next item is read, a member shall be able to speak briefly to the previous motion. Questions and answers by members of the Council are not considered as speaking to the motion.

(b) **Rule 19(b) – Time Limit.** Each member of the Council shall speak for no more than ten (10) minutes unless granted an exemption by the majority of the Council.

(c) **Rule 19(c) – Donation of Time.** No member of Council may give his allotted time to another member unless there is approval of the majority of the Council.

(Res. 525 S1, 1988, amended by Res. 1140, 2011).

ORDER OF BUSINESS

RULE 20. The business of all regular meetings of the Council shall be transacted as follows; provided, however that the Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

(a) **Call to order by the Presiding Officer.**

- (b) Pledge of Allegiance.
- (c) Invocation (Presiding Officer's discretion).
- (d) Roll call (See Rule 7 for procedure to excuse an absence).
- (e) Correspondence not previously received by the Council.

(f) Comments from the public (non-public hearing topics). Public comments are encouraged and appreciated. The information and advice received from citizens helps the City Council make the best possible decisions.

(1) Procedure.

(A) Citizens are encouraged to supplement verbal comments through written submittals.

(B) All citizens desiring to address Council during the Public Comment period shall first fill out a sign-in sheet and submit the form to the City Clerk prior to the start of Public Comments.

(2) Scope of Comments.

(A) Subjects not on the current agenda. Any member of the public may request time to address the Council after first stating their name, address, and the subject of their comments. The Presiding Officer may then allow the comments subject to such time limitations as the Presiding Officer deems necessary. Following such comments the Presiding Officer may place the matter on the current agenda or a future agenda, or refer the matter to administration or a Council committee for investigation and report.

(B) Subjects on the current agenda. Any member of the public who wishes to address the Council on an item on the current agenda shall make such request to the Presiding Officer at the time when comments from the public are requested. The Presiding Officer shall rule on the appropriateness of public comments as the agenda item is reached. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e.) proponents, opponents, adjacent owners, vested interests, etc.).

(C) Subjects of a Public Hearing. Comments made during the Public Comment period on a topic set for a public hearing by the City Council shall be out of order. To ensure a fair hearing to applicants or matters that are subject to a public hearing before the City Council, the ~~presiding officer~~ Presiding Officer may rule public comments made outside the scope of a public hearing record to be out of order.

(D) Any ruling by the Presiding Officer relative to the preceding two subsections may be overruled by a vote of a majority of members present.

(3) Rules of Conduct. A minimum number of basic rules are established to ensure that all individuals wishing to address the City Council are fairly heard.

(A) Each person addressing the Council shall step up to the indicated speakers table, give his or her name and address for the record, and shall limit comments to three (3) minutes. Groups may be allotted five (5) minutes by the ~~presiding officer~~Presiding Officer.

(B) Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated speaking table and addressed to the Council as a body and not to individual members, the audience or the television cameras.

(C) The ~~presiding officer~~Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude his or her remarks. All speakers are encouraged to submit supplemental or detailed written remarks for Council consideration.

(D) Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous, threatening, or personally abusive while addressing the Council, may be ordered to leave the meeting. The ~~presiding officer~~Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct and to enforce these rules.

(E) The ~~presiding officer~~Presiding Officer may rule "out of order" any comment made with respect to a quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can appear at the public hearing on the matter and present their comments.

(F) Any person whose comments have been ruled out of order by the ~~presiding officer~~Presiding Officer shall immediately cease and refrain from further improper comments. The refusal of an individual to desist from personal, inappropriate, slanderous or otherwise disruptive remarks after being ruled out of order by the ~~presiding officer~~Presiding Officer may subject the individual to removal from the Council Chambers.

(g) Committee and ~~B~~board reports.

(1) Procedure. Councilmembers and the ~~presiding officer~~Presiding Officer may give reports regarding boards or committees to which they have been appointed.

(2) Scope and Time Limits.

(A) The ~~presiding officer~~Presiding Officer may rule "out of order" any comments made during this portion of the meeting that do not pertain to the activities of the Councilmembers' boards or committees.

(B) Board and committee reports shall also be limited to three (3) minutes unless extended time is granted by the ~~presiding-officer~~Presiding Officer for matters of significant importance. The ~~presiding-officer~~Presiding Officer or designee shall notify the Councilmember when the allotted time has expired and the Councilmember shall promptly conclude his/~~or~~-her report.

(h) Presiding Officer's report. In addition to any special board or committee reports, the ~~presiding-officer~~Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

(i) Councilmember comments (non-agenda topics).

(1) Procedure. Councilmembers may comment on other subjects of importance and/or respond to citizen comments.

(2) Scope and Time Limits.

(A) Councilmember comments during this portion of the meeting shall be limited to subjects not on the current agenda. The ~~presiding-officer~~Presiding Officer may rule "out of order" any comment made during this portion of the meeting with respect to any agenda item or quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter and/or during that portion of the meeting for which the agenda item is scheduled.

(B) Councilmember comments during this portion of the meeting shall also be limited to three (3) minutes. The ~~presiding-officer~~Presiding Officer or designee shall notify the Councilmember when the allotted time has expired and the Councilmember shall promptly conclude his or her remarks.

(j) Administration reports.

(k) Consent Calendar.

(1) The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been: (a) previously discussed by the Council, or (b) based on the information delivered to members of the Council by administration that can be reviewed by a Councilmember without further explanation, or (c) are so routine or technical in nature that passage is likely, or (d) as directed by the City Council.

~~(2) — The Clerk shall read the Consent Calendar, including the titles of any ordinances or resolutions contained therein.~~

(~~3~~2) The proper Council motion on the Consent Calendar is as follows: "I move adoption of the Consent Calendar." This motion shall be non-debatable and will have the effect of moving to adopt all items on the Consent Calendar. Since adoption of any item on the Consent Calendar implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent Calendar. Therefore, prior to the vote on the motion to adopt

the Consent Calendar, the Presiding Officer shall inquire if any Councilmember wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the item withdrawn from the consent calendar shall be the next business in order following the conclusion of the consent calendar.

(l) Public Hearings (see Rule 21 for procedural details).

(m) Old Business.

(n) New Business.

(o) Executive Session (as required)

(p) Next meeting date announced by Presiding Officer.

(q) Adjournment. No meeting shall be permitted to continue beyond ~~10:30~~10:00 PM without approval of three fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to ~~10:30~~10:00 PM, the items not acted on shall be deferred to the next regular Council meeting as old business, unless the Council, by a majority vote of members present, determines otherwise. (Res. 525 §1, 1988, amended by Res. 894 §1, 2000, amended by Res. 961 §4, 2003, amended by Res. 977, 2004, amended by Res. _____, 2012).

ACTIONS FOR A PUBLIC HEARING

RULE 21. The procedures for a public hearing are as follows:

(a) Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names and addresses, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).

(b) The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting.

(1) "All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and address. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here."

(2) "It is not necessary to be a proponent or opponent in order to speak. If you consider yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent."

(3) "No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting."

(4) "There will be no demonstrations during or at the conclusion of anyone's presentation."

(5) "These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and to ensure that no individual is embarrassed by exercising their right of free speech."

(c) (1) When Council conducts a hearing to which the Appearance of Fairness Doctrine, (Rule 15) applies, the Presiding Officer, or in the case of a potential Rule 15 violation by that individual, the Mayor Pro Tem, will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 15. The suggested form of the announcement is as follows:

"All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists."

(2) When Council conducts a "quasi-judicial" hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:

The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:

"Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"

(d) At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the standards.

(e) The Presiding Officer calls for proponents in quasi-judicial proceedings and for speakers in non-quasi-judicial proceedings.

(f) The proponents or speakers now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).

(g) The Presiding Officer calls for additional proponents or speakers three times.

(h) In non-quasi-judicial proceedings refer to Rules 21(l), otherwise the Presiding Officer calls for opponents by announcing the following:

"At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."

(i) Opponents speak.

(j) The Presiding Officer calls for additional opponents three times.

(k) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.

(l) The Presiding Officer announces the following:

"At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."

(m) The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.

(n) The Presiding Officer closes the public hearing.

(o) The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.

(p) The Presiding Officer inquires if there is any further discussion by the Councilmembers.

(q) The Presiding Officer inquires if there are any final comments or recommendations from administration.

(r) The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.

(s) The Clerk shall conduct a roll call vote.

(t) The Presiding Officer directs administration to prepare findings consistent with the action.

(Res. 571 §2, 1989, amended by Res. 894, §2, 2000, amended by Res. 1140, 2011).

VOTING

RULE 22. The votes during all meetings of the Council shall be transacted as follows:

(a) Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice, except that at the request of any Councilmember, a roll call vote shall be taken by the Clerk. The order of the roll call vote shall be determined by the Presiding Officer.

(b) In case of a tie in votes on any proposal, the proposal shall be considered lost.

(c) Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses himself or herself in accordance with Rule 15. If any unexcused Councilmember refuses to vote "aye" or "nay", their vote shall be counted as a "nay" vote.

(d) The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the whole membership of the Council.

(e) The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least a majority plus one of the whole membership of the Council.

(f) The passage of any motion or resolution not subject to the provisions of RCW, DMMC, or this Resolution as amended, shall require the affirmative vote of at least a majority of the membership of the Council who are present and eligible to vote.

COMMITTEES

RULE 23. The procedures governing all committees of the Council shall be as follows:

(a) The following standing committees shall consist of three members of the Council appointed by the Mayor in January of each year or at such time as new standing committees are authorized: Environment, Municipal Facilities, Public Safety & Transportation, and Finance and Economic Development.

(b) Council Committees for a particular purpose may be formed by motion of Council and members shall be appointed by the Mayor.

(c) Committees shall make a recommendation on proposed ordinances, resolutions and motions, within their area of responsibility before action is taken by the Council. Minutes shall be kept of each City Council standing and special committee meeting, and shall list discussion topics, comments made, and any final recommendations.

The Committee Chair shall present the recommendations of the committee to the City Council at a regular City Council meeting during the discussion of the item of business. (Res. 575 §1, 1989, Amended by Res. 602 1990, Amended by Res. 633 1990, Amended by Res. 664 1991 Amended by Res. 685 1992, Amended by Res. 754 §3, 1994, Amended by Res. 931, §1, 2002, Amended by Res. 940, §1 2002, Amended by Res. 1140, 2011).

ENACTED ORDINANCES, RESOLUTION AND MOTIONS

RULE 24. An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired. An enacted motion is a form of action taken by the Council to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law. (Res. 525 §1, 1988).

RESOLUTIONS

RULE 25. A resolution may be put to its final passage on the same day on which it was introduced. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting. (Res. 525 §1, 1988).

ORDINANCES

RULE 26. The procedure for ordinances is as follows:

~~(a) — All ordinances shall have two one separate readings, unless otherwise required by state law or Des Moines Municipal Code. At each reading the title of an ordinance shall in all cases be read prior to its passage; provided that should a Councilmember request that the entire ordinance or certain of its sections be read, such requests shall be granted.~~ Printed copies shall be made available upon request to any person attending a Council meeting.

~~(b) — The provision requiring two separate readings of an ordinance may be temporarily suspended at any meeting of the Council by a majority vote of all members present.~~

~~(c) — If a Motion to pass an ordinance to a second reading fails, the ordinance shall be considered lost.~~

(Res. 525 S1, 1988, Amended by Res. 1140, 2011, amended by Res. _____, 2012.)

PERMISSION REQUIRED TO ADDRESS THE COUNCIL

RULE 27. Persons other than Councilmembers and administration shall be permitted to address the Council upon introduction by the Presiding Officer. (Res. 525 S1, 1988, Amended by Res. 1140, 2011).

RECONSIDERATION

RULE 28. Any action of the Council, including final action on applications for changes in land use status; but excluding a reconsideration of any action previously reconsidered, motions to adjourn, motions to suspend the rules, an affirmative vote to lay on the table or to take from the table, or a vote electing to office one who is present and does not decline; shall be subject to a motion to reconsider. Such motions can only be made by a member of the prevailing side on the original action. A motion to reconsider must be made no later than the next succeeding regular Council meeting. A motion to reconsider is debatable only if the action being reconsidered is debatable. Upon passage of a motion to reconsider, the subject matter is returned to the table anew at the next regular Council meeting for any action the Council deems advisable. (Res. 525 S1, 1988).

LEGISLATIVE PROCESS, PREPARATION, INTRODUCTION AND FLOW OF ORDINANCES AND RESOLUTIONS AND MOTIONS

RULE 29. Ordinances and resolutions shall be prepared, introduced, and proceed in the manner described on the flow chart attached hereto as Exhibit "A", and by this reference incorporated herein. Prior to final passage of all ordinances, resolutions or motions, such documents or proposals shall be designated as DRAFTS as follows:

(a) PROPOSED DRAFTS shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.

(b) COUNCIL DRAFTS shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration. (Res. 525 S1, 1988).

COUNCIL RELATIONS WITH BOARDS, COMMISSIONS AND COUNCIL CITIZEN ADVISORY BODIES

RULE 30. All statutory boards and commissions and Council citizen advisory bodies shall provide the Council with copies of minutes of all meetings. Communications from such boards, commissions and bodies to the City Council shall be made in the form of a motion and recorded in the minutes. Any such communication shall be officially acknowledged by the Council and receipt noted in the minutes. The procedure for acknowledging such receipt shall be as follows. Any member of the Council may bring such communication to the Presiding Officer's attention under the agenda item "Committee and Board Reports." The presiding Officer shall state: "So noted for the record," and thereafter the Clerk shall make an appropriate notation in the minutes. Should any member of the Council determine that any such communication be officially answered by the Council, the Presiding Officer shall place the matter on the agenda under New Business for the current meeting or any subsequent meeting. (Res. 525 S1, 1988).

COMPLAINTS AND SUGGESTIONS TO COUNCIL

RULE 31. When citizen complaints or suggestions are brought before the City Council not on an agenda, the Presiding Officer shall first determine whether the issue is legislative or administrative in nature and then:

(a) If legislative, and a complaint about the letter or intent of legislative acts or suggestions for changes to such acts, and if the Council finds such complaint suggests a change to an ordinance or resolution of the City, the Council may refer the matter to a committee, Administration or the Council of the whole for study and recommendation.

(b) If administrative and a complaint regarding administrative staff performance, administrative execution of legislative policy or administrative policy within the authority of the City Manager, the Presiding Officer should then refer the complaint directly to the City Manager for his/her review if said complaint has not been so reviewed. The City Council may direct that the City Manager brief or report to the Council when his/her response is made. (Res. 525 S1, 1988).

ADMINISTRATIVE COMPLAINTS MADE DIRECTLY TO INDIVIDUAL COUNCILMEMBERS

RULE 32. When administrative policy or administrative performance complaints are made directly to individual Councilmembers, the Councilmember may then refer the matter directly to the City Manager for his/her view and/or action. The individual Councilmember may request to be informed of the action or response made to the complaint. (Res. 525 S1, 1988).

FILLING COUNCIL VACANCIES

RULE 33. If a vacancy occurs in the office of Councilmember, the Council will follow the procedures outlined in RCW 35A.13.020. In order to fill the vacancy with the most qualified person available until an election is held, the Council will widely distribute and publish a notice of the vacancy, the procedure and any application form for applying. The Council will draw up an application form which contains relevant information to answer set questions posed by the Council. The application forms will be used in conjunction with an interview of each candidate to aid the Council's selection of the new Councilmember. (Res. 525 S1, 1988).

**PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE --
PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION**

RULE 34. No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, flood lights, or similar artificial illumination shall be made at City Council Meetings without the consent of the Presiding Officer or a majority of the Council. (Res. 525 S1, 1988).

AUDIO RECORDINGS OF MEETINGS

RULE 35. All meetings of the City Council should be recorded by the City Clerk on an audio recording device. (Res. 657, 1991, amended by Res. 1140, 2011).

VIDEO RECORDING AND BROADCAST

| **RULE 36.** All public meetings of the City Council held in the Des Moines City Service Center at 21630 11th Avenue South should be video recorded and cablecast within the City. | (Res. 772, 1994, amended by Res. 1140, 2011, amended by Res. ____, 2012).

SPIRIT OF DES MOINES AWARD PROGRAM

RULE 37. It is the intent of the Des Moines City Council that a Spirit of Des Moines Awards Program be enacted by the Council to honor the commitment and dedication of its named recipients. Awards will be of two kinds; an annual award or lifetime achievement award. The awards shall be made in accordance with the Spirit of Des Moines Awards Policy and attached to these City Council Rules as Appendix A. (Res. 1140, 2011).

REFERENCES TO DES MOINES MUNICIPAL CODE (DMMC) AND REVISED CODE OF WASHINGTON (RCW)

DMMC 4.04.010 Council Meetings - City Hall Location.

All meetings of the City Council shall be held at 21630 11th Avenue South, which is designated as the location of the City Hall, except that, when necessary, the City Council may hold meetings at other places.

DMMC 4.04.020 Council Meetings - Time.

(1) The regular meetings of the City Council are held every Thursday, with the meetings convening at 7:30 p.m.; except when the regular meeting date falls on a legal holiday the meeting is canceled and the City Council shall not meet.

(2) The ~~presiding officer~~ Presiding Officer may cancel a regular meeting at the ~~presiding officer~~ Presiding Officer's discretion as the business of the City Council requires; except the City Council shall meet at least once each month.

RCW 35A.12.050 and 12.060 Forfeiture of Office.

The office of a ~~mayer~~ Mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of ~~mayer~~ Mayor or in the council shall be filled as provided in chapter 42.12 RCW. An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of ~~mayer~~ Mayor. A Councilmember shall forfeit his office if he fails to attend three consecutive regular meetings of the Council without being excused by the Council.

RCW 35A.13.020 Election of Councilmen - Eligibility - Terms - Vacancies - Forfeiture of Office - Council Chairman.

In council-manager code cities, eligibility for election to the Council, the manner of electing councilmen, the numbering of council positions, the terms of councilmen, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a ~~mayer~~ Mayor pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060 and 35A.12.065 relating to the council of a code city organized under the ~~mayer~~ Mayor-council plan, except, that in council-manager cities where all council positions are at-large positions, the ~~city council~~ City Council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one shall be the Council chairman and shall carry out the duties prescribed by RCW 35A.13.030.

RCW 42.30.080 Special Meetings.

A special meeting may be called at any time by the ~~presiding officer~~ Presiding Officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body; and to each local newspaper of general circulation and to each local radio or television station which has on file with the governing body a written request to be notified of such special meeting or of all special meetings. Such notice must

be delivered personally, by mail, by fax, or by electronic mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the governing body a written waiver of notice. Such waiver may be given by telegram, by fax, or electronic mail. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

RCW 42.30.090 Adjournments.

The governing body of a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He/she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.030.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

RCW 42.30.110 Executive Sessions.

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting.

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when the governing body elects to take final action hiring, setting the salary or an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public.

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information

(2) Before convening in executive session, the ~~presiding officer~~ Presiding Officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the ~~presiding officer~~ Presiding Officer.

RCW 42.30.140 Chapter Controlling - Application. If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: *Provided*, that this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation or profession or to any disciplinary proceedings involving a member of such business, occupation or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by Title 35 RCW, the administrative procedure act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

RCW 42.36.010 Local Land Use Decisions.

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

RCW 42.36.040 Public Discussion by Candidate for Public Office.

Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17.020 (9) and (41) no public discussion by expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine.

RCW 42.36.050 Campaign Contributions.

A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

RCW 42.36.060 Quasi-judicial Proceedings - Ex Parte Communications Prohibited, Exceptions.
During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing

where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

REFERENCES TO RESOLUTION NO. 1070 POLICIES GOVERNING CITY COUNCIL PARTICIPATION IN PUBLIC CONTRACTS

1. Interlocal Agreements. Chapter 39.34 RCW requires the governing bodies of participating public agencies to take appropriate action by ordinance, resolution or otherwise before interlocal agreements may enter into force. All interlocal agreements should appear on the consent calendar, subject to removal in accordance with the City Council Rules of Procedure.

2. Franchise Agreements. Franchise agreements such as Comcast, PSE, water, sewer, and the like require City Council approval. Franchise agreements should be referred to an *Ad Hoc* Council Committee for the study and recommendation prior to presentation to the City Council for approval.

3. Public Works (small works roster).

(a) MRSC rosters. The City wishes to contract with the Municipal Research and Services Center of Washington (MRSC) to adopt for City use those state-wide electronic databases for small works roster and consulting services developed and maintained by MRSC and authorizes the City Manager to sign that contract. In addition, paper and/or electronic rosters may be kept on file by appropriate City departments.

(b) Small works rosters. The following small works roster procedures are established for use by the City pursuant to RCW 39.04.155:

(i) Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair or improvement of real property where the estimated cost does not exceed Two Hundred Thousand Dollars (\$200,000.00), which includes the costs of labor, material, equipment, and sales and/or use taxes as applicable. Instead, the City may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

(ii) Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster.

(iii) Telephone or written quotations. The City shall obtain telephone, written, or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to a contractor who meets the mandatory bidder responsibility criteria in RCW 39.04.350(1) and may establish supplementary bidder criteria under RCW 39.04.350(2).

(A) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation.

(B) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five (5) contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. "Equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

If the estimated cost of the work is from One Hundred Thousand Dollars (\$100,000.00) to Two Hundred Thousand Dollars (\$200,000.00), the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

- (1) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (2) Mailing a notice to these contractors; or
- (3) Sending a notice to these contractors by facsimile or email.

(C) At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

(D) A written record shall be made by the City representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(c) Limited public works process.

(i) If a work, construction, alteration, repair, or improvement project is estimated to cost less than Thirty-Five Thousand Dollars (\$35,000.00), the City may award such a contract using the limited public works process provided under RCW 39.04.155(3). For a limited public works project, the City will solicit electronic or written quotations from a minimum of three (3) contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request.

(ii) For limited public works projects, the City may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(iii) The City shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

(iv) Determining the lowest responsible bidder. The City Council shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by Chapter 133, Laws of 2007 (SHB 2010) and who meets any supplementary bidder responsibility criteria established by the City.

(v) Award. The City Manager or his designee shall present all telephonic quotations/bids, and recommendation for award of the contract to the lowest responsible bidder to the City Council. However, for public works projects under Fifty Thousand Dollars(\$50,000.00), the City Manager shall have the authority to award public works contracts without City Council approval. For public works projects over Fifty Thousand Dollars (\$50,000.00), the City Council shall award all public works contracts.

(c) Consulting services rosters.

(i) Consulting services. Consulting services are professional services that have a primarily intellectual output or product and include architectural and engineering services as defined in RCW 39.80.020.

(ii) Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the consulting services roster or rosters and solicit statements of qualifications from firms providing consulting services. Such advertisements will include information on how to find the address and telephone number of a representative of the City who can provide further details as to the City's projected needs for consulting services. Firms or persons providing consulting services shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a consulting services roster.

(iii) Professional architectural and engineering services. The MSRC rosters will distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services and will announce generally to the public the City's projected requirements for any category or type of professional or other consulting services. The City reserves the right to publish an announcement on each occasion when professional services or other consulting services are required by the agency and to use paper and/or other electronic rosters that may be kept on file by appropriate City documents.

4. Public Works (Subject to Bid). -Public work projects exceeding \$200,000 are subject to bid laws and shall be processed in accordance with the Revised Code of Washington. After opening of bids, results shall be submitted to the Council Committee of origin for study and recommendation prior to being presented to the City Council for approval and if there is no Council Committee of origin, shall be considered by the Council as a whole. Action taken by the City Council in awarding the bid and directing the City Manager to sign contracts should include authority granted to the City Manager to expend funds in the amount of the bid award plus ten percent.

5. Purchase of Supplies, Material, Equipment, and Non-Professional Services. For Code cities of a population of 20,000 or greater there are no bidding requirements for purchases of supplies, material, equipment, or services which are not purchased in connection with a public work. For such purchases, the City Manager shall adopt written guidelines, subject to City Council

approval, to ensure that purchases are made at the lowest possible price from a responsible vendor.

6. Architectural and Engineering Services. Chapter 39.80 RCW provides that in selecting architect and engineer consultants the City shall conduct discussions with one or more firms and shall select the firm deemed the most highly qualified to provide the services required for the proposed project. The Attorney General of the State of Washington has issued an opinion precluding cities from considering price when selecting architects and engineers, except for a final price negotiation after the most qualified architect or engineer has been selected. The following process shall govern awarding of contracts to architects or engineers:

- (a) The City Manager shall advertise the architectural and engineering requirements;
- (b) The City Manager shall thereafter enter into discussion with several firms and select the most qualified architect or engineer;
- (c) The City Manager shall then negotiate the scope of work and price with the architect or engineer selected; and
- (d) If the contract amount does not exceed \$20,000 and has been previously budgeted, the City Manager shall be authorized to sign a contract for such services without approval by the City Council or any committee thereof. If the contract amount exceeds \$20,000, the Contract should appear on the consent calendar, subject to removal in accordance with the City Council Rules of Procedure.
- (e) In case of a disaster, emergency, or immediate City need, including assistance on Capital Improvement Program projects and general engineering services previously approved by the Council, the City Manager shall be authorized to sign Task Order Assignments on multi-year "on-call" civil engineering services consultant contracts, which have been previously approved by the Council for services if the Task Order Assignment does not exceed \$50,000.
- (f) The City Manager shall, as part of the City Manager's monthly report, provide the City Council with a list of contracts with consultants that have been approved by the City Manager pursuant to this resolution.
- (g) The City Manager shall not allow task order assignments for a specific single project that cumulatively add up to an amount greater than \$50,000.00 without being approved by the City Council.

7. Leases of City Real Property. Leases of City real property are subject to review and approval by the City Council. The Mayor shall have discretion to submit any such lease to a standing or ad hoc committee for study and recommendation prior to being presented to the City Council for approval.

8. Contracts for General Professional Services. Contracts for general professional services, which do not involve architects or engineers, are not subject to the bid laws of the State of Washington. Examples of such services are computer consultants, financial consultants, management consultants, and the like. The process for awarding general professional services contracts shall be as follows:

- (a) The City Manager shall research the persons and firms that are available to such professional services, taking into consideration recommendations from any source.

(b) The City Manager shall then negotiate a contract with the party selected, including scope of work and price.

(c) If the contract amount does not exceed \$20,000 and has been previously budgeted, the City Manager shall be authorized to sign a contract for such services without the approval by the City Council or any committee thereof. If the contract amount exceeds \$20,000, the contract should appear on the consent calendar, subject to removal in accordance with the City Council Rules of Procedure.

9. Administrative Contracts. Administrative contracts are contracts which do not fall into any other category described in this rule, and are for services previously budgeted by the City Council. Examples of administrative contracts are agreements with the Sexual Assault Center, VanGo, Senior Nutrition, D.A.W.N., and the like. The City Manager is authorized to execute administrative contracts, and the same shall not be subject to approval by the City Council or any committee thereof.

APPENDIX A

THE SPIRIT OF DES MOINES AWARDS PROGRAM POLICY

The spirit of any community is its citizens, community leaders, volunteers and donors. We are all bettered by the commitment and dedication they exhibit in keeping or enhancing those things that make the City of Des Moines special to us. We are remiss if we don't, from time to time, acknowledge those efforts. That is the impetus behind the Spirit of Des Moines Awards.

PURPOSE

The Spirit of Des Moines Award is given to publicly acknowledge the efforts and accomplishments of individuals' civic and community service to the betterment of the community of Des Moines, Washington – both over the course of a year, and over a lifetime.

ELIGIBILITY

Up to two individuals may be acknowledged in both the annual award, and lifetime award categories. Nominees for the award need not be Des Moines residents, but must have shown a consistent commitment and dedication to the betterment of Des Moines. Any person is eligible for the annual Spirit of Des Moines Award. Any person is eligible for the lifetime Spirit of Des Moines Award who has demonstrated at least two decades of civic and community service, or who has performed an extraordinary service to the community with long-lasting implications. An annual award recipient is eligible to be considered for future Spirit of Des Moines awards. A lifetime award recipient is ineligible to be considered for future Spirit of Des Moines awards.

NOMINATIONS

In September of each year, the community shall be solicited for nominees for the annual and lifetime Spirit of Des Moines Awards. Nominations shall be reviewed by a community-based review committee, and finalists will be chosen based on the eligibility criteria and any materials submitted to support the nomination. There will be at least two finalists for each position.
~~finalists for each position.~~

REVIEW COMMITTEE

A community-based review committee shall be established to review nominations from the community for the Spirit of Des Moines Awards. The review committee shall have no more than nine (9) members, and no fewer than five (5) members. The members of the review committee, who must be residents of Des Moines, shall be chosen from a cross-section of the Des Moines community – both geographically and in terms of the activities of the community. The ~~mayor~~Mayor and one other Des Moines ~~city council~~City Council member shall serve on the committee, and the ~~mayor~~Mayor will be entrusted with choosing the remaining committee members. Neither elected official shall chair the review committee. Meeting notes shall be taken by the review committee, and those notes shall be kept and maintained by the City of Des Moines.

REVIEW PROCESS

Nominations are solicited from the community in September each year. The review committee shall meet no later than October 15th, and finalists shall be chosen by the committee no later than November 1st. Recipients shall be chosen by the Council from the group of finalists.

PUBLIC ACKNOWLEDGEMENT

The Spirit of Des Moines Awards shall be given out at a public meeting or event by the ~~mayer~~Mayor, no later than the middle of November each year. The physical awards reflect the connection of Des Moines, Washington to Puget Sound, and the official City of Des Moines theme of “the Waterland Community”.

CONTRIBUTIONS AND SPONSORSHIPS

Contributions and sponsorships may be solicited to offset the cost of presenting the Spirit of Des Moines Awards. Any funds collected in excess of the direct cost of presenting the awards shall be shared equally among Award recipients, and given as donations in their name to a local charity of their choosing.

ORGANIZATION AWARD

An honorary award may be given each year, at the recommendation of the review committee, to recognize the activities of an organization that has demonstrated a consistent commitment and dedication to the betterment of Des Moines.

(Res. 1140, 2011).

CITY ATTORNEY'S FIRST DRAFT 03/27/2012

DRAFT ORDINANCE NO. 12-030

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the day and time of regular City Council meetings, and amending DMMC 4.04.020.

WHEREAS, DMMC 4.04.020 sets the date and time for regular meetings of the City Council, and

WHEREAS, members of the City Council desire to convene Council meetings at a different time, and

WHEREAS, after due deliberation, the City Council finds that the provisions of DMMC 4.04.020 should be amended as set forth in this Ordinance; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 4.04.020 and section 1 of Ordinance No. 358 as amended by section 1(A) of Ordinance No. 436 as amended by section 1 of Ordinance No. 562 as amended by section 1 of Ordinance No. 641 as amended by section 4 of Ordinance No. 765 as amended by section 1 of Ordinance No. 1039, are amended to read as follows:

Council meetings - Time.

(1) The regular meetings of the City Council are held every Thursday, with the meetings convening at ~~7:30~~ 7:00 p.m.; except when the regular meeting date falls on a legal holiday the meeting is canceled and the City Council shall not meet.

(2) The presiding officer may cancel a regular meeting at the presiding officer's discretion as the business of the City Council requires; except the City Council shall meet at least once each month.

NEW SECTION. Sec. 2. Severability - Construction.

Ordinance No. _____
Page 2 of 2

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

NEW SECTION. Sec. 3. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2012 and signed in authentication thereof this _____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Sale and issuance of \$2,810,000
Limited Tax General Obligation Refunding Bonds,
2012 to advance refund the City's Limited Tax
General Obligation and Refunding Bonds, 2002.

FOR AGENDA OF: April 5, 2012

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: April 5, 2012

ATTACHMENTS:

1. Ordinance No. 1535 (Draft Ordinance No.
12-034)

CLEARANCES:

☒ Legal-Bond Counsel

☒ Finance 

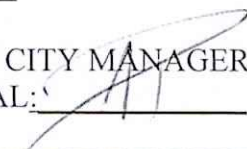
☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☐ Planning, Building & Public Works N/A

☐ Police N/A

☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this report is to seek City Council approval of Ordinance No. 1535 (Draft Ordinance No. 12-034) providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the Limited Tax General Obligation and Refunding Bonds, 2002.

Suggested Motion

Motion: "To move to enact Ordinance No. 1535 (Draft Ordinance No. 12-034) providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the City's Limited Tax General Obligation and Refunding Bonds, 2002."

Background

First reading of Draft Ordinance No. 12-034 (assigned Ordinance No. 1535) was approved by the City Council on March 22, 2012.

Discussion

Final approval of Ordinance No. 1535 (Draft Ordinance No. 12-034) will authorize the issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012. In conjunction, therewith, the City Council authorizes execution of purchase agreement with purchaser, Seattle-Northwest Securities Corporation to purchase all of the bonds, and execution of Escrow Agreement with Escrow Trustee.

Alternatives

None.

Financial Impact

Bond pricing today provides for net present value savings of \$216,741.13.

Recommendation

Staff recommends that the City Council authorize the issuance of \$2,810,000 in Limited Tax General Obligation Refunding Bonds, 2012, by adopting Ordinance No. 1535 (Draft Ordinance No. 12-034).

Concurrence

The Municipal Facilities Committee and Finance Department both concur with this action.

ORDINANCE NO. 1535

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation.

WHEREAS, pursuant to Ordinance No. 1312, the City has heretofore issued and sold the 2002 Bonds, of which \$2,795,000 in aggregate principal amount is currently outstanding, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to defease all or a portion of the 2002 Bonds pursuant to a refunding plan adopted by the City, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to redeem the 2002 Bonds maturing on and after December 1, 2014, in whole or in part, at any time on and after December 1, 2012, at a redemption price of par plus accrued interest to the date fixed for redemption, and

WHEREAS, all of the outstanding 2002 Bonds mature on and after December 1, 2014, and

WHEREAS, undertaking a refunding plan to advance refund and defease all of the outstanding 2002 Bonds to their earliest redemption date on December 1, 2012, will effect a debt service savings to the City, and

WHEREAS, pursuant to chapter 39.53 RCW, the City is

authorized to sell and issue, without an election, limited tax general obligation bonds of the City to refund the 2002 Bonds, and

WHEREAS, the City deems it to be in the best interest of the City that the City incur indebtedness and issue and sell its limited tax general obligation refunding bonds for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan, and

WHEREAS, the incurrence of such indebtedness will not cause the total indebtedness of the City incurred without the assent of the voters of the City to exceed the limitations set forth in chapter 39.36 RCW, and

WHEREAS, the Purchaser has offered, by way of the Purchase Agreement, to purchase such limited tax general obligation bonds upon the terms and conditions set forth below; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec 1. Definitions. Unless the context otherwise requires, the terms defined in this Section, for all purposes of this Ordinance (including the recitals hereto) and of any ordinance supplemental hereto, shall have the meanings herein specified; words importing the singular number include the plural number and vice versa:

(1) "Annual Debt Service" means, in any year, that year's total of principal and interest requirements for the then-outstanding Bonds or Parity Bonds, as the context may require (except the principal maturity of any Bonds or Parity Bonds issued as term bonds), plus any mandatory sinking fund or mandatory bond redemption requirement for such Bonds or Parity Bonds for that year.

(2) "Authorized Officer" means the City Manager and the City Finance Director, acting alone or in combination.

(3) "Average Annual Debt Service" means, in any year, the sum of the remaining Annual Debt Service of the then-

outstanding Bonds, divided by the number of years such Bonds are scheduled to remain outstanding.

(4) "Beneficial Owner" means, with respect to any Bond, the Person named on the records of the Custodian as having the right, without a physical certificate evidencing such right, to transfer, to hypothecate and to receive the payment of the principal of, premium, if any, and interest on such Bond as the same becomes due and payable.

(5) "Bond Principal and Interest Account" means the Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(6) "Bond Register" means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bonds.

(7) "Bond Reserve Account" means the Limited Tax General Obligation Refunding Bond Reserve Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(8) "Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation Refunding Bonds, 2012, the sale and issuance of which are authorized by this Ordinance.

(9) "Book-Entry Termination Date" means the fifth business day following the date of receipt by the Registrar of the City's request to terminate the book-entry system of registering the beneficial ownership of the Bonds.

(10) "City" means the City of Des Moines, Washington, a code city organized and existing under State law.

(11) "City Council" means the City Council of the City.

(12) "Closing" means the time on the Date of Issue when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

(13) "Code" means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

(14) "Custodian" means (a) The Depository Trust Company, New York, New York, or (b) any successor thereto engaged by the City to operate a book-entry system for recording, through electronic or manual means, the beneficial ownership of the Bonds, in which system no physical certificates are issued to the Beneficial Owners of the Bonds, but in which a limited number of physical certificates are issued to and registered in the name of the Custodian or its nominee, and delivered to the Custodian; provided, that such book-entry system operated by the Custodian may include the use of subsystems of recording the beneficial ownership of Bonds which are operated by parties other than the Custodian and the use of a nominee for the Custodian; and the term "Custodian," as used herein, includes any party operating any such subsystem.

(15) "Date of Issue" means the date on which the Bonds are issued and delivered to the Purchaser in return for payment of the purchase price therefor.

(16) "Escrow Agent" means U.S. Bank National Association, acting in its fiduciary capacity as Escrow Agent pursuant to the Escrow Agreement.

(17) "Escrow Agreement" means that certain Escrow Agreement, to be dated as of the Date of Issue, by and between the City and the Escrow Agent, in substantially the same form as the draft dated April 5, 2012, a copy of which is on file with the City Clerk and is incorporated herein by this reference.

(18) "Escrow Obligations" means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

(19) "Future Parity Bonds" means all limited tax general obligation bonds of the City issued after the Date of Issue, for the payment of principal and interest on which the City has also pledged the Net Revenue.

(20) "Government Obligations" means "government obligations," as defined in chapter 39.53 RCW, as now in existence or hereafter amended.

(21) "Letter of Representations" means the Letter of Representations, between the City and the Custodian pertaining to the payment of the Bonds and the "book-entry" system for evidencing the beneficial ownership of the Bonds prior to the Book-Entry Termination Date.

(22) "Marina" means the small boat harbor and marina, including the Redondo facilities, owned and operated by the City.

(23) "Marina Improvement Projects" means capital improvements to the Marina, including, but not limited to, the improvements described in the marina master plan of the City.

(24) "Marina Revenue Fund" means that special fund of the City into which all Revenue of the Marina (except for earnings in any special fund for the redemption of revenue obligations of the Marina) shall be deposited.

(25) "Maximum Annual Debt Service" means the maximum amount of Annual Debt Service that shall become due in any future year on any outstanding Bonds or Parity Bonds, as the context may require.

(26) "MSRB" means the Municipal Securities Rulemaking Board.

(27) "Net Revenue" means the Revenue of the Marina less the Operating and Maintenance Expense.

(28) "Operating and Maintenance Expense" means all necessary operating expenses of the Marina, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of the Marina, but shall exclude depreciation, interest expense, and all general administrative expenses of the City.

(29) "Ordinance" means this Ordinance No. 1535 of the City.

(30) "Owner" means the person named as the registered owner of a Bond on the Bond Register.

(31) "Parity Bonds" means, collectively, (a) the Bonds, (b) the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 2008A, and (c) any Future Parity Bonds.

(32) "Preliminary Official Statement" means the Preliminary Official Statement pertaining to the Bonds, dated March 28, 2012.

(33) "Purchase Agreement" means the Bond Purchase Agreement for the Bonds by and between the City and the Purchaser, which written Purchase Agreement is on file with the City Clerk and is incorporated herein by this reference.

(34) "Purchaser" means Seattle-Northwest Securities Corporation.

(35) "RCW" means the Revised Code of Washington, as amended.

(36) "Refunding Plan" means the plan to advance refund and defease all of the outstanding 2002 Bonds, to fund a deposit to the Bond Reserve Account, and to pay the incidental costs and costs related to the sale and issuance of the Bonds, all as more particularly defined and described in the Escrow Agreement.

(37) "Registrar" means the fiscal agency of the State located in New York, New York (as of the Date of Issue, The Bank of New York Mellon), which fiscal agency is appointed from time to time by the State Finance Committee pursuant to chapter 43.80 RCW.

(38) "Reserve Requirement" means the least of (1) 1.25 times the Average Annual Debt Service with respect to all outstanding Bonds; (2) Maximum Annual Debt Service with respect

to all outstanding Bonds; or (3) 10% of the proceeds of the Bonds.

(39) "Revenue of the Marina" means all of the earnings and revenues received by the City from the maintenance and operation of the Marina, except government grants, proceeds from the sale of property, City taxes collected by or through the Marina, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Marina obligations (until commingled with other earnings and revenues of the Marina) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

(40) "Rule" means SEC Rule 15c2-12.

(41) "SEC" means the United States Securities and Exchange Commission.

(42) "State" means the State of Washington.

(43) "2002 Bond Redemption Date" means December 1, 2012.

(44) "2002 Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation and Refunding Bonds, 2002, currently outstanding in the aggregate principal amount of \$2,795,000.

Sec 2. Finding, purpose and description of Bonds. The City Council hereby finds that undertaking the Refunding Plan will be in the best interest of the City because it will effect a debt service savings to the City. To that end, the incurrence of indebtedness and the issuance of by the City of its "Limited Tax General Obligation Refunding Bonds, 2012" for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan are hereby authorized.

The Bonds shall be issued in the aggregate principal amount of \$2,810,000. The Bonds shall be dated the Date of Issue; shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity;

and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall bear interest at the rates and shall mature on December 1 in each of the years and in the principal amounts, all as set forth below:

Maturity Date (December 1)	Principal Amount	Interest Rate Per Annum	Initial CUSIP Number
2012	\$265,000	2.00%	250172 HLO
2013	230,000	2.00	250172 HM8
2014	230,000	2.00	250172 HN6
2015	235,000	2.00	250172 HP1
2016	240,000	3.00	250172 HQ9
2017	245,000	3.00	250172 HR7
2018	250,000	4.00	250172 HS5
2019	50,000	2.50	250172 HT3
2019	215,000	4.00	250172 HX4
2020	270,000	4.00	250172 HU0
2021	285,000	4.00	250172 HV8
2022	295,000	4.00	250172 HW6

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent interest payment date to which interest has been paid or duly provided for, whichever is later, payable on December 1, 2012, and semiannually thereafter on June 1 and December 1 of each year to their maturity.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the Date of Issue, all Bonds maturing in the same maturity year and bearing the same initial CUSIP number shall be issued in the form of a single certificate, which certificate shall be registered in the name of the Custodian, or its nominee, and delivered to the Custodian. The Custodian shall hold each such Bond certificate in fully immobilized form for

the benefit of the Beneficial Owners of the Bonds pursuant to the Letter of Representations, until the earliest to occur of either (a) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof; (b) the Book-Entry Termination Date; or (c) the date the City determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the City is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this Section 2, the Custodian will be deemed to be the Owner of the Bonds for all purposes, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The City may terminate the "book-entry" system of registering ownership of the Bonds at any time (provided the City is not then in default of any payment then due on the outstanding Bonds) by delivering to the Registrar: (1) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner's nominee on the Book-Entry Termination Date; (2) a list identifying the Beneficial Owners as to both name and address; and (3) a supply of Bond certificates, if necessary for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner's duly appointed agent, naming such Beneficial Owner or such Beneficial Owner's nominee as the Owner thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such

issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with Section 11 hereof.

Neither the City nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Sec 3. Place, manner and medium of payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar (or, if approved by the City Finance Director, by wire transfer) on or before the interest payment date, to the Owners, at the addresses for such Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. From and after the Book-Entry Termination Date, the principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Owners at the principal corporate trust office of the Registrar.

Sec 4. No redemption; open market purchase. The Bonds shall not be subject to redemption prior to their scheduled maturity. However, the City reserves the right to purchase any or all of the Bonds on the open market at any time and at any price. All Bonds so purchased by the City shall be surrendered to the Registrar for cancellation.

Sec 5. Debt limit not exceeded. The City finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the City.

Sec 6. Debt service coverage covenant. The City covenants and agrees that it has established, maintains, and revises as necessary and collects such rental fees and charges for boat moorage and other Marina services furnished, sufficient to produce Net Revenue in each calendar year, which, together with other revenue available therefor, will be at least equal to 1.25 times the Annual Debt Service on the outstanding Parity Bonds in the year for which such debt service coverage ratio is being calculated.

Sec 7. Pledge of full faith, credit and resources and Marina revenue. The Bonds are limited tax general obligations of the City. The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, it will include in its budgets and make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City upon all property within the City subject to taxation in amounts which, together with the Net Revenue and any other money of the City legally available for such purposes, shall be sufficient to pay such principal and interest on the Bonds as the same shall become due. The City hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of principal and interest on the Bonds. The City hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the principal of and interest on the Bonds shall be within and as a part of the tax levy permitted the City without a vote.

In addition, the City hereby irrevocably pledges the Net Revenue for the payment of principal and interest on the Bonds. The City hereby further irrevocably sets aside, pledges and appropriates to the payment of the principal of and interest on the Bonds a sufficient portion of the Net Revenue and each annual tax levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds. Such portion of the Net Revenue, taxes and other money to be used for such purposes shall be deposited into the Bond Principal and Interest Account of the Marina Revenue Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

Sec 8. Form of Bonds. The Bonds shall be wordprocessed, printed or lithographed on good bond paper in a form consistent with this Ordinance and State law.

Sec 9. Execution of Bonds. The Bonds shall be signed on behalf of the City with the facsimile or manual signatures of the Mayor and the City Clerk, and shall have the seal of the City impressed or a facsimile of such seal imprinted on the Bonds.

In case either or both of the officers who shall have executed any Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar or issued by the City, such Bond nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond also may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond such persons were not such officers of the City.

Sec 10. Authentication of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the City, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance.

Only such Bonds as shall bear a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered under and are entitled to the benefits of this Ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Sec 11. Registration, transfer and exchange. The City covenants that, until all Bonds shall have been surrendered and cancelled, it will cause the Registrar to maintain a system of recording the ownership of each Bond that complies with the provisions of the Code. To that end, the Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The City and the Registrar, in its discretion, may deem and treat the Owner of each Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3 of this Ordinance, but such registration may be transferred as provided in this Section 11. All such payments made as provided in Section 3 of this Ordinance shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred or exchanged. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, transfer of any Bond shall be valid only if it is surrendered at the principal corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee for such transfer (other than any taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

On and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate

principal amount of Bonds of the same maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment or maturity date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

Sec 12. Mutilated, lost, stolen or destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution for such mutilated, lost, stolen or destroyed Bond, all in accordance with law. If such mutilated, lost, stolen or destroyed Bond has matured, the City, at its option, may pay the same without the surrender of the original Bond. However, no such substitution or payment shall be made unless and until the applicant shall furnish (a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership of such original Bond, and (b) such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Bond shall be furnished unless the applicant shall reimburse the City and the Registrar for their respective expenses in the furnishing of such substitute Bond. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this Ordinance with all other Bonds issued under this Ordinance.

Sec 13. Defeasance. The City may, at any time, defease all or a portion of the Bonds (the "Defeased Bonds"), as follows: if money and/or Government Obligations maturing at such times and bearing such interest as will provide, without any reinvestment, amounts sufficient to repay, redeem or retire the Defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account (the "Escrow Account") pledged irrevocably to the repayment, redemption or retirement of the Defeased Bonds, then all right and interest of the Owners of the Defeased Bonds in the covenants of this Ordinance and in

the funds and accounts obligated to the payment of the Defeased Bonds shall cease and become void. The Owners of the Defeased Bonds shall have the right to receive payment of the principal of and interest on the Defeased Bonds only from the Escrow Account. The Defeased Bonds shall no longer be deemed to be outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine.

Sec 14. Sale of the Bonds. The Purchaser has presented the Purchase Agreement to the City pursuant to which the Purchaser has offered to purchase the Bonds upon the terms and conditions provided in the Purchase Agreement, which written Purchase Agreement is on file with the City Clerk and is incorporated in this Ordinance by this reference. The City Council finds that entering into the Purchase Agreement is in the City's best interest and therefore accepts the offer contained in the Purchase Agreement and authorizes the execution of the Purchase Agreement by the City Manager.

Sec 15. Execution of documents; delivery of Bonds; temporary Bonds. The Bonds will be printed at City expense and will be delivered to the Purchaser at the Closing in accordance with the terms of the Purchase Agreement, together with the approving legal opinion of Gottlieb Fisher PLLC ("Bond Counsel"), Seattle, Washington, relative to the issuance of the Bonds. Bond Counsel has not been engaged to review or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and Bond Counsel's opinion shall so state. Bond Counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

If definitive Bonds are not ready for delivery by the Closing, the City Finance Director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this

Ordinance with respect to the payment, security and obligation of such temporary Bonds as definitive Bonds authorized by this Ordinance. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners for definitive Bonds when the latter are ready for delivery.

The Authorized Officers are authorized and directed to execute and/or approve, as appropriate, all documents, including but not limited to, the final official statement pertaining to the Bonds, and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

Sec 16. Conditional call of 2002 Bonds for redemption.

The City hereby calls the 2002 Bonds for redemption on the 2002 Bond Redemption Date at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date. Such call for redemption shall become irrevocable upon delivery of the Bonds to the Purchaser at the Closing; provided, however, that if the Bonds are not delivered to the Purchaser at the Closing, or if the Purchaser fails to pay the full purchase price therefor at the Closing for any reason, then this call of such 2002 Bonds for redemption shall be hereby automatically revoked and shall be null and void.

Sec 17. Escrow Agreement. The Escrow Agreement is hereby approved in order to accomplish the Refunding Plan. The Authorized Officers are authorized and directed: (a) to execute and to deliver the Escrow Agreement, on behalf of the City, to the Escrow Agent on the Date of Issue, with such changes as are deemed by such Authorized Officer(s) as actually execute such document to be in the best interests of the City; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the City; and (b) to cause the Escrow Agent to deliver notices of defeasance and redemption of the 2002 Bonds in accordance with the Escrow Agreement.

Sec 18. Acquisition of Escrow Obligations. The Authorized Officers shall, at or prior to the Closing, make

appropriate arrangements for the payment for and delivery of any Escrow Obligations which are to be purchased in the open market pursuant to the Refunding Plan; and shall, prior to the Closing, deliver or cause to be delivered to the United States Bureau of Public Debt subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the initial cash to be provided to the Escrow Agent pursuant to the Refunding Plan, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

The Escrow Agent shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt shall be payable to the Escrow Agent. Such subscription may be amended as permitted by federal law.

Sec 19. Verification of sufficiency of escrow. The Authorized Officers are authorized and directed to obtain, prior to Closing, independent verification that, among other things, the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

Sec 20. Establishment of Bond Accounts. There is hereby created and established in the office of the City Finance Director special accounts for the Bonds in the Marina Revenue Fund to be designated as the "Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012" (the "Bond Principal and Interest Account") and "Limited Tax General Obligation Refunding Bond Reserve Account, 2012" (the "Bond Reserve Account"). Each such Bond account shall be held separate and apart from the other.

The accrued interest on the Bonds received by the City upon the sale of the Bonds, if any, shall be deposited into the Bond Principal and Interest Account in the Marina Revenue Fund and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Bond Principal and Interest Account shall be used by the City, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

The Bond Reserve Account is established in the Marina Revenue Fund for the purposes of securing the payment of the Bonds. At the Closing, the City will transfer and pay into the Bond Reserve Account (a) the sum of \$19,215.36 derived entirely from sale proceeds of the Bonds, and (b) the sum of \$279,500.00, constituting all of the funds on deposit in the City's Limited Tax General Obligation and Refunding Bond Reserve Account, 2002, established pursuant to Ordinance No. 1312. The City covenants and agrees that it will set aside and pay into the Bond Reserve Account out of Revenue of the Marina or from any other money that the City may have available for that purpose such amounts so that by no later than December 31, 2012, there shall have been accumulated in the Bond Reserve Account an amount not less than the Reserve Requirement for the Bonds. The City further covenants and agrees that when the required amounts have been paid into the Bond Reserve Account in the Marina Revenue Fund, it will maintain an amount of money and assets in the Bond Reserve Account that will be equal to the Reserve Requirement.

In the event there shall be a deficiency in the Bond Principal and Interest Account to meet maturing installments of either principal of or interest on any Bonds, such deficiency shall be made up from the Bond Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Bond Reserve Account by reason of any such withdrawal shall be made up from the Net Revenue or any other money legally available therefor (after providing for the required deposits to the Bond Principal and Interest Account).

Income from the investments in the Bond Principal and Interest Account shall be deposited in such account. Income from investments in the Bond Reserve Account shall be deposited in such account until the amount therein is equal to the Reserve

Requirement, and any excess shall be deposited into the Bond Principal and Interest Account. Investments in the Bond Reserve Account shall be valued at fair market value and marked to market at least once each year. Investments in the Bond Reserve Account shall not have maturities extending beyond five years. If the value of the money and investments in the Bond Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Bond Principal and Interest Account.

Sec. 21. Application of Bond proceeds. Proceeds from the sale of the Bonds in the amount of \$2,959,222.20 (which is equal to the original aggregate principal amount of the Bonds, plus original issue premium of \$177,153.60, less an underwriter's discount of \$27,931.40) shall be applied as follows: (a) the sum of \$19,215.36 shall be deposited into the Bond Reserve Account; (b) the sum of \$2,937,598.88 shall be paid to the Escrow Agent, for application to the payment of the costs of advance refunding and defeasing all of the 2002 Bonds and paying the costs of issuing the Bonds; and (c) the sum of \$2,407.96 (the "rounding amount") shall be deposited into the Bond Principal and Interest Account for application to the payment of the interest first coming due on the Bonds.

Sec 22. Tax-exemption covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds which would cause any Bond to be an "arbitrage bond" within the meaning of section 148 of the Code.

The City further covenants that it will calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of Bond proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Bonds, plus income

derived from such excess earnings, to the extent and in the manner required by section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance which would cause any Bond to be treated as a "private activity bond" (as defined in section 141(b) of the Code) subject to treatment under said section 141(b) as an obligation not described in section 103(a) of the Code, unless the tax exemption thereof is not affected.

The City hereby designates the Bonds as "qualified tax-exempt obligations," as defined in section 265 of the Code (relating to the partial interest expense deduction authorized for banks, thrift institutions and certain other financial institutions). The City covenants that it will not issue more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 2012, and authorizes and directs the Authorized Officers to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Sec 23. Preliminary official statement declaration. The City has been provided with copies of the Preliminary Official Statement. For the sole purpose of the Purchaser's compliance with SEC Rule 15c2-12(b)(1), the City "deems final" the Preliminary Official Statement, as of its date, except for the omission of information on offering prices, interest rates, selling compensation, delivery dates, ratings, and other terms of the Bonds dependent on such matters.

Sec 24. Undertaking to provide continuing disclosure. This Section constitutes the City's written undertaking for the benefit of the Owners and Beneficial Owners of the Bonds required by subsection (b)(5)(i) of Rule 15c2-12 of the SEC (the "Undertaking").

The City hereby agrees to provide or cause to be provided to the MSRB the following annual financial information and operating data (collectively, the "Annual Financial Information") for each prior fiscal year, commencing with the fiscal year ending December 31, 2011, on or before the last day of the seventh month following the end of such prior fiscal year:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by state law; which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the City, they will be provided (the "Annual Financial Statements");

(b) Principal amount of the Parity Bonds outstanding and the coverage calculation showing the ratio of Net Revenue to Annual Debt Service with respect to the Parity Bonds;

(c) Updated operating and financial data regarding the Marina, of the type found under the heading "The Marina" in the Preliminary Official Statement;

(d) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Moorage Rates," "City of Des Moines Guest Moorage Rates" and "Current Length Distribution of Waiting List Vessels";

(e) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Marina Income Statement (Years ending December 31)" and "City of Des Moines Marina Statement of Net Assets (Years ending December 31)";

(f) Historical financial information (for the prior fiscal year only) of the type shown in the table in the Preliminary Official Statement entitled "Historical Assessed Valuation and Property Tax Collection Record";

(g) Historical financial information (for the prior fiscal year only and excluding overlapping debt information) of the type shown in the tables in the Preliminary Official Statement entitled "Debt Capacity Computation," "Debt Information" and "Bonded Debt Ratios;

(h) Historical financial information (for the prior fiscal year only) of the type shown in the Preliminary Official Statement under the headings "Pension System" and "Insurance Coverage";

(i) Any change in the auditing, budgetary process or investment policies of the City; and

(j) A narrative explanation of the reasons for any amendments to this Undertaking made during the previous fiscal year and the impact of such amendments on the Annual Financial Information being provided.

Items (b) through (j) shall be required only to the extent that such information is not included in the annual financial statements.

In its provision of such financial information and operating data, the City may cross-reference to any "final official statement" (as defined in the Rule) available to the public on the MSRB's internet web site or filed with the SEC.

If not submitted as part of the Annual Financial Information, then when and if available, the City shall provide its Annual Financial Statements, which shall have been audited by such auditor as shall be then required or permitted by State law, to the MSRB.

The City further agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

7. Modifications to rights of the Owners of the Bonds, if material;

8. Bond calls, if material, and tender offers;

9. Defeasances of the Bonds;

10. Release, substitution or sale of property securing repayment of the Bonds, if material;

11. Rating changes;

12. Bankruptcy, insolvency, receivership, or similar event of the City;

13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this Undertaking, the City advises with reference to item 14 above that there is no trustee for the Bonds.

The City also agrees to provide or cause to be provided to the MSRB, in a timely manner, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the seventh month following the end of such prior fiscal year.

The City agrees that all documents provided to the MSRB pursuant to this Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

The City may amend its obligations under, or waive any provision of, this Undertaking upon receipt of a favorable opinion of nationally recognized bond counsel or other counsel familiar with the federal securities law, or pursuant to a favorable "no-action letter" issued by the SEC. In the event of any amendment or waiver of the City's obligations under this Undertaking, the City agrees to describe such amendment in the Annual Financial Information for such fiscal year and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and its impact of the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change will be given in the same manner as for a material event, and (B) the Annual Financial Information for the fiscal year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

The City's obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance or payment in full of all of the then outstanding Bonds. This Undertaking, or any

provision hereof, shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require this Undertaking or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the MSRB with copies of such opinion.

The right of each Owner or Beneficial Owner of Bonds to enforce the provisions of this Undertaking shall be limited to the right to obtain specific enforcement of the City's obligations under this Undertaking, and any failure by the City to comply with the provisions of this Undertaking shall not be a default with respect to the Bonds under this Ordinance.

The Authorized Officers are authorized and directed to take such further action on behalf of the City as may be necessary, appropriate or convenient to carry out the requirements of this Undertaking.

Sec 25. Additional covenant. The City covenants to the Owners that it will at all times as long as the Bonds are outstanding (a) maintain the Marina in good repair, working order and condition, (b) operate the Marina in an efficient manner and at a reasonable cost, and (c) establish, maintain and collect rentals, rates and charges for Marina services as may be necessary to provide for (1) the Operating and Maintenance Expenses of the Marina and (2) the deposits into the Bond Principal and Interest Account and the Bond Reserve Account.

Sec 26. Contract; severability. The covenants contained in this Ordinance shall constitute a contract between the City and the Owners of each and every Bond. The City unconditionally covenants that it will keep and perform all of the covenants of the Bonds and this Ordinance. If any one or more of the provisions of this Ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this Ordinance or the Bonds, and this Ordinance and the Bonds shall be construed and enforced as if such unconstitutional or invalid provision had not been contained in this Ordinance.

Sec 27. Effective date. This Ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this 5th day of April, 2012, and signed in authentication thereof this 5th day of April, 2012.

M A Y O R

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

Published: April 11, 2012

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1535, Adopted April 5, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation

The full text of the Ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: April 11, 2012

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Sale and issuance of \$2,810,000
Limited Tax General Obligation Refunding Bonds,
2012 to advance refund the City's Limited Tax
General Obligation and Refunding Bonds, 2002.

ATTACHMENTS:

1. Ordinance No. 1535 (Draft Ordinance No.
12-034)

FOR AGENDA OF: April 5, 2012

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: April 5, 2012

CLEARANCES:

- ☒ Legal-Bond Counsel
- ☒ Finance ph
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☐ Planning, Building & Public Works N/A
- ☐ Police N/A
- ☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this report is to seek City Council approval of Ordinance No. 1535 (Draft Ordinance No. 12-034) providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the Limited Tax General Obligation and Refunding Bonds, 2002.

Suggested Motion

Motion: "To move to enact Ordinance No. 1535 (Draft Ordinance No. 12-034) providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to provide funds to advance refund the City's Limited Tax General Obligation and Refunding Bonds, 2002."

Background

First reading of Draft Ordinance No. 12-034 (assigned Ordinance No. 1535) was approved by the City Council on March 22, 2012.

Discussion

Final approval of Ordinance No. 1535 (Draft Ordinance No. 12-034) will authorize the issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012. In conjunction, therewith, the City Council authorizes execution of purchase agreement with purchaser, Seattle-Northwest Securities Corporation to purchase all of the bonds, and execution of Escrow Agreement with Escrow Trustee.

Alternatives

None.

Financial Impact

Bond pricing today provides for net present value savings of \$216,741.13.

Recommendation

Staff recommends that the City Council authorize the issuance of \$2,810,000 in Limited Tax General Obligation Refunding Bonds, 2012, by adopting Ordinance No. 1535 (Draft Ordinance No. 12-034).

Concurrence

The Municipal Facilities Committee and Finance Department both concur with this action.

ORDINANCE NO. 1535

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation.

WHEREAS, pursuant to Ordinance No. 1312, the City has heretofore issued and sold the 2002 Bonds, of which \$2,795,000 in aggregate principal amount is currently outstanding, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to defease all or a portion of the 2002 Bonds pursuant to a refunding plan adopted by the City, and

WHEREAS, pursuant to Ordinance No. 1312, the City reserved the right to redeem the 2002 Bonds maturing on and after December 1, 2014, in whole or in part, at any time on and after December 1, 2012, at a redemption price of par plus accrued interest to the date fixed for redemption, and

WHEREAS, all of the outstanding 2002 Bonds mature on and after December 1, 2014, and

WHEREAS, undertaking a refunding plan to advance refund and defease all of the outstanding 2002 Bonds to their earliest redemption date on December 1, 2012, will effect a debt service savings to the City, and

WHEREAS, pursuant to chapter 39.53 RCW, the City is

authorized to sell and issue, without an election, limited tax general obligation bonds of the City to refund the 2002 Bonds, and

WHEREAS, the City deems it to be in the best interest of the City that the City incur indebtedness and issue and sell its limited tax general obligation refunding bonds for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan, and

WHEREAS, the incurrence of such indebtedness will not cause the total indebtedness of the City incurred without the assent of the voters of the City to exceed the limitations set forth in chapter 39.36 RCW, and

WHEREAS, the Purchaser has offered, by way of the Purchase Agreement, to purchase such limited tax general obligation bonds upon the terms and conditions set forth below; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec 1. Definitions. Unless the context otherwise requires, the terms defined in this Section, for all purposes of this Ordinance (including the recitals hereto) and of any ordinance supplemental hereto, shall have the meanings herein specified; words importing the singular number include the plural number and vice versa:

(1) "Annual Debt Service" means, in any year, that year's total of principal and interest requirements for the then-outstanding Bonds or Parity Bonds, as the context may require (except the principal maturity of any Bonds or Parity Bonds issued as term bonds), plus any mandatory sinking fund or mandatory bond redemption requirement for such Bonds or Parity Bonds for that year.

(2) "Authorized Officer" means the City Manager and the City Finance Director, acting alone or in combination.

(3) "Average Annual Debt Service" means, in any year, the sum of the remaining Annual Debt Service of the then-

outstanding Bonds, divided by the number of years such Bonds are scheduled to remain outstanding.

(4) "Beneficial Owner" means, with respect to any Bond, the Person named on the records of the Custodian as having the right, without a physical certificate evidencing such right, to transfer, to hypothecate and to receive the payment of the principal of, premium, if any, and interest on such Bond as the same becomes due and payable.

(5) "Bond Principal and Interest Account" means the Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(6) "Bond Register" means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bonds.

(7) "Bond Reserve Account" means the Limited Tax General Obligation Refunding Bond Reserve Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(8) "Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation Refunding Bonds, 2012, the sale and issuance of which are authorized by this Ordinance.

(9) "Book-Entry Termination Date" means the fifth business day following the date of receipt by the Registrar of the City's request to terminate the book-entry system of registering the beneficial ownership of the Bonds.

(10) "City" means the City of Des Moines, Washington, a code city organized and existing under State law.

(11) "City Council" means the City Council of the City.

(12) "Closing" means the time on the Date of Issue when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

(13) "Code" means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

(14) "Custodian" means (a) The Depository Trust Company, New York, New York, or (b) any successor thereto engaged by the City to operate a book-entry system for recording, through electronic or manual means, the beneficial ownership of the Bonds, in which system no physical certificates are issued to the Beneficial Owners of the Bonds, but in which a limited number of physical certificates are issued to and registered in the name of the Custodian or its nominee, and delivered to the Custodian; provided, that such book-entry system operated by the Custodian may include the use of subsystems of recording the beneficial ownership of Bonds which are operated by parties other than the Custodian and the use of a nominee for the Custodian; and the term "Custodian," as used herein, includes any party operating any such subsystem.

(15) "Date of Issue" means the date on which the Bonds are issued and delivered to the Purchaser in return for payment of the purchase price therefor.

(16) "Escrow Agent" means U.S. Bank National Association, acting in its fiduciary capacity as Escrow Agent pursuant to the Escrow Agreement.

(17) "Escrow Agreement" means that certain Escrow Agreement, to be dated as of the Date of Issue, by and between the City and the Escrow Agent, in substantially the same form as the draft dated April 5, 2012, a copy of which is on file with the City Clerk and is incorporated herein by this reference.

(18) "Escrow Obligations" means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

(19) "Future Parity Bonds" means all limited tax general obligation bonds of the City issued after the Date of Issue, for the payment of principal and interest on which the City has also pledged the Net Revenue.

(20) "Government Obligations" means "government obligations," as defined in chapter 39.53 RCW, as now in existence or hereafter amended.

(21) "Letter of Representations" means the Letter of Representations, between the City and the Custodian pertaining to the payment of the Bonds and the "book-entry" system for evidencing the beneficial ownership of the Bonds prior to the Book-Entry Termination Date.

(22) "Marina" means the small boat harbor and marina, including the Redondo facilities, owned and operated by the City.

(23) "Marina Improvement Projects" means capital improvements to the Marina, including, but not limited to, the improvements described in the marina master plan of the City.

(24) "Marina Revenue Fund" means that special fund of the City into which all Revenue of the Marina (except for earnings in any special fund for the redemption of revenue obligations of the Marina) shall be deposited.

(25) "Maximum Annual Debt Service" means the maximum amount of Annual Debt Service that shall become due in any future year on any outstanding Bonds or Parity Bonds, as the context may require.

(26) "MSRB" means the Municipal Securities Rulemaking Board.

(27) "Net Revenue" means the Revenue of the Marina less the Operating and Maintenance Expense.

(28) "Operating and Maintenance Expense" means all necessary operating expenses of the Marina, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of the Marina, but shall exclude depreciation, interest expense, and all general administrative expenses of the City.

(29) "Ordinance" means this Ordinance No. 1535 of the City.

(30) "Owner" means the person named as the registered owner of a Bond on the Bond Register.

(31) "Parity Bonds" means, collectively, (a) the Bonds, (b) the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 2008A, and (c) any Future Parity Bonds.

(32) "Preliminary Official Statement" means the Preliminary Official Statement pertaining to the Bonds, dated March 28, 2012.

(33) "Purchase Agreement" means the Bond Purchase Agreement for the Bonds by and between the City and the Purchaser, which written Purchase Agreement is on file with the City Clerk and is incorporated herein by this reference.

(34) "Purchaser" means Seattle-Northwest Securities Corporation.

(35) "RCW" means the Revised Code of Washington, as amended.

(36) "Refunding Plan" means the plan to advance refund and defease all of the outstanding 2002 Bonds, to fund a deposit to the Bond Reserve Account, and to pay the incidental costs and costs related to the sale and issuance of the Bonds, all as more particularly defined and described in the Escrow Agreement.

(37) "Registrar" means the fiscal agency of the State located in New York, New York (as of the Date of Issue, The Bank of New York Mellon), which fiscal agency is appointed from time to time by the State Finance Committee pursuant to chapter 43.80 RCW.

(38) "Reserve Requirement" means the least of (1) 1.25 times the Average Annual Debt Service with respect to all outstanding Bonds; (2) Maximum Annual Debt Service with respect

to all outstanding Bonds; or (3) 10% of the proceeds of the Bonds.

(39) "Revenue of the Marina" means all of the earnings and revenues received by the City from the maintenance and operation of the Marina, except government grants, proceeds from the sale of property, City taxes collected by or through the Marina, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Marina obligations (until commingled with other earnings and revenues of the Marina) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

(40) "Rule" means SEC Rule 15c2-12.

(41) "SEC" means the United States Securities and Exchange Commission.

(42) "State" means the State of Washington.

(43) "2002 Bond Redemption Date" means December 1, 2012.

(44) "2002 Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation and Refunding Bonds, 2002, currently outstanding in the aggregate principal amount of \$2,795,000.

Sec 2. Finding, purpose and description of Bonds. The City Council hereby finds that undertaking the Refunding Plan will be in the best interest of the City because it will effect a debt service savings to the City. To that end, the incurrence of indebtedness and the issuance of by the City of its "Limited Tax General Obligation Refunding Bonds, 2012" for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan are hereby authorized.

The Bonds shall be issued in the aggregate principal amount of \$2,810,000. The Bonds shall be dated the Date of Issue; shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity;

and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall bear interest at the rates and shall mature on December 1 in each of the years and in the principal amounts, all as set forth below:

Maturity Date (December 1)	Principal Amount	Interest Rate Per Annum	Initial CUSIP Number
2012	\$265,000	2.00%	250172 HLO
2013	230,000	2.00	250172 HM8
2014	230,000	2.00	250172 HN6
2015	235,000	2.00	250172 HP1
2016	240,000	3.00	250172 HQ9
2017	245,000	3.00	250172 HR7
2018	250,000	4.00	250172 HS5
2019	50,000	2.50	250172 HT3
2019	215,000	4.00	250172 HX4
2020	270,000	4.00	250172 HU0
2021	285,000	4.00	250172 HV8
2022	295,000	4.00	250172 HW6

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent interest payment date to which interest has been paid or duly provided for, whichever is later, payable on December 1, 2012, and semiannually thereafter on June 1 and December 1 of each year to their maturity.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the Date of Issue, all Bonds maturing in the same maturity year and bearing the same initial CUSIP number shall be issued in the form of a single certificate, which certificate shall be registered in the name of the Custodian, or its nominee, and delivered to the Custodian. The Custodian shall hold each such Bond certificate in fully immobilized form for

the benefit of the Beneficial Owners of the Bonds pursuant to the Letter of Representations, until the earliest to occur of either (a) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof; (b) the Book-Entry Termination Date; or (c) the date the City determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the City is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this Section 2, the Custodian will be deemed to be the Owner of the Bonds for all purposes, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The City may terminate the "book-entry" system of registering ownership of the Bonds at any time (provided the City is not then in default of any payment then due on the outstanding Bonds) by delivering to the Registrar: (1) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner's nominee on the Book-Entry Termination Date; (2) a list identifying the Beneficial Owners as to both name and address; and (3) a supply of Bond certificates, if necessary for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner's duly appointed agent, naming such Beneficial Owner or such Beneficial Owner's nominee as the Owner thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such

issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with Section 11 hereof.

Neither the City nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Sec 3. Place, manner and medium of payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar (or, if approved by the City Finance Director, by wire transfer) on or before the interest payment date, to the Owners, at the addresses for such Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. From and after the Book-Entry Termination Date, the principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Owners at the principal corporate trust office of the Registrar.

Sec 4. No redemption; open market purchase. The Bonds shall not be subject to redemption prior to their scheduled maturity. However, the City reserves the right to purchase any or all of the Bonds on the open market at any time and at any price. All Bonds so purchased by the City shall be surrendered to the Registrar for cancellation.

Sec 5. Debt limit not exceeded. The City finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the City.

Sec 6. Debt service coverage covenant. The City covenants and agrees that it has established, maintains, and revises as necessary and collects such rental fees and charges for boat moorage and other Marina services furnished, sufficient to produce Net Revenue in each calendar year, which, together with other revenue available therefor, will be at least equal to 1.25 times the Annual Debt Service on the outstanding Parity Bonds in the year for which such debt service coverage ratio is being calculated.

Sec 7. Pledge of full faith, credit and resources and Marina revenue. The Bonds are limited tax general obligations of the City. The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, it will include in its budgets and make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City upon all property within the City subject to taxation in amounts which, together with the Net Revenue and any other money of the City legally available for such purposes, shall be sufficient to pay such principal and interest on the Bonds as the same shall become due. The City hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of principal and interest on the Bonds. The City hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the principal of and interest on the Bonds shall be within and as a part of the tax levy permitted the City without a vote.

In addition, the City hereby irrevocably pledges the Net Revenue for the payment of principal and interest on the Bonds. The City hereby further irrevocably sets aside, pledges and appropriates to the payment of the principal of and interest on the Bonds a sufficient portion of the Net Revenue and each annual tax levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds. Such portion of the Net Revenue, taxes and other money to be used for such purposes shall be deposited into the Bond Principal and Interest Account of the Marina Revenue Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

Sec 8. Form of Bonds. The Bonds shall be wordprocessed, printed or lithographed on good bond paper in a form consistent with this Ordinance and State law.

Sec 9. Execution of Bonds. The Bonds shall be signed on behalf of the City with the facsimile or manual signatures of the Mayor and the City Clerk, and shall have the seal of the City impressed or a facsimile of such seal imprinted on the Bonds.

In case either or both of the officers who shall have executed any Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar or issued by the City, such Bond nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond also may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond such persons were not such officers of the City.

Sec 10. Authentication of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the City, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance.

Only such Bonds as shall bear a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered under and are entitled to the benefits of this Ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Sec 11. Registration, transfer and exchange. The City covenants that, until all Bonds shall have been surrendered and cancelled, it will cause the Registrar to maintain a system of recording the ownership of each Bond that complies with the provisions of the Code. To that end, the Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The City and the Registrar, in its discretion, may deem and treat the Owner of each Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3 of this Ordinance, but such registration may be transferred as provided in this Section 11. All such payments made as provided in Section 3 of this Ordinance shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred or exchanged. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, transfer of any Bond shall be valid only if it is surrendered at the principal corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee for such transfer (other than any taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

On and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate

principal amount of Bonds of the same maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment or maturity date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

Sec 12. Mutilated, lost, stolen or destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution for such mutilated, lost, stolen or destroyed Bond, all in accordance with law. If such mutilated, lost, stolen or destroyed Bond has matured, the City, at its option, may pay the same without the surrender of the original Bond. However, no such substitution or payment shall be made unless and until the applicant shall furnish (a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership of such original Bond, and (b) such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Bond shall be furnished unless the applicant shall reimburse the City and the Registrar for their respective expenses in the furnishing of such substitute Bond. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this Ordinance with all other Bonds issued under this Ordinance.

Sec 13. Defeasance. The City may, at any time, defease all or a portion of the Bonds (the "Defeased Bonds"), as follows: if money and/or Government Obligations maturing at such times and bearing such interest as will provide, without any reinvestment, amounts sufficient to repay, redeem or retire the Defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account (the "Escrow Account") pledged irrevocably to the repayment, redemption or retirement of the Defeased Bonds, then all right and interest of the Owners of the Defeased Bonds in the covenants of this Ordinance and in

the funds and accounts obligated to the payment of the Defeased Bonds shall cease and become void. The Owners of the Defeased Bonds shall have the right to receive payment of the principal of and interest on the Defeased Bonds only from the Escrow Account. The Defeased Bonds shall no longer be deemed to be outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine.

Sec 14. Sale of the Bonds. The Purchaser has presented the Purchase Agreement to the City pursuant to which the Purchaser has offered to purchase the Bonds upon the terms and conditions provided in the Purchase Agreement, which written Purchase Agreement is on file with the City Clerk and is incorporated in this Ordinance by this reference. The City Council finds that entering into the Purchase Agreement is in the City's best interest and therefore accepts the offer contained in the Purchase Agreement and authorizes the execution of the Purchase Agreement by the City Manager.

Sec 15. Execution of documents; delivery of Bonds; temporary Bonds. The Bonds will be printed at City expense and will be delivered to the Purchaser at the Closing in accordance with the terms of the Purchase Agreement, together with the approving legal opinion of Gottlieb Fisher PLLC ("Bond Counsel"), Seattle, Washington, relative to the issuance of the Bonds. Bond Counsel has not been engaged to review or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and Bond Counsel's opinion shall so state. Bond Counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

If definitive Bonds are not ready for delivery by the Closing, the City Finance Director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this

Ordinance with respect to the payment, security and obligation of such temporary Bonds as definitive Bonds authorized by this Ordinance. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners for definitive Bonds when the latter are ready for delivery.

The Authorized Officers are authorized and directed to execute and/or approve, as appropriate, all documents, including but not limited to, the final official statement pertaining to the Bonds, and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

Sec 16. Conditional call of 2002 Bonds for redemption. The City hereby calls the 2002 Bonds for redemption on the 2002 Bond Redemption Date at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date. Such call for redemption shall become irrevocable upon delivery of the Bonds to the Purchaser at the Closing; provided, however, that if the Bonds are not delivered to the Purchaser at the Closing, or if the Purchaser fails to pay the full purchase price therefor at the Closing for any reason, then this call of such 2002 Bonds for redemption shall be hereby automatically revoked and shall be null and void.

Sec 17. Escrow Agreement. The Escrow Agreement is hereby approved in order to accomplish the Refunding Plan. The Authorized Officers are authorized and directed: (a) to execute and to deliver the Escrow Agreement, on behalf of the City, to the Escrow Agent on the Date of Issue, with such changes as are deemed by such Authorized Officer(s) as actually execute such document to be in the best interests of the City; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the City; and (b) to cause the Escrow Agent to deliver notices of defeasance and redemption of the 2002 Bonds in accordance with the Escrow Agreement.

Sec 18. Acquisition of Escrow Obligations. The Authorized Officers shall, at or prior to the Closing, make

appropriate arrangements for the payment for and delivery of any Escrow Obligations which are to be purchased in the open market pursuant to the Refunding Plan; and shall, prior to the Closing, deliver or cause to be delivered to the United States Bureau of Public Debt subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the initial cash to be provided to the Escrow Agent pursuant to the Refunding Plan, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

The Escrow Agent shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt shall be payable to the Escrow Agent. Such subscription may be amended as permitted by federal law.

Sec 19. Verification of sufficiency of escrow. The Authorized Officers are authorized and directed to obtain, prior to Closing, independent verification that, among other things, the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

Sec 20. Establishment of Bond Accounts. There is hereby created and established in the office of the City Finance Director special accounts for the Bonds in the Marina Revenue Fund to be designated as the "Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012" (the "Bond Principal and Interest Account") and "Limited Tax General Obligation Refunding Bond Reserve Account, 2012" (the "Bond Reserve Account"). Each such Bond account shall be held separate and apart from the other.

The accrued interest on the Bonds received by the City upon the sale of the Bonds, if any, shall be deposited into the Bond Principal and Interest Account in the Marina Revenue Fund and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Bond Principal and Interest Account shall be used by the City, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

The Bond Reserve Account is established in the Marina Revenue Fund for the purposes of securing the payment of the Bonds. At the Closing, the City will transfer and pay into the Bond Reserve Account (a) the sum of \$19,215.36 derived entirely from sale proceeds of the Bonds, and (b) the sum of \$279,500.00, constituting all of the funds on deposit in the City's Limited Tax General Obligation and Refunding Bond Reserve Account, 2002, established pursuant to Ordinance No. 1312. The City covenants and agrees that it will set aside and pay into the Bond Reserve Account out of Revenue of the Marina or from any other money that the City may have available for that purpose such amounts so that by no later than December 31, 2012, there shall have been accumulated in the Bond Reserve Account an amount not less than the Reserve Requirement for the Bonds. The City further covenants and agrees that when the required amounts have been paid into the Bond Reserve Account in the Marina Revenue Fund, it will maintain an amount of money and assets in the Bond Reserve Account that will be equal to the Reserve Requirement.

In the event there shall be a deficiency in the Bond Principal and Interest Account to meet maturing installments of either principal of or interest on any Bonds, such deficiency shall be made up from the Bond Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Bond Reserve Account by reason of any such withdrawal shall be made up from the Net Revenue or any other money legally available therefor (after providing for the required deposits to the Bond Principal and Interest Account).

Income from the investments in the Bond Principal and Interest Account shall be deposited in such account. Income from investments in the Bond Reserve Account shall be deposited in such account until the amount therein is equal to the Reserve

Requirement, and any excess shall be deposited into the Bond Principal and Interest Account. Investments in the Bond Reserve Account shall be valued at fair market value and marked to market at least once each year. Investments in the Bond Reserve Account shall not have maturities extending beyond five years. If the value of the money and investments in the Bond Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Bond Principal and Interest Account.

Sec. 21. Application of Bond proceeds. Proceeds from the sale of the Bonds in the amount of \$2,959,222.20 (which is equal to the original aggregate principal amount of the Bonds, plus original issue premium of \$177,153.60, less an underwriter's discount of \$27,931.40) shall be applied as follows: (a) the sum of \$19,215.36 shall be deposited into the Bond Reserve Account; (b) the sum of \$2,937,598.88 shall be paid to the Escrow Agent, for application to the payment of the costs of advance refunding and defeasing all of the 2002 Bonds and paying the costs of issuing the Bonds; and (c) the sum of \$2,407.96 (the "rounding amount") shall be deposited into the Bond Principal and Interest Account for application to the payment of the interest first coming due on the Bonds.

Sec 22. Tax-exemption covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds which would cause any Bond to be an "arbitrage bond" within the meaning of section 148 of the Code.

The City further covenants that it will calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of Bond proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Bonds, plus income

derived from such excess earnings, to the extent and in the manner required by section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance which would cause any Bond to be treated as a "private activity bond" (as defined in section 141(b) of the Code) subject to treatment under said section 141(b) as an obligation not described in section 103(a) of the Code, unless the tax exemption thereof is not affected.

The City hereby designates the Bonds as "qualified tax-exempt obligations," as defined in section 265 of the Code (relating to the partial interest expense deduction authorized for banks, thrift institutions and certain other financial institutions). The City covenants that it will not issue more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 2012, and authorizes and directs the Authorized Officers to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Sec 23. Preliminary official statement declaration. The City has been provided with copies of the Preliminary Official Statement. For the sole purpose of the Purchaser's compliance with SEC Rule 15c2-12(b)(1), the City "deems final" the Preliminary Official Statement, as of its date, except for the omission of information on offering prices, interest rates, selling compensation, delivery dates, ratings, and other terms of the Bonds dependent on such matters.

Sec 24. Undertaking to provide continuing disclosure. This Section constitutes the City's written undertaking for the benefit of the Owners and Beneficial Owners of the Bonds required by subsection (b)(5)(i) of Rule 15c2-12 of the SEC (the "Undertaking").

The City hereby agrees to provide or cause to be provided to the MSRB the following annual financial information and operating data (collectively, the "Annual Financial Information") for each prior fiscal year, commencing with the fiscal year ending December 31, 2011, on or before the last day of the seventh month following the end of such prior fiscal year:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by state law; which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the City, they will be provided (the "Annual Financial Statements");

(b) Principal amount of the Parity Bonds outstanding and the coverage calculation showing the ratio of Net Revenue to Annual Debt Service with respect to the Parity Bonds;

(c) Updated operating and financial data regarding the Marina, of the type found under the heading "The Marina" in the Preliminary Official Statement;

(d) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Moorage Rates," "City of Des Moines Guest Moorage Rates" and "Current Length Distribution of Waiting List Vessels";

(e) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Marina Income Statement (Years ending December 31)" and "City of Des Moines Marina Statement of Net Assets (Years ending December 31)";

(f) Historical financial information (for the prior fiscal year only) of the type shown in the table in the Preliminary Official Statement entitled "Historical Assessed Valuation and Property Tax Collection Record";

(g) Historical financial information (for the prior fiscal year only and excluding overlapping debt information) of the type shown in the tables in the Preliminary Official Statement entitled "Debt Capacity Computation," "Debt Information" and "Bonded Debt Ratios;

(h) Historical financial information (for the prior fiscal year only) of the type shown in the Preliminary Official Statement under the headings "Pension System" and "Insurance Coverage";

(i) Any change in the auditing, budgetary process or investment policies of the City; and

(j) A narrative explanation of the reasons for any amendments to this Undertaking made during the previous fiscal year and the impact of such amendments on the Annual Financial Information being provided.

Items (b) through (j) shall be required only to the extent that such information is not included in the annual financial statements.

In its provision of such financial information and operating data, the City may cross-reference to any "final official statement" (as defined in the Rule) available to the public on the MSRB's internet web site or filed with the SEC.

If not submitted as part of the Annual Financial Information, then when and if available, the City shall provide its Annual Financial Statements, which shall have been audited by such auditor as shall be then required or permitted by State law, to the MSRB.

The City further agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

7. Modifications to rights of the Owners of the Bonds, if material;

8. Bond calls, if material, and tender offers;

9. Defeasances of the Bonds;

10. Release, substitution or sale of property securing repayment of the Bonds, if material;

11. Rating changes;

12. Bankruptcy, insolvency, receivership, or similar event of the City;

13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this Undertaking, the City advises with reference to item 14 above that there is no trustee for the Bonds.

The City also agrees to provide or cause to be provided to the MSRB, in a timely manner, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the seventh month following the end of such prior fiscal year.

The City agrees that all documents provided to the MSRB pursuant to this Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

The City may amend its obligations under, or waive any provision of, this Undertaking upon receipt of a favorable opinion of nationally recognized bond counsel or other counsel familiar with the federal securities law, or pursuant to a favorable "no-action letter" issued by the SEC. In the event of any amendment or waiver of the City's obligations under this Undertaking, the City agrees to describe such amendment in the Annual Financial Information for such fiscal year and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and its impact of the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change will be given in the same manner as for a material event, and (B) the Annual Financial Information for the fiscal year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

The City's obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance or payment in full of all of the then outstanding Bonds. This Undertaking, or any

provision hereof, shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require this Undertaking or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the MSRB with copies of such opinion.

The right of each Owner or Beneficial Owner of Bonds to enforce the provisions of this Undertaking shall be limited to the right to obtain specific enforcement of the City's obligations under this Undertaking, and any failure by the City to comply with the provisions of this Undertaking shall not be a default with respect to the Bonds under this Ordinance.

The Authorized Officers are authorized and directed to take such further action on behalf of the City as may be necessary, appropriate or convenient to carry out the requirements of this Undertaking.

Sec 25. Additional covenant. The City covenants to the Owners that it will at all times as long as the Bonds are outstanding (a) maintain the Marina in good repair, working order and condition, (b) operate the Marina in an efficient manner and at a reasonable cost, and (c) establish, maintain and collect rentals, rates and charges for Marina services as may be necessary to provide for (1) the Operating and Maintenance Expenses of the Marina and (2) the deposits into the Bond Principal and Interest Account and the Bond Reserve Account.

Sec 26. Contract; severability. The covenants contained in this Ordinance shall constitute a contract between the City and the Owners of each and every Bond. The City unconditionally covenants that it will keep and perform all of the covenants of the Bonds and this Ordinance. If any one or more of the provisions of this Ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this Ordinance or the Bonds, and this Ordinance and the Bonds shall be construed and enforced as if such unconstitutional or invalid provision had not been contained in this Ordinance.

Sec 27. Effective date. This Ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this 5th day of April, 2012, and signed in authentication thereof this 5th day of April, 2012.

M A Y O R

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

Published: April 11, 2012

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1535, Adopted April 5, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation

The full text of the Ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: April 11, 2012

DMMC 1.12.010 Adopted.

There is adopted for the city the classification of nonchartered code city, governed by the provisions of chapters 35A.02 and 35A.13 RCW. [Ord. 385 § 1, 1976.]

RCW 35A.13.030

Mayor -- Election -- Chair to be mayor -- Duties.

Biennially at the first meeting of the new council the members thereof shall choose a chair from among their number unless the chair is elected pursuant to RCW 35A.13.033. The chair of the council shall have the title of mayor and shall preside at meetings of the council. In addition to the powers conferred upon him or her as mayor, he or she shall continue to have all the rights, privileges, and immunities of a member of the council. The mayor shall be recognized as the head of the city for ceremonial purposes and by the governor for purposes of military law. He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order.

RCW 35A.13.035

Mayor pro tempore or deputy mayor.

Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability.

* * *
p 69 of pkt
OK by Bob & JB
p. 72 - friendly amendment
Club to Macel Subis over
calendar item
City Clerk reading consent agenda

**PROPOSED ADDITIONAL AMENDMENTS TO COUNCIL RULES OF PROCEDURE
FOR COUNCILMEMBER BURRAGE**

Councilmember Burrage: Your suggested amendments are shown below in "track change" format (underlines and cross-outs). In the last two, when there were already proposed changes, we have put your requested changes in yellow highlight.

MOTION: I move to amend Rule 4(c) of the City Council *Rules of Procedure* as follows:

Rule 4(c) Except when there is only one nominee, election shall be by written ballot. Each ballot shall contain the name of the Councilmember who cast it. Each ~~succeeding~~ ballot shall include the name of all Councilmembers nominated (unless they have withdrawn). Voting shall continue until a nominee receives a majority of the votes. The City Clerk shall publicly announce the results of the election by reading each ballot into the record, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Thereafter, the City Clerk shall record in the minutes of the meeting the manner in which each voting member of the Council cast his or her ballot.

JB-
friendly
amendment
OK by meeting
agenda

MOTION: I move to amend Rule 20(1)(B) of the City Council *Rules of Procedure* as follows:

(1) Procedure.

(A) Citizens are encouraged to supplement verbal comments through written submittals.

(B) All citizens desiring to address Council during the Public Comment period shall first fill out a sign-in sheet and ~~submit the form to the City Clerk~~ the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comments.

OK as
friendly amend.
next

MOTION: I move to amend Rule 20(2)(A) of the City Council *Rules of Procedure* as follows:

Rule 20 (2) Scope of Comments.

(A) Subjects not on the current agenda. Any member of the public may request time to address the Council after first stating their name, address, and the subject of their comments. The Presiding Officer may then allow the comments subject to such time limitations as referenced in Rule 20(3)(A) ~~as the Presiding Officer deems necessary~~. Following such comments the Presiding Officer may place the matter on the current agenda or a future agenda, or refer the matter to administration or a Council committee for investigation and report.

Leave in
but put in
'or' (flip
them)

MOTION: I move to amend Rule 26 of the City Council *Rules of Procedure* as follows:

RULE 26. The procedure for ordinances is as follows:

(a) — All ordinances shall have ~~two~~ one separate readings, unless otherwise required by state law or Des Moines Municipal Code or as requested by the City Council. At each reading the title of an ordinance shall in all cases be read prior to its passage; provided that should a Councilmember request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

(b) — The provision requiring two separate readings of an ordinance may be temporarily suspended at any meeting of the Council by a majority vote of all members present.

(c) — If a Motion to pass an ordinance to a second reading fails, the ordinance shall be considered lost.

(Res. 525 S1, 1988, Amended by Res. 1140, 2011, amended by Res. _____, 2012.)

MOTION: I move to amend Rule 36 of the City Council *Rules of Procedure* as follows:

RULE 36. All public meetings of the full City Council held in the Des Moines City Service Center at 21630 11th Avenue South should be video recorded and cablecast within the City. (Res. 772, 1994, amended by Res. 1140, 2011, amended by Res. _____, 2012.)

OR

RULE 36. All public meetings of the full City Council not exempt from the Open Public Meetings Act held in the Des Moines City Service Center at 21630 11th Avenue South should be video recorded and cablecast within the City. (Res. 772, 1994, amended by Res. 1140, 2011, amended by Res. _____, 2012.)

no friendly
this is an amendment
JB/CS discussion
JD withdrew motion

MP moved to revert to his lang.
CS second
this rule be retained as a
friendly amendment

BSOK w/2nd
one
take out full

quorum

next week

Motion to settle the matter of Maureen Richter v. City of Des Moines, U.S. District Court for the Western District of WA, Cause No. 2:10-cv-00461-MJP in the amount of \$ 75,000⁰⁰.