

S-U-P-P-L-E-M-E-N-T-A-L A-G-E-N-D-A

**REGULAR MEETING
DES MOINES CITY COUNCIL**

April 12, 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

Briefing By Cleanscapes

CONSENT CALENDAR

Page 3

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the regular meetings of March 22, 2012

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers described as follows:

Claim checks that total **\$448,676.83**

Payroll fund transfers in the total amount of **\$426,444.30**

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are **\$875,121.13**

Page 7

Item 3: 2012 POVERTY BAY BREWS AND BLUES DRAFT RESOLUTION NO. 12-047

Motion 1 is to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina.

Motion 2 is to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provisions of support services and amenities for the event as identified therein, substantially in the form as attached.

Item 4: MOTION TO SETTLE THE MATTER OF MAUREEN RICHTER V. CITY OF DES MOINES

Motion is to approve settlement of 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 \$75,000.

EXECUTIVE SESSION

Acquisition of Real Estate Per RCW 42.30.110.(1)(b)

OLD BUSINESS

Page 21 1. 2nd Reading Ordinance No. 12-002, Park-In-Lieu Fee
Staff Presentation: Senior Planner Jason Sullivan

NEW BUSINESS

Page 35 1. Ordinance Decriminalizing Possession & Discharge of Fireworks
Staff Presentation: Police Chief John O'Leary

NEXT MEETING DATE – April 26, 2012, City Council Study Session

ADJOURNMENT

AGENDA

REGULAR MEETING DES MOINES CITY COUNCIL

April 12, 2012 - 7:30 p.m.

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NEXT MEETING DATE – April 26, 2012, City Council Study Session

ADJOURNMENT

MINUTES

**REGULAR MEETING
DES MOINES CITY COUNCIL**

March 29, 2012 - 7:30 p.m.

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

PLEDGE OF ALLEGIANCE - Councilmember Burrage led the flag salute.

ROLL CALL

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

Mayor Pro-Tem Matt Pina was absent. Councilmember Sheckler moved to excuse Councilmember Pina; Councilmember Musser, second; all the votes were ayes.

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; Interim Police Chief John O'Leary; Finance Director Paula Henderson; Finance Operations Manager Cecilia Pollock; Parks Recreation and Senior Services Director Patrice Thorell; Development Services Manager Robert Ruth; Senior Planner Jason Sullivan; Court Administrator Jennefer Johnson; CIP Project Manager Scott Romano; Policy Analyst Sue Anderson; City Clerk Sandy Paul

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Reported that she had photographed the interior of the Beach Park auditorium
- Attended a Farmer's Market meeting Monday, March 26

Councilmember Sheckler

- Attended the SCORE meeting this week and reported that SCORE passed its first audit
- Since the SCORE facility is located under SeaTac Airport flight pattern, he suggested that space on the large, flat roof be sold for advertising
- Reported from his book *776 of the Stupidest Things Ever Said by Politicians*

Councilmember Musser

- Reported on the walking tour of Beach Park and Marina by stakeholders on Monday March 26. The next meeting is May 8
- Announced a link on the Marina website through the city's website to the printed materials the stakeholders are using in their Marina/Beach Park Business Development Plan
- There will be a May 23 Community Open House at the Auditorium at Beach Park
- Reminded Council and the audience that Saturday night at 6:00 p.m. Sports Night would take place at the Fieldhouse. The Cove is catering. Wine and desserts will also be available
- The Des Moines Elementary PTA is holding its annual benefit auction at The Landmark on the Sound on April 20 with a catered dinner beginning at 6:30 p.m.

Councilmember Caldwell

- On Friday, March 23, members of the South Ministers took meals to feed fed 120 homeless at Seattle Pacific University. University students assisted as needed
- The Ski-hawks handicapped ski team annual banquet was held at the Ballard Elks Club on Sunday April 1. His son, Dan, is eligible to go to Korea with the Special Olympics
- Attended Port of Seattle meeting

- Adam Smith is holding a meeting at Kent City Hall on April 9, 10:00-11:00 a.m. This would be a good time for seniors to meet with him and discuss senior issues. A City van will be provided to take some seniors to Kent for the meeting.

PRESIDING OFFICER'S REPORT

- Mayor Kaplan said he believes in goal and objective setting then taking a temperature check to track progress. He commented on the progress in the setting of goals, and the action taken so far to address some of those goals

ADMINISTRATION REPORTS

- Police dept and court are working on a pilot program for electronic ticketing
- Electronic council packets are now posted on the City's website
- Attended the retirement celebration for Chief Rick Kieffer of Normandy Park with Assistant City Manager Lorri Ericson.
- Fifteen semifinalists for the Police Chief position were sent questionnaires; 3 candidates withdrew. Interviews may be held in May
- Farmers Market has requested to move the market to near the harbormaster's office. The fee is between \$80 and \$100 per day, but renting portable toilets will not be necessary, so the market will be saving money since the cost of the portable rest rooms is \$2000 per summer
- Planning Building Public Works Director Grant Fredricks provided a report on current Capital Improvement (CIP) Projects.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of March 8, 2012 City Council meeting as amended.

ACTION/DIRECTION

Councilmember Sheckler moved to adopt the Consent Agenda; Councilmember Musser, second. The motion passed 6-0.

OLD BUSINESS

1. NEIGHBORHOOD COMMERCIAL (NC) PERMITTED USES ORDINANCE/AMENDMENT TO SETTLEMENT AGREEMENT – 2ND READING

Staff Presentation was provided by Development Services Manager Robert Ruth.

ACTION/DIRECTION

Councilmember Sheckler moved to authorize the City Manager to sign the updated Settlement Agreement and Release included as Attachment 1 to the March 29, 2012 Administration Report superseding the June 3, 2005 Settlement Agreement and Release to allow the property owner of Zenith Viewpointe to substitute one residential dwelling for the existing commercial tenant space; Councilmember Scott, second. The motion passed. The vote was 6-0.

Councilmember Sheckler moved to adopt Draft Ordinance No. 12-013 amending Section 18.20.020 DMMC of the NC (Neighborhood Commercial) Zone allowing multiple dwelling units as a permitted use; Councilmember Musser, second. The motion passed, 6-0.

2. BUDGET PROCESS

Council Discussion

The first presentation was that of Assistant City Manager Lorri Erickson who presented staffing and budget information on the Personnel and Records Divisions as they relate to City Council Goals #1-9.

Judge Veronica Alicea-Galvan addressed Court case load, staffing and budget issues as they relate to Council goals #1, 3, and 6, to protect people and property, enhance and preserve livability, and provide efficient and effective customer service.

City Attorney Pat Bosmans spoke about the legal department. She also explained the division of staff hours as they relate to City Council goals #1, 6, 7, and 8.

Parks Recreation and Senior Services Director Patrice Thorell, speaking from an organization chart, related staffing and budget issues to City Council goals #1-9.

BREAK

The City Council took a 10 minute break from 9:10-9:20 p.m. The City Council meeting reconvened at 9:20 p.m.

BUDGET PROCESS (continued)

Finance Director Paula Henderson spoke about Finance Department staffing and budget levels that serve the rest of the City internally and externally and how their work relates to the City Council goal #6, to provide efficient and effective City service.

The Planning Building and Public Works budget was discussed at the March 10 retreat and was not discussed at this meeting.

City Manager Tony Piasecki outlined the Executive Department supporting actions, which is to implement Council direction and to oversee a good flow of information and all else that takes place throughout the City organization as it relates to accomplishing City Council goals.

Total full time equivalents (FTEs) are 137 with about 150 people employed in some capacity. Four or five of those are funded from capital accounts.

Mayor Kaplan explained the next steps in the process were to take the provided budget information and list it by priorities, applying dollars to each function, layering them according to mandates and what is necessary from a good government/best practices standpoint. The current budget will be organized by priorities, looking at current ongoing revenues and showing what falls below the line in terms of ongoing expenses. The following discussion will include what *should* the budget look like and what we would want it to look like.

ADJOURNMENT

There being no further business to come before the City Council, Councilmember Caldwell moved to adjourn; second by Councilmember Burrage. The motion passed, 6-0.

The meeting was adjourned at 10:05.

Respectfully submitted,

Sandy Paul CMC
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Poverty Bay Brews & Blues Festival
at the Des Moines Beach Park

FOR AGENDA OF: April 12, 2012

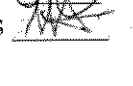
DEPT. OF ORIGIN: Legal Department

ATTACHMENTS:

1. Draft Resolution No. 12-047
2. Draft Agreement Between City of Des Moines and the Des Moines Rotary Club for 2012 Poverty Bay Brews & Blues Festival

DATE SUBMITTED: March 19, 2012

CLEARANCES

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this item is to seek Council approval of Draft Resolution No. 12-047 authorizing Poverty Bay Brews & Blues Festival on August 25, 2012, sponsored by the Rotary Club of Des Moines to be held at the Des Moines Beach Park and Marina.

Suggested Motions

First Motion: "I move to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina."

Second Motion: "I move to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provision of support services and amenities for the event as identified therein, substantially in the form as attached."

Background

The Rotary Club of Des Moines has requested the use of the Des Moines Beach Park meadow, Founders Lodge and parking lot and Marina north parking lot to hold its third annual Poverty Bay Brews & Blues

Festival. Proceeds from the event will be used to provide the opportunity for music education for disadvantaged Highline School District students benefitting Des Moines youth.

Discussion

The Rotary Club of Des Moines requests that City Council approve Draft Resolution No. 12-047 authorizing the use of the Des Moines Beach Park and Marina for the third annual Poverty Bay Brews & Blues Festival. Rotary would provide event management, production and fund raising necessary for event production including \$2,000,000.00 event liability insurance coverage naming the City of Des Moines as an additional insured.

Rotary would work with City Departments to prepare the Beach Park and Marina event layout, parking lot management and pedestrian safety plans as required by the City's Special Event Permit to ensure a safe event open to the public on Saturday, August 25, 2012 between the hours of 12:00 p.m. and 8:00 p.m. The Rotary Club of Des Moines proposes to pay the city for the use of Beach Park facilities and will be responsible for providing event security officers, parking attendants, fencing, portable restrooms and garbage collection and removal. The Beach Park facility rental charge will cover the cost of on-site recreation facility support staff, water and power.

The City would assist the Rotary Club of Des Moines by promoting the event through its promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Rec & Roll Guide, City Web Page, Channel 21 and Seattle Southside Visitors Service.

The net proceeds from this event will be used to fund music programs within the Highline School District. The emphasis will be on obtaining instruments for low income students, beginning with elementary schools located in Des Moines. Music programs are often the first to go when schools face a budget crisis even though it has been shown that learning music enhances other learning skills. The Pacific Northwest is home to many great scholastic music programs that have been nationally recognized. The Rotary Club of Des Moines will use the funds to encourage such a program in South King County.

Alternatives

None provided.

Financial Impact

The Rotary Club of Des Moines requests that the City of Des Moines allow use of the Beach Park for the Poverty Bay Brews & Blues Festival and the north Marina parking lot for event parking. Facility rental charges and any city permit fees will be determined by the hours of park facilities use and impacts to other city services identified by city departments as part of the Special Event Permit process which is currently underway.

Staff anticipates minimal City support would be required because Rotary will provide and pay for event security officers, parking lot attendants, fencing, signage, portable restrooms, garbage collection and removal and any other event expenses.

Recommendation or Conclusion

Staff recommends that City Council approve Draft Resolution No. 12-047 for the third annual Rotary Club of Des Moines Poverty Bay Brews & Blues Festival.

CITY ATTORNEY'S FIRST DRAFT 03/16/2012

DRAFT RESOLUTION NO. 12-047

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Des Moines Rotary Club ("Rotary Club") to conduct its 2012 Poverty Bay Brews and Blues Festival ("Festival") at the Des Moines Beach Park and Marina and listing conditions under which such permission is granted.

WHEREAS, the Rotary Club wishes to conduct its third annual Festival in August 2012 at the Des Moines Beach Park and Marina, and

WHEREAS, the Rotary Club will solicit sponsors to assist in financing the Festival from hotels, motels, restaurants, suppliers, car rental companies, and other area business, and

WHEREAS, the Rotary Club has designed the Festival to raise funds for charitable, community, and educational projects supported by the Rotary Club, and to promote the Des Moines community and area businesses,

WHEREAS, the Festival will enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, the City of Des Moines wishes to permit the Rotary Club Festival; and, at the same time, be held harmless from any liability arising from the existence of such activity; now therefore,

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

Sec. 1. Permission to conduct the 2012 Poverty Bay Brews and Blues Festival ("Festival") on August 25, 2012 is granted to the Des Moines Rotary Club, subject to the following conditions:

(1) The Rotary Club shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of the Festival or its activities; and an authorized official of the Rotary Club shall sign a written agreement on behalf of the Rotary Club that approval of this 2012 Festival resolution does not constitute a waiver of the Rotary Club's obligation to defend and hold the City of Des Moines harmless

from any liability that may result from the conduct of the Festival event or its activities.

(2) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(3) The Rotary Club shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. The Rotary Club must remove all such signage within ten (10) days after the final day of the Festival.

(4) Normal fees for conduct of a community event shall be paid by the Rotary Club. Fees required by other governmental agencies, including the Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(5) An authorized official of the Rotary Club shall execute a written agreement, on behalf of the Rotary Club, acknowledging its responsibilities for the conduct of Festival activities and accepting such limitations as are contained in this resolution, in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(b) The hours of operation of the Festival shall occur within the following times:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary, following assessment of any security issue.

(c) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(d) The Rotary Club will use all reasonable efforts to advertise the Festival as a community festival.

(e) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors.

(f) All retail sales of food, beer, wine, and merchandise will be subject to permission of the Rotary Club.

(g) To enhance the security of the patrons of the Festival, the Rotary Club shall be required to fence areas in the Beach Park and is given permission to install tents within the fenced area as necessary for festival vendors and attendees. The tent(s) will meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or his designees for review and approval at least ninety (90) days before the date of the Festival.

(h) An admission fee will be charged by the Rotary Club.

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to the Rotary Club to use and occupy for the purpose of the Festival City facilities and property at the Des Moines Beach Park and Marina.

Sec. 3. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

Resolution No. _____
Page 4 of 4

Sec. 4. The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

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:

Assistant City Attorney

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND
THE DES MOINES ROTARY CLUB
2012 POVERTY BAY BREWS AND BLUES FESTIVAL**

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and the DES MOINES ROTARY CLUB (hereinafter "Rotary Club") for the 2012 Poverty Bay Brews and Blues Festival.

WHEREAS, the City finds that the Festival enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, the Rotary Club, as sponsor of the Festival, carries out all activities as a Rotary Club function, and

WHEREAS, the City of Des Moines wishes to permit the Poverty Bay Brews and Blues Festival activities of the Rotary Club while at the same time being held harmless from any liability arising from the existence of such activities and to have the Rotary Club sponsor the Festival pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) The Rotary Club agrees as follows:

(a) The Rotary Club shall conduct the 2012 Festival in compliance with the conditions outlined in City of Des Moines Resolution No. ____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The Des Moines Rotary Club shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence of the City. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, the Des Moines Rotary Club shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and the Des Moines Rotary Club and their respective officers, agents, and employees, or any of them, the Des Moines Rotary Club shall satisfy the same.

(c) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as an additional named insured. Proof of such insurance shall be delivered to the City no later than thirty (30) days prior to the event.

(d) The Rotary Club shall remove all signage within ten (10) days after the final day of the Festival.

(e) The Rotary Club acknowledges its responsibilities for the conduct of Festival activities and accepts such limitations as are contained herein, in addition to such limitations as may be imposed by the City Council or City Manager.

(f) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(g) The date and hours of operation of the Festival shall be held within the following limits:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

(h) A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary following assessment of any security issues.

(i) The Rotary Club will use all reasonable efforts to advertise the Festival as a Community Festival.

(j) Retail sales of food, beer, and Brews and Blues merchandise will be subject to permission of the Rotary Club.

(k) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(l) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors inside the festival area.

(m) To enhance the security of the patrons of the Festival, the Rotary Club will be required to fence event areas in the Beach Park for use as the Festival grounds. Any tents shall meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or designees for review and approval at least ninety (90) days before the date of the Festival.

(n) An admission fee will be charged by the Rotary Club.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City grants permission to the Rotary Club to use and occupy, for the purpose of the Festival, City facilities and property at the Des Moines Beach Park for the main event venue and the Des Moines Marina parking lot for event parking.

(b) Normal City fees for conduct of this community event, and those fees required by other governmental agencies, including Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(c) The City authorizes the Rotary Club to utilize the official City of Des Moines logo in connection with the Festival.

(d) The City shall permit the Rotary Club to erect such special signage as is appropriate in the thirty (30) days prior to and during the event.

(e) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(f) The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(3) Duration of Agreement. This Agreement is solely for the 2012 Festival. The Agreement will commence upon date of execution and ends upon completion of all contractual obligations, execution of a new Contract, City's written termination of the Contract as described in section 4 of this Agreement, or the Rotary Club's decision not to have the Festival, whichever is sooner. Provided, however all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to the Rotary Club of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of the Rotary Club to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. The Rotary Club shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in Festival festivities on the basis of race, color, religion, creed, sex, national origin, sexual orientation, marital status, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

DES MOINES ROTARY CLUB

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. _____
In an Open Public Meeting on _____

By _____
Its _____

Date _____

Date _____

APPROVED AS TO FORM:

City Attorney

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Park Requirements for Subdivisions and Short
Plats (2nd Reading)

ATTACHMENTS:

1. Draft Ordinance 12-002 – Color
2. Requested Amendment – Color

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Planning, Building and
Public Works

DATE SUBMITTED: April 2, 2012

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *TA*

Purpose and Recommendation

The purpose of this Agenda Item is to bring back Draft Ordinance 12-002 related to modifications to the park requirements for short plats and subdivisions for second reading as directed by the City Council on February 23, 2012. Staff is recommending that the City Council adopt Draft Ordinance 12-002 in order to bring the City's park requirements for short plats and subdivisions in to compliance with state and case law. The City Council may adopt Draft Ordinance 12-002 by passing the following motion:

Suggested Motion:

Motion: "I move to adopt Draft Ordinance 12-002 amending the City park requirements established by DMMC 17.36.150."

Background

Applicants requesting to subdivide property are required to develop, dedicate and improve space for recreational use or provide a payment in lieu of this dedication in order to mitigate impacts on

the existing parks and recreational facilities within the City. Historically, the City has required that the applicant make an in-lieu payment instead of dedicating park space, given that the amount of park land typically required is less than one-half acre. Only a few projects meet the requirement to dedicate a minimum of one-half acre, given that land division must have a minimum of 30 lots in order to be required to dedicate a park with at least a minimum of one-half acre under the current requirements to maintain the existing ratio of park land to population.

While the City has the authority to collect park in-lieu fees, the Courts have held that the only rational, non-arbitrary way of determining the amount of the in-lieu fee is to base the amount of the fee on the value of the land that would have been required to be dedicated and not a generalized formula (*Vintage Construction Company, Inc. v. The City of Bothell* 83 Wash. App. 605, 922 P.2d 828). Therefore, when establishing the amount of the in-lieu fee, the City must relate the fee to the specific value of land that would have otherwise been dedicated to fulfill the requirement to provide "appropriate provisions" for parks and playgrounds as established by RCW 58.17.110(2).

In identifying what constitutes "appropriate provisions", the City should utilize the adopted level of service standards related to the underlying provision as directed by WAC 365-196-820(4). In the case of parks, the City's adopted Level of Service Standard is 6.5 acres per 1,000 people or 283 square feet per person (sf/person). The per person standard would be translated to a lot standard by multiplying the 283 sf/person by the average household size 2.75 persons per single family home as established by the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011; therefore, the amount of park area required per lot would be 778 square feet.

SEPA

The SEPA Official determined that the proposed text code amendments were categorically exempt from SEPA pursuant to WAC 197-11-800(19).

APPROVAL PROCESS REQUIREMENTS

Textual code amendments are Type IV land use actions as defined by DMMC 18.56.060; as such, public hearing with the City Council was held on February 23, 2012 as required by DMMC 18.56.180.

Further, DMMC 17.36.150 is classified as a development regulation under the Growth Management Act as defined in RCW 36.70A.030(7); therefore, the amendments were required to be forwarded to the Department of Commerce for review and comment by the Department and other State agencies. The required 60 day review period concluded on April 9, 2012 and as of the date of this Agenda Item, the City has not received any comments from the Department of Commerce or other State agencies.

Discussion

On February 23, 2012, the City Council held a public hearing on Draft Ordinance 12-002 to consider modifying the park requirements established by DMMC 17.36.150. At the time of the public hearing, the Department of Commerce's 60 day comment period had not expired and as a result the City Council could not adopt the Draft Ordinance and therefore moved the Draft Ordinance to a second reading on April 12, 2012. During the public hearing, the City Council amended Finding of Fact No. 1 to reflect that it is the "City responsibility" to ensure that subdivisions provide appropriate provisions for parks. This amendment has been incorporated into the City Council's First Draft of Ordinance 12-002 (Attachment 1).

Staff was also asked to prepare an amendment to the General Obligation requirement in Section 2(1) of Draft Ordinance 12-002 to clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The proposed amendment language is provided in Attachment 2 to this Agenda Item. Staff received no other questions or comments since the initial public hearing on February 23, 2012.

Alternatives

The City Council has the following alternatives:

- (1) The City Council may adopt Draft Ordinance 12-002.
- (2) The City Council may amend Draft Ordinance 12-002 and then adopt amended version of Draft Ordinance 12-002.
- (3) The City Council may decline to act on Draft Ordinance 12-002.

Financial Impact

Modification to the park in-lieu fee provisions are required to ensure that the City can continue to collect the in-lieu fees as offsetting mitigation for the development. Removal of these in-lieu fees would negatively impact the funding mechanism adopted by the Parks Master Plan to provide for additional park facilities to meet the City's adopted level of service standard.

Recommendation and Conclusion

Staff recommends that modifications to the current park in-lieu fee formula be made to ensure that the fee is collected consistent with both state and case law.

Concurrence

The Parks, Recreation, and Senior Services Department concurs with the above recommendation regarding the modification to the park in-lieu calculation methodology and the development of a park impact fee program.

**CITY COUNCIL'S FIRST DRAFT
02/23/2012**

DRAFT ORDINANCE NO. 12-002

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending DMMC 17.36.150 relating to park requirements for subdivisions and short plats within the City of Des Moines.

WHEREAS, the City of Des Moines has adopted DMMC 17.36.150 to ensure subdivisions and shorts plats provide appropriate provisions for parks space as required RCW 58.17.110(2), and

WHEREAS, such park requirements have been in effect since 1992 without modification, and

WHEREAS, changes in state law and case law have called into question the legality and enforceability of certain provisions relate to the City's methodology for collecting park in-lieu fees, and

WHEREAS, clear and predictable development regulations to encourage efficient permitting is a planning goal established by the Growth Management Act (Chapter 36.70A RCW), and

WHEREAS, the Des Moines Planning Agency at its January 9, 2012 regular meeting recommended that the City Council amend the park in-lieu provisions of the City Subdivision Code, DMMC 17.36.150, and

WHEREAS, the Finance and Economic Development Committee has determined that modifications to the City's park in-lieu provisions are required to facilities economic growth within the City, and

WHEREAS, notice of the public hearing was given to the public pursuant to DMMC 17.44.030, and

WHEREAS, such public hearing was held on February 23, 2012 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the recommended amendments to DMMC 17.36.150 are appropriate to provide a clear, concise, and legal method of enforcing the park in-lieu

requirements needed to promote the health and welfare of the citizens; now therefore,

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

Sec. 1. Findings of fact. The findings of fact and conclusions set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to amend the park in-lieu requirements for new subdivisions and short plats.

Sec. 2. DMMC 17.36.150 and section 67 of Ordinance No. 931 is amended to read as follows:

Parks.

(1) General Obligation. Proposed residential subdivisions shall shall provide a minimum of 778 square feet of park area per lot in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3. maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.

(2) Decision by the City Criteria for City Acceptance of a Mini-Park. The community development director shall

~~evaluate the proposed dedication of land to determine its usability for recreation purposes. Considerations in this evaluation shall include access to the site, size, topography, location, and shape of the proposed recreation area and the ability of the area to be combined with adjacent property. The city shall not find a division of land as meeting the obligation of this section unless the land proposed to be dedicated will reasonably meet the basic parks needs of the eventual users of the division of land. Applicants proposing to develop a Mini-Park in order to fulfill the general obligation to provide appropriate provisions for parks and playgrounds as established in DMMC 17.36.150(1) of this section shall comply with the following criteria:~~

~~(a) Use/Description: The proposed Mini-Park shall be designed and improved as play space for toddlers and young children to serve the basic needs of the neighborhood.~~

~~(b) The amenities within the Mini-Park shall include sand play areas, play apparatus, play equipment, picnic area, sports courts, and sanitation accommodations.~~

~~(c) Size: The proposed Mini-Park shall be a minimum of 0.5 acres~~

~~(3) Tracts Required. Dedicated Recreational areas shall be located in a separate tract which provides for public recreation use. The area dedicated under this section shall become the property of the city shall be deeded to the City, which shall thereafter assume all maintenance and other ownership responsibilities.~~

~~(4) Lot Area. The area of the recreation Mini-Park tract shall not be included in the compilation of lot area for any lot.~~

~~(5) Payment in Lieu of Dedication Mini-Park Development. If the city finds that the land proposed to be dedicated developed as a Mini-Park under this section does not reasonably meet the criteria established in DMMC 17.36.150(2) then basic recreation needs of the eventual~~

~~users and the community, or that the land would best serve recreational needs by remaining undeveloped, or if the applicant chooses not to dedicate recreation space and the community development director determines that it would be in the best public interest not to provide such dedication and/or improvement, the applicant may voluntarily agree to~~shall make an in-lieu cash payment to the ~~city~~ City which shall be deposited into the ~~city~~ City's ~~park MCI fund~~ Fund. The in-lieu amount for dedication shall be based on the following formula: equal to five percent of the market value of all lots within the subdivision. The in-lieu amount for improvement shall be the current maximum improvement cost per square foot for five percent of the total lot area, exclusive of rights-of-way and tracts, within the subdivision. Market value shall be established by a real estate appraisal submitted by the applicant. If land is dedicated, but not improved, only the fee in lieu of improvement shall be required. The in-lieu cash payment shall be used for the acquisition and development of parks determined necessary as a consequence of the proposed development subdivision or plat. Such payment shall be managed, utilized or refunded in accordance with chapter 82.02 RCW, as presently constituted or as may be subsequently amended

Total Number of Lots within the subdivision equals (=) X

Total site area of the proposed subdivision equals (=) Y

Total appraised value of all property within the proposed subdivision as determined by the King County Assessor's website at the time of approval of the final plat documents equals (=) Z

In-lieu Fee equals (=) Z multiplied by ((X multiplied by 778 square feet) divided by Y).

Sec. 3. Severability - Construction.

(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.

Sec. 4. Effective date. This ordinance shall take effect and be in full force thirty (30) 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: _____

EXHIBIT A TO DRAFT ORDINANCE NO. 12-002

FINDINGS of FACT

1. ~~The City must ensure that all subdivisions must ensure that provide~~ appropriate provisions are made for open spaces, parks, recreation, and playgrounds pursuant to RCW 58.17.110(2).
2. When draft development regulations "appropriate provisions" should be defined in a manner consistent with the City's adopted level of service ("LOS") standards related to the underlying provision pursuant to WAC 365-196-820(4).
3. All subdivisions must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.16.130(2)(c).
4. All short plats must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.12.110(3).
5. The City's adopted Level of Service Standard for Park Space is 6.5 acres per 1,000 people or 283 square feet per person (sf/person) pursuant to the *City of Des Moines 2010 Parks, Recreation, and Senior Services Master Plan* adopted November 5, 2009 and Goal 6-01-06 of the Recreational Element of the *Des Moines Comprehensive Plan*.
6. Within the City of Des Moines 2.75 individuals reside in each single family residential homes pursuant to the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011, Table 2.
7. The amount park in-lieu is based on the value of the total amount of land needed to provide 778 square feet of park space as established by the appraised land value determined by the King County Assessor.
8. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-03-02 states that the City should, "[U]tilize the Comprehensive Plan as the policy basis for preparing neighborhood plans, establishing

development regulations, prioritizing capital improvement construction, reviewing individual development proposals and making other decisions affecting the growth and development of Des Moines and the surrounding area.

9. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should "review and amend as appropriate the Zoning Code, Subdivision Code and other development regulations to establish development standards that are clear and predictable, that simplify the review process, and adapt to varied site or neighborhood conditions.
10. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should, "[C]onsistently and equitably enforce development standards. If such enforcement is not possible, re-evaluate the standards and amend them to be more precisely defined.
11. The Land Use Element of the *Des Moines Comprehensive Plan*, Policy 2-03-03 states that the City should, "[E]nsure that future development has adequate public facilities and services or such services can be concurrently provided.
12. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should "[R]equire that new development maintain and enhance on-site open spaces, and provide on-site recreation facilities in new subdivisions and multifamily developments or pay appropriate in-lieu fees as required by the DMMC.
13. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should, [E]stablish standards for new development to provide on- and off-site roadways, utilities and other public facilities as necessary to serve the additional demand generated by the development.

CONCLUSIONS

1. Based Findings of Fact 1 - 7, all subdivisions and short plats must provided 778 square feet of park space per lot or pay an in-lieu fee amount equal to the value of 778 square feet per lot in order to ensure that every subdivision and short plat provides appropriate provisions

for park space concurrently with the development of the associated housing.

2. Findings of Fact 1 - 13, implement the policies and strategies of the *Des Moines Comprehensive Plan* by establishing development regulations which ensure that public facilities are provided concurrently with development in a consistent and equitably manner.

REQUESTED AMENDMENT 1 (General Obligation Modification)

DESCRIPTION:

Amendment 1 will modify Section 2(1) of Draft Ordinance 12-002 so that the General Obligation requirement clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The additional language is shown in yellow highlighted text below.

MOTION: "I move Amendment 1 as provided in Attachment 2 to April 2 Agenda Item"

AMENDMENTS:

SECTION 2 – PAGE 2 OF DRAFT ORDINANCE 12-002 IS AMENDED AS FOLLOWS:

(1) General Obligation. Proposed residential subdivisions ~~shall~~ shall either provide a minimum of 778 square feet of park area per lot consistent with the requirements of DMMC 17.36.150(2) – DMMC 17.36.150(4) or make an in-lieu fee payment consistent with the requirements of DMMC 17.36.150(5) in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3. ~~maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.~~

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Ordinance Classifying Certain
Firework Violations as Class 1 Civil
Infractions

ATTACHMENTS:

1. Draft Ordinance No. 11-142

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Police

DATE SUBMITTED: April 3, 2012

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AA

Purpose and Recommendation

"The purpose of this report is to seek City Council approval to amend DMMC 9.42 to reclassify violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Suggested Motion

First Motion: "I move to suspend Rule 26(a) in order to enact Draft Ordinance 11-142 on first reading."

Second Motion: "I move to enact Draft Ordinance 11-142 classifying violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Background

Currently, the illegal possession or discharge of any amount of fireworks in the City of Des Moines is classified as a criminal misdemeanor. The vast majority of firework related offenses occur on holidays which are typically busy days for police officers. The officer time and effort involved in criminally citing an individual is higher than that involved in citing an individual civilly as there is a higher burden of proof involved in a criminal case as well as elevated rights for the individual being arrested. By citing

a violator civilly for violations related to the limited possession or discharge of fireworks, officers will be able to spend more time on higher priority calls.

Discussion

The possession and discharge of fireworks are legal in the state of Washington subject to the restrictions found in RCW 70.77. The City of Des Moines has previously passed an Ordinance that prohibits the possession and discharge of fireworks within city limits unless the City has issued a permit. Currently, the possession, discharge, or any other violation of DMMC 9.42 related to fireworks is a criminal misdemeanor. This subjects the violator to arrest, with a maximum penalty of 90 days in jail and a \$1,000 fine.

This Draft Ordinance proposes to decriminalize the limited possession and discharge of fireworks in the City of Des Moines. The decriminalization would only apply to violators possessing or discharging less than five pounds of fireworks. Those who possess more would still be subject to arrest.

The time involved in documenting and processing a criminal case is typically much greater than that of a civil infraction. A criminal case imposes a greater standard of proof on the City, which requires the officer to more fully document the evidence, provide greater detail in reports, and to spend more time in general on handling the matter. A civil infraction can generally be accomplished by filling out a simple citation. The majority of firework violations occur on or around busy holidays for police officers, and the reduced time spent on handling them will increase the amount of time spent on other matters.

A class 1 civil infraction imposes a maximum fine of \$513. There is no possibility of jail time. All illegal fireworks will still be subject to impound.

Changing this type of violation to an infraction would be consistent with enforcement efforts of surrounding communities. The Chief of Police has consulted with the cities of Renton, Tukwila, Burien, SeaTac, Kent and Federal Way and all of these cities utilize civil infractions for typical fireworks violations.

Generally, those contacted by police regarding firework violations are young. These types of violations are often times categorized as a nuisance although there remains concerns of life safety and the potential of damage to property. Handling the minor violations as infractions will avoid creating a criminal history record for violators which would likely have to be disclosed for employment, higher education or military enlistment reasons. More serious firework violations involving actual or potential risk to life safety or damage to property remain enforceable through other criminal codes such as reckless endangerment violation.

When a City or County adopts an ordinance that imposes greater restrictions on fireworks, the Ordinance must wait an entire calendar year before it goes into effect. As this ordinance lessens the penalty for certain firework violations, the requirement does not apply.

Alternatives

1. Pass the Draft Ordinance as presented.
2. Pass the Draft Ordinance with amendments.
3. Do not pass the Draft Ordinance.

Financial Impact

The police department does not believe this code change will have any significant financial impact to the city. Some minor cost saving may be realized because the proposed change will streamline the enforcement and prosecution of these types of violations.

Recommendation or Conclusion

This Draft Ordinance was presented to the Public Safety and Transportation Committee who approved its presentation to the entire Council. The Police Department recommends this Ordinance be enacted.

Concurrence

The Legal Department concurs.

CITY ATTORNEY'S FIRST DRAFT 2/24/2012

DRAFT ORDINANCE NO. 11-142

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to fireworks, amending DMMC 9.42.030 and 9.42.130, and classifying violations of chapter 9.42 DMMC as a class 1 civil infraction.

WHEREAS, RCW 70.77.547 allows for the civil enforcement of fireworks regulations, and

WHEREAS, the illegal possession or discharge of fireworks in the City of Des Moines has previously been classified as a criminal misdemeanor, and

WHEREAS, the officer time and effort involved in criminally citing an individual who violates this chapter can be burdensome as firework violations typically occur on busy holidays, and

WHEREAS, citing an individual civilly creates a lower burden of proof and reduces the requirements to write extensive reports, thereby reducing officer time involved with addressing firework violations, and

WHEREAS, the Council finds that a class 1 civil infraction imposes a significant and sufficient penalty on an individual who violates this chapter; now therefore,

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

Sec. 1. DMMC 9.42.030 and section 3 of Ordinance No. 1362 are amended to read as follows:

Fireworks prohibited. Except as authorized by a permit for the public display of fireworks, as defined in RCW 70.77.160, or for religious purposes as authorized by RCW 70.77.311(2), no person, firm or corporation shall manufacture, possess, sell, store, ignite, explode or discharge any fireworks or firecrackers within the City limits of the City of Des Moines. The manufacture, possession, sale,

discharge or storage of five (5) pounds or more of fireworks or firecrackers is a misdemeanor.

Sec. 2. DMMC 9.42.130 and section 13 of Ordinance No. 1362 are amended to read as follows:

Penalties.

(1) Unless otherwise noted, a violation or failure to comply with any part of this chapter is a class 1 civil infraction. Any person who violates any portion of this chapter shall be subject to having their fireworks confiscated as provided in RCW 70.77.435 ~~and shall be guilty of a misdemeanor.~~

(2) A person is guilty of a separate offense for each day during which he ~~commits, continues, or permits a~~ action which violates ~~violation of~~ any provision of, or any order, rule, or regulation made pursuant to this chapter.

~~(3) The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means.~~

~~(4)~~ (3) Civil proceedings to enforce this chapter may be brought in the City of Des Moines Municipal Court or in the Superior Court for King County.

NEW SECTION. Sec. 3. Severability - Construction.

(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.

Ordinance No. _____
Page 3 of 3

NEW SECTION. **Sec. 4. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval 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

**REGULAR MEETING
DES MOINES CITY COUNCIL**

April 12, 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

Briefing By Cleanscapes

CONSENT CALENDAR

Page 3 **Item 1: APPROVAL OF MINUTES**
Motion is to approve minutes from the regular meetings of March 22, 2012

Item 2: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers described as follows:

Claim checks that total \$
Payroll fund transfers in the total amount of \$
Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$

Page 7 Item 3: 2012 POVERTY BAY BREWS AND BLUES DRAFT RESOLUTION NO. 12-047

Motion 1 is to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina.

Motion 2 is to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provisions of support services and amenities for the event as identified therein, substantially in the form as attached.

EXECUTIVE SESSION

Acquisition of Real Estate Per RCW 42.30.110.(1)(b)

OLD BUSINESS

Page 21 1.

2nd Reading Ordinance No. 12-002, Park-In-Lieu Fee
Staff Presentation: Senior Planner Jason Sullivan

NEW BUSINESS

Page 35 1.

Ordinance Decriminalizing Possession & Discharge of Fireworks
Staff Presentation: Police Chief John O'Leary

NEXT MEETING DATE – April 26, 2012, City Council Study Session

ADJOURNMENT

MINUTES

REGULAR MEETING
DES MOINES CITY COUNCIL

March 29, 2012 - 7:30 p.m.

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

PLEDGE OF ALLEGIANCE - Councilmember Burrage led the flag salute.

ROLL CALL

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

Mayor Pro-Tem Matt Pina was absent. Councilmember Sheckler moved to excuse Councilmember Pina; Councilmember Musser, second; all the votes were ayes.

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; Interim Police Chief John O'Leary; Finance Director Paula Henderson; Finance Operations Manager Cecilia Pollock; Parks Recreation and Senior Services Director Patrice Thorell; Development Services Manager Robert Ruth; Senior Planner Jason Sullivan; Court Administrator Jennefer Johnson; CIP Project Manager Scott Romano; Policy Analyst Sue Anderson; City Clerk Sandy Paul

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Reported that she had photographed the interior of the Beach Park auditorium
- Attended a Farmer's Market meeting Monday, March 26

Councilmember Sheckler

- Attended the SCORE meeting this week and reported that SCORE passed its first audit
- Since the SCORE facility is located under SeaTac Airport flight pattern, he suggested that space on the large, flat roof be sold for advertising
- Reported from his book *776 of the Stupidest Things Ever Said by Politicians*

Councilmember Musser

- Reported on the walking tour of Beach Park and Marina by stakeholders on Monday March 26. The next meeting is May 8
- Announced a link on the Marina website through the city's website to the printed materials the stakeholders are using in their Marina/Beach Park Business Development Plan
- There will be a May 23 Community Open House at the Auditorium at Beach Park
- Reminded Council and the audience that Saturday night at 6:00 p.m. Sports Night would take place at the Fieldhouse. The Cove is catering. Wine and desserts will also be available
- The Des Moines Elementary PTA is holding its annual benefit auction at The Landmark on the Sound on April 20 with a catered dinner beginning at 6:30 p.m.

Councilmember Caldwell

- On Friday, March 23, members of the South Ministers took meals to feed 120 homeless at Seattle Pacific University. University students assisted as needed
- The Ski-hawks handicapped ski team annual banquet was held at the Ballard Elks Club on Sunday April 1. His son, Dan, is eligible to go to Korea with the Special Olympics
- Attended Port of Seattle meeting

- Adam Smith is holding a meeting at Kent City Hall on April 9, 10:00-11:00 a.m. This would be a good time for seniors to meet with him and discuss senior issues. A City van will be provided to take some seniors to Kent for the meeting.

PRESIDING OFFICER'S REPORT

- Mayor Kaplan said he believes in goal and objective setting then taking a temperature check to track progress. He commented on the progress in the setting of goals, and the action taken so far to address some of those goals

ADMINISTRATION REPORTS

- Police dept and court are working on a pilot program for electronic ticketing
- Electronic council packets are now posted on the City's website
- Attended the retirement celebration for Chief Rick Kieffer of Normandy Park with Assistant City Manager Lorri Ericson.
- Fifteen semifinalists for the Police Chief position were sent questionnaires; 3 candidates withdrew. Interviews may be held in May
- Farmers Market has requested to move the market to near the harbormaster's office. The fee is between \$80 and \$100 per day, but renting portable toilets will not be necessary, so the market will be saving money since the cost of the portable rest rooms is \$2000 per summer
- Planning Building Public Works Director Grant Fredricks provided a report on current Capital Improvement (CIP) Projects.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of March 8, 2012 City Council meeting as amended.

ACTION/DIRECTION

Councilmember Sheckler moved to adopt the Consent Agenda; Councilmember Musser, second. The motion passed 6-0.

OLD BUSINESS

1. NEIGHBORHOOD COMMERCIAL (NC) PERMITTED USES ORDINANCE/AMENDMENT TO SETTLEMENT AGREEMENT – 2ND READING

Staff Presentation was provided by Development Services Manager Robert Ruth.

ACTION/DIRECTION

Councilmember Sheckler moved to authorize the City Manager to sign the updated Settlement Agreement and Release included as Attachment 1 to the March 29, 2012 Administration Report superseding the June 3, 2005 Settlement Agreement and Release to allow the property owner of Zenith Viewpointe to substitute one residential dwelling for the existing commercial tenant space; Councilmember Scott, second. The motion passed. The vote was 6-0.

Councilmember Sheckler moved to adopt Draft Ordinance No. 12-013 amending Section 18.20.020 DMMC of the NC (Neighborhood Commercial) Zone allowing multiple dwelling units as a permitted use; Councilmember Musser, second. The motion passed, 6-0.

2. BUDGET PROCESS

Council Discussion

The first presentation was that of Assistant City Manager Lorri Erickson who presented staffing and budget information on the Personnel and Records Divisions as they relate to City Council Goals #1-9.

Judge Veronica Alicea-Galvan addressed Court case load, staffing and budget issues as they relate to Council goals #1, 3, and 6, to protect people and property, enhance and preserve livability, and provide efficient and effective customer service.

City Attorney Pat Bosmans spoke about the legal department. She also explained the division of staff hours as they relate to City Council goals #1, 6, 7, and 8.

Parks Recreation and Senior Services Director Patrice Thorell, speaking from an organization chart, related staffing and budget issues to City Council goals #1-9.

BREAK

The City Council took a 10 minute break from 9:10-9:20 p.m. The City Council meeting reconvened at 9:20 p.m.

BUDGET PROCESS (continued)

Finance Director Paula Henderson spoke about Finance Department staffing and budget levels that serve the rest of the City internally and externally and how their work relates to the City Council goal #6, to provide efficient and effective City service.

The Planning Building and Public Works budget was discussed at the March 10 retreat and was not discussed at this meeting.

City Manager Tony Piasecki outlined the Executive Department supporting actions, which is to implement Council direction and to oversee a good flow of information and all else that takes place throughout the City organization as it relates to accomplishing City Council goals.

Total full time equivalents (FTEs) are 137 with about 150 people employed in some capacity. Four or five of those are funded from capital accounts.

Mayor Kaplan explained the next steps in the process were to take the provided budget information and list it by priorities, applying dollars to each function, layering them according to mandates and what is necessary from a good government/best practices standpoint. The current budget will be organized by priorities, looking at current ongoing revenues and showing what falls below the line in terms of ongoing expenses. The following discussion will include what *should* the budget look like and what we would want it to look like.

ADJOURNMENT

There being no further business to come before the City Council, Councilmember Caldwell moved to adjourn; second by Councilmember Burrage. The motion passed, 6-0.

The meeting was adjourned at 10:05.

Respectfully submitted,

Sandy Paul CMC
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Poverty Bay Brews & Blues Festival
at the Des Moines Beach Park

FOR AGENDA OF: April 12, 2012

ATTACHMENTS:

1. Draft Resolution No. 12-047
2. Draft Agreement Between City of Des Moines and the Des Moines Rotary Club for 2012 Poverty Bay Brews & Blues Festival

DEPT. OF ORIGIN: Legal Department

DATE SUBMITTED: March 19, 2012

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: JS

Purpose and Recommendation

The purpose of this item is to seek Council approval of Draft Resolution No. 12-047 authorizing Poverty Bay Brews & Blues Festival on August 25, 2012, sponsored by the Rotary Club of Des Moines to be held at the Des Moines Beach Park and Marina.

Suggested Motions

First Motion: "I move to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina."

Second Motion: "I move to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provision of support services and amenities for the event as identified therein, substantially in the form as attached."

Background

The Rotary Club of Des Moines has requested the use of the Des Moines Beach Park meadow, Founders Lodge and parking lot and Marina north parking lot to hold its third annual Poverty Bay Brews & Blues

Festival. Proceeds from the event will be used to provide the opportunity for music education for disadvantaged Highline School District students benefitting Des Moines youth.

Discussion

The Rotary Club of Des Moines requests that City Council approve Draft Resolution No. 12-047 authorizing the use of the Des Moines Beach Park and Marina for the third annual Poverty Bay Brews & Blues Festival. Rotary would provide event management, production and fund raising necessary for event production including \$2,000,000.00 event liability insurance coverage naming the City of Des Moines as an additional insured.

Rotary would work with City Departments to prepare the Beach Park and Marina event layout, parking lot management and pedestrian safety plans as required by the City's Special Event Permit to ensure a safe event open to the public on Saturday, August 25, 2012 between the hours of 12:00 p.m. and 8:00 p.m. The Rotary Club of Des Moines proposes to pay the city for the use of Beach Park facilities and will be responsible for providing event security officers, parking attendants, fencing, portable restrooms and garbage collection and removal. The Beach Park facility rental charge will cover the cost of on-site recreation facility support staff, water and power.

The City would assist the Rotary Club of Des Moines by promoting the event through its promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Rec & Roll Guide, City Web Page, Channel 21 and Seattle Southside Visitors Service.

The net proceeds from this event will be used to fund music programs within the Highline School District. The emphasis will be on obtaining instruments for low income students, beginning with elementary schools located in Des Moines. Music programs are often the first to go when schools face a budget crisis even though it has been shown that learning music enhances other learning skills. The Pacific Northwest is home to many great scholastic music programs that have been nationally recognized. The Rotary Club of Des Moines will use the funds to encourage such a program in South King County.

Alternatives

None provided.

Financial Impact

The Rotary Club of Des Moines requests that the City of Des Moines allow use of the Beach Park for the Poverty Bay Brews & Blues Festival and the north Marina parking lot for event parking. Facility rental charges and any city permit fees will be determined by the hours of park facilities use and impacts to other city services identified by city departments as part of the Special Event Permit process which is currently underway.

Staff anticipates minimal City support would be required because Rotary will provide and pay for event security officers, parking lot attendants, fencing, signage, portable restrooms, garbage collection and removal and any other event expenses.

Recommendation or Conclusion

Staff recommends that City Council approve Draft Resolution No. 12-047 for the third annual Rotary Club of Des Moines Poverty Bay Brews & Blues Festival.

CITY ATTORNEY'S FIRST DRAFT 03/16/2012

DRAFT RESOLUTION NO. 12-047

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Des Moines Rotary Club ("Rotary Club") to conduct its 2012 Poverty Bay Brews and Blues Festival ("Festival") at the Des Moines Beach Park and Marina and listing conditions under which such permission is granted.

WHEREAS, the Rotary Club wishes to conduct its third annual Festival in August 2012 at the Des Moines Beach Park and Marina, and

WHEREAS, the Rotary Club will solicit sponsors to assist in financing the Festival from hotels, motels, restaurants, suppliers, car rental companies, and other area business, and

WHEREAS, the Rotary Club has designed the Festival to raise funds for charitable, community, and educational projects supported by the Rotary Club, and to promote the Des Moines community and area businesses,

WHEREAS, the Festival will enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, the City of Des Moines wishes to permit the Rotary Club Festival; and, at the same time, be held harmless from any liability arising from the existence of such activity; now therefore,

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

Sec. 1. Permission to conduct the 2012 Poverty Bay Brews and Blues Festival ("Festival") on August 25, 2012 is granted to the Des Moines Rotary Club, subject to the following conditions:

(1) The Rotary Club shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of the Festival or its activities; and an authorized official of the Rotary Club shall sign a written agreement on behalf of the Rotary Club that approval of this 2012 Festival resolution does not constitute a waiver of the Rotary Club's obligation to defend and hold the City of Des Moines harmless

Resolution No. _____

Page 2 of 2

from any liability that may result from the conduct of the Festival event or its activities.

(2) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(3) The Rotary Club shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. The Rotary Club must remove all such signage within ten (10) days after the final day of the Festival.

(4) Normal fees for conduct of a community event shall be paid by the Rotary Club. Fees required by other governmental agencies, including the Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(5) An authorized official of the Rotary Club shall execute a written agreement, on behalf of the Rotary Club, acknowledging its responsibilities for the conduct of Festival activities and accepting such limitations as are contained in this resolution, in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(b) The hours of operation of the Festival shall occur within the following times:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary, following assessment of any security issue.

(c) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(d) The Rotary Club will use all reasonable efforts to advertise the Festival as a community festival.

(e) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors.

(f) All retail sales of food, beer, wine, and merchandise will be subject to permission of the Rotary Club.

(g) To enhance the security of the patrons of the Festival, the Rotary Club shall be required to fence areas in the Beach Park and is given permission to install tents within the fenced area as necessary for festival vendors and attendees. The tent(s) will meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or his designees for review and approval at least ninety (90) days before the date of the Festival.

(h) An admission fee will be charged by the Rotary Club.

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to the Rotary Club to use and occupy for the purpose of the Festival City facilities and property at the Des Moines Beach Park and Marina.

Sec. 3. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the City Currents, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

Resolution No. _____
Page 4 of 4

Sec. 4. The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

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:

Assistant City Attorney

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND
THE DES MOINES ROTARY CLUB
2012 POVERTY BAY BREWS AND BLUES FESTIVAL**

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and the DES MOINES ROTARY CLUB (hereinafter "Rotary Club") for the 2012 Poverty Bay Brews and Blues Festival.

WHEREAS, the City finds that the Festival enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, the Rotary Club, as sponsor of the Festival, carries out all activities as a Rotary Club function, and

WHEREAS, the City of Des Moines wishes to permit the Poverty Bay Brews and Blues Festival activities of the Rotary Club while at the same time being held harmless from any liability arising from the existence of such activities and to have the Rotary Club sponsor the Festival pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) The Rotary Club agrees as follows:

(a) The Rotary Club shall conduct the 2012 Festival in compliance with the conditions outlined in City of Des Moines Resolution No. ____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The Des Moines Rotary Club shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence of the City. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, the Des Moines Rotary Club shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and the Des Moines Rotary Club and their respective officers, agents, and employees, or any of them, the Des Moines Rotary Club shall satisfy the same.

(c) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as an additional named insured. Proof of such insurance shall be delivered to the City no later than thirty (30) days prior to the event.

(d) The Rotary Club shall remove all signage within ten (10) days after the final day of the Festival.

(e) The Rotary Club acknowledges its responsibilities for the conduct of Festival activities and accepts such limitations as are contained herein, in addition to such limitations as may be imposed by the City Council or City Manager.

(f) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(g) The date and hours of operation of the Festival shall be held within the following limits:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

(h) A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary following assessment of any security issues.

(i) The Rotary Club will use all reasonable efforts to advertise the Festival as a Community Festival.

(j) Retail sales of food, beer, and Brews and Blues merchandise will be subject to permission of the Rotary Club.

(k) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(l) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors inside the festival area.

(m) To enhance the security of the patrons of the Festival, the Rotary Club will be required to fence event areas in the Beach Park for use as the Festival grounds. Any tents shall meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or designees for review and approval at least ninety (90) days before the date of the Festival.

(n) An admission fee will be charged by the Rotary Club.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City grants permission to the Rotary Club to use and occupy, for the purpose of the Festival, City facilities and property at the Des Moines Beach Park for the main event venue and the Des Moines Marina parking lot for event parking.

(b) Normal City fees for conduct of this community event, and those fees required by other governmental agencies, including Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(c) The City authorizes the Rotary Club to utilize the official City of Des Moines logo in connection with the Festival.

(d) The City shall permit the Rotary Club to erect such special signage as is appropriate in the thirty (30) days prior to and during the event.

(e) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(f) The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(3) Duration of Agreement. This Agreement is solely for the 2012 Festival. The Agreement will commence upon date of execution and ends upon completion of all contractual obligations, execution of a new Contract, City's written termination of the Contract as described in section 4 of this Agreement, or the Rotary Club's decision not to have the Festival, whichever is sooner. Provided, however all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to the Rotary Club of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of the Rotary Club to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. The Rotary Club shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in Festival festivities on the basis of race, color, religion, creed, sex, national origin, sexual orientation, marital status, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

DES MOINES ROTARY CLUB

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. ____
In an Open Public Meeting on _____

Date _____

APPROVED AS TO FORM:

City Attorney

By _____
Its _____

Date _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Park Requirements for Subdivisions and Short
Plats (2nd Reading)

ATTACHMENTS:

1. Draft Ordinance 12-002 – Color
2. Requested Amendment – Color

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Planning, Building and
Public Works

DATE SUBMITTED: April 2, 2012

CLEARANCES:

☒ Legal *PB*

☐ Finance N/A

☐ Marina N/A

☒ Parks, Recreation & Senior Services

☒ Planning, Building & Public Works *HA*

☐ Police N/A

☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *HA*

Purpose and Recommendation

The purpose of this Agenda Item is to bring back Draft Ordinance 12-002 related to modifications to the park requirements for short plats and subdivisions for second reading as directed by the City Council on February 23, 2012. Staff is recommending that the City Council adopt Draft Ordinance 12-002 in order to bring the City's park requirements for short plats and subdivisions in to compliance with state and case law. The City Council may adopt Draft Ordinance 12-002 by passing the following motion:

Suggested Motion:

Motion: "I move to adopt Draft Ordinance 12-002 amending the City park requirements established by DMMC 17.36.150."

Background

Applicants requesting to subdivide property are required to develop, dedicate and improve space for recreational use or provide a payment in lieu of this dedication in order to mitigate impacts on

the existing parks and recreational facilities within the City. Historically, the City has required that the applicant make an in-lieu payment instead of dedicating park space, given that the amount of park land typically required is less than one-half acre. Only a few projects meet the requirement to dedicate a minimum of one-half acre, given that land division must have a minimum of 30 lots in order to be required to dedicate a park with at least a minimum of one-half acre under the current requirements to maintain the existing ratio of park land to population.

While the City has the authority to collect park in-lieu fees, the Courts have held that the only rational, non-arbitrary way of determining the amount of the in-lieu fee is to base the amount of the fee on the value of the land that would have been required to be dedicated and not a generalized formula (*Vintage Construction Company, Inc. v. The City of Bothell* 83 Wash. App. 605, 922 P.2d 828). Therefore, when establishing the amount of the in-lieu fee, the City must relate the fee to the specific value of land that would have otherwise been dedicated to fulfill the requirement to provide "appropriate provisions" for parks and playgrounds as established by RCW 58.17.110(2).

In identifying what constitutes "appropriate provisions", the City should utilize the adopted level of service standards related to the underlying provision as directed by WAC 365-196-820(4). In the case of parks, the City's adopted Level of Service Standard is 6.5 acres per 1,000 people or 283 square feet per person (sf/person). The per person standard would be translated to a lot standard by multiplying the 283 sf/person by the average household size 2.75 persons per single family home as established by the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011; therefore, the amount of park area required per lot would be 778 square feet.

SEPA

The SEPA Official determined that the proposed text code amendments were categorically exempt from SEPA pursuant to WAC 197-11-800(19).

APPROVAL PROCESS REQUIREMENTS

Textual code amendments are Type IV land use actions as defined by DMMC 18.56.060; as such, public hearing with the City Council was held on February 23, 2012 as required by DMMC 18.56.180.

Further, DMMC 17.36.150 is classified as a development regulation under the Growth Management Act as defined in RCW 36.70A.030(7); therefore, the amendments were required to be forwarded to the Department of Commerce for review and comment by the Department and other State agencies. The required 60 day review period concluded on April 9, 2012 and as of the date of this Agenda Item, the City has not received any comments from the Department of Commerce or other State agencies.

Discussion

On February 23, 2012, the City Council held a public hearing on Draft Ordinance 12-002 to consider modifying the park requirements established by DMMC 17.36.150. At the time of the public hearing, the Department of Commerce's 60 day comment period had not expired and as a result the City Council could not adopt the Draft Ordinance and therefore moved the Draft Ordinance to a second reading on April 12, 2012. During the public hearing, the City Council amended Finding of Fact No. 1 to reflect that it is the "City responsibility" to ensure that subdivisions provide appropriate provisions for parks. This amendment has been incorporated into the City Council's First Draft of Ordinance 12-002 (Attachment 1).

Staff was also asked to prepare an amendment to the General Obligation requirement in Section 2(1) of Draft Ordinance 12-002 to clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The proposed amendment language is provided in Attachment 2 to this Agenda Item. Staff received no other questions or comments since the initial public hearing on February 23, 2012.

Alternatives

The City Council has the following alternatives:

- (1) The City Council may adopt Draft Ordinance 12-002.
- (2) The City Council may amend Draft Ordinance 12-002 and then adopt amended version of Draft Ordinance 12-002.
- (3) The City Council may decline to act on Draft Ordinance 12-002.

Financial Impact

Modification to the park in-lieu fee provisions are required to ensure that the City can continue to collect the in-lieu fees as offsetting mitigation for the development. Removal of these in-lieu fees would negatively impact the funding mechanism adopted by the Parks Master Plan to provide for additional park facilities to meet the City's adopted level of service standard.

Recommendation and Conclusion

Staff recommends that modifications to the current park in-lieu fee formula be made to ensure that the fee is collected consistent with both state and case law.

Concurrence

The Parks, Recreation, and Senior Services Department concurs with the above recommendation regarding the modification to the park in-lieu calculation methodology and the development of a park impact fee program.

CITY COUNCIL'S FIRST DRAFT
02/23/2012

DRAFT ORDINANCE NO. 12-002

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending DMMC 17.36.150 relating to park requirements for subdivisions and short plats within the City of Des Moines.

WHEREAS, the City of Des Moines has adopted DMMC 17.36.150 to ensure subdivisions and shorts plats provide appropriate provisions for parks space as required RCW 58.17.110(2), and

WHEREAS, such park requirements have been in effect since 1992 without modification, and

WHEREAS, changes in state law and case law have called into question the legality and enforceability of certain provisions relate to the City's methodology for collecting park in-lieu fees, and

WHEREAS, clear and predictable development regulations to encourage efficient permitting is a planning goal established by the Growth Management Act (Chapter 36.70A RCW), and

WHEREAS, the Des Moines Planning Agency at its January 9, 2012 regular meeting recommended that the City Council amend the park in-lieu provisions of the City Subdivision Code, DMMC 17.36.150, and

WHEREAS, the Finance and Economic Development Committee has determined that modifications to the City's park in-lieu provisions are required to facilities economic growth within the City, and

WHEREAS, notice of the public hearing was given to the public pursuant to DMMC 17.44.030, and

WHEREAS, such public hearing was held on February 23, 2012 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the recommended amendments to DMMC 17.36.150 are appropriate to provide a clear, concise, and legal method of enforcing the park in-lieu

requirements needed to promote the health and welfare of the citizens; now therefore,

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

Sec. 1. Findings of fact. The findings of fact and conclusions set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to amend the park in-lieu requirements for new subdivisions and short plats.

Sec. 2. DMMC 17.36.150 and section 67 of Ordinance No. 931 is amended to read as follows:

Parks.

(1) **General Obligation.** Proposed residential subdivisions shall shall provide a minimum of 778 square feet of park area per lot in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3. maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.

(2) Decision by the CityCriteria for City Acceptance of a Mini-Park. The community development director shall

~~evaluate the proposed dedication of land to determine its usability for recreation purposes. Considerations in this evaluation shall include access to the site, size, topography, location, and shape of the proposed recreation area and the ability of the area to be combined with adjacent property. The city shall not find a division of land as meeting the obligation of this section unless the land proposed to be dedicated will reasonably meet the basic parks needs of the eventual users of the division of land. Applicants proposing to develop a Mini-Park in order to fulfill the general obligation to provide appropriate provisions for parks and playgrounds as established in DMMC 17.36.150(1) of this section shall comply with the following criteria:~~

~~(a) Use/Description: The proposed Mini-Park shall be designed and improved as play space for toddlers and young children to serve the basic needs of the neighborhood.~~

~~(b) The amenities within the Mini-Park shall include sand play areas, play apparatus, play equipment, picnic area, sports courts, and sanitation accommodations.~~

~~(c) Size: The proposed Mini-Park shall be a minimum of 0.5 acres.~~

~~(3) Tracts Required. Dedicated ~~r~~Recreational areas shall be located in a separate tract which provides for public recreation use. The area dedicated under this section shall become the property of the city shall be deeded to the City, which shall thereafter assume all maintenance and other ownership responsibilities.~~

~~(4) Lot Area. The area of the ~~recreation~~ Mini-Park tract shall not be included in the compilation of lot area for any lot.~~

~~(5) Payment in Lieu of ~~Dedication~~ Mini-Park Development. If the city finds that the land proposed to be ~~dedicated~~ developed as a Mini-Park under this section does not reasonably meet the criteria established in DMMC 17.36.150(2) then basic recreation needs of the eventual~~

~~users and the community, or that the land would best serve recreational needs by remaining undeveloped, or if the applicant chooses not to dedicate recreation space and the community development director determines that it would be in the best public interest not to provide such dedication and/or improvement, the applicant may voluntarily agree to~~shall make an in-lieu cash payment to the ~~city~~ City which shall be deposited into the ~~city~~ City's ~~park~~ MCI fundFund. The in-lieu amount ~~for dedication~~ shall be based on the following formula: ~~equal to five percent of the market value of all lots within the subdivision. The in-lieu amount for improvement shall be the current maximum improvement cost per square foot for five percent of the total lot area, exclusive of rights of way and tracts, within the subdivision. Market value shall be established by a real estate appraisal submitted by the applicant. If land is dedicated, but not improved, only the fee in lieu of improvement shall be required. The in-lieu cash payment shall be used for the acquisition and development of parks determined necessary as a consequence of the proposed development subdivision or plat. Such payment shall be managed, utilized or refunded in accordance with chapter 82.02 RCW, as presently constituted or as may be subsequently amended~~

Total Number of Lots within the subdivision equals (=) X

Total site area of the proposed subdivision equals (=) Y

Total appraised value of all property within the proposed subdivision as determined by the King County Assessor's website at the time of approval of the final plat documents equals (=) Z

In-lieu Fee equals (=) Z multiplied by ((X multiplied by 778 square feet) divided by Y).

Sec. 3. Severability - Construction.

(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.

Draft Ordinance No. 12-002

Page 5 of 5

(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.

Sec. 4. Effective date. This ordinance shall take effect and be in full force thirty (30) 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: _____

EXHIBIT A TO DRAFT ORDINANCE NO. 12-002

FINDINGS of FACT

1. ~~The City must ensure that Aall subdivisions must ensure that provide appropriate provisions are made for open spaces, parks, recreation, and playgrounds pursuant to RCW 58.17.110(2).~~
2. When draft development regulations "appropriate provisions" should be defined in a manner consistent with the City's adopted level of service ("LOS") standards related to the underlying provision pursuant to WAC 365-196-820(4).
3. All subdivisions must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.16.130(2)(c).
4. All short plats must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.12.110(3).
5. The City's adopted Level of Service Standard for Park Space is 6.5 acres per 1,000 people or 283 square feet per person (sf/person) pursuant to the *City of Des Moines 2010 Parks, Recreation, and Senior Services Master Plan* adopted November 5, 2009 and Goal 6-01-06 of the Recreational Element of the *Des Moines Comprehensive Plan*.
6. Within the City of Des Moines 2.75 individuals reside in each single family residential homes pursuant to the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011, Table 2.
7. The amount park in-lieu is based on the value of the total amount of land needed to provide 778 square feet of park space as established by the appraised land value determined by the King County Assessor.
8. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-03-02 states that the City should, "[U]tilize the Comprehensive Plan as the policy basis for preparing neighborhood plans, establishing

development regulations, prioritizing capital improvement construction, reviewing individual development proposals and making other decisions affecting the growth and development of Des Moines and the surrounding area.

9. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should "review and amend as appropriate the Zoning Code, Subdivision Code and other development regulations to establish development standards that are clear and predictable, that simplify the review process, and adapt to varied site or neighborhood conditions.
10. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should, "[C]onsistently and equitably enforce development standards. If such enforcement is not possible, re-evaluate the standards and amend them to be more precisely defined.
11. The Land Use Element of the *Des Moines Comprehensive Plan*, Policy 2-03-03 states that the City should, "[E]nsure that future development has adequate public facilities and services or such services can be concurrently provided.
12. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should "[R]equire that new development maintain and enhance on-site open spaces, and provide on-site recreation facilities in new subdivisions and multifamily developments or pay appropriate in-lieu fees as required by the DMMC.
13. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should, "[E]stablish standards for new development to provide on- and off-site roadways, utilities and other public facilities as necessary to serve the additional demand generated by the development.

CONCLUSIONS

1. Based Findings of Fact 1 - 7, all subdivisions and short plats must provided 778 square feet of park space per lot or pay an in-lieu fee amount equal to the value of 778 square feet per lot in order to ensure that every subdivision and short plat provides appropriate provisions

for park space concurrently with the development of the associated housing.

2. Findings of Fact 1 - 13, implement the policies and strategies of the *Des Moines Comprehensive Plan* by establishing development regulations which ensure that public facilities are provided concurrently with development in a consistent and equitably manner.

REQUESTED AMENDMENT 1 (General Obligation Modification)

DESCRIPTION:

Amendment 1 will modify Section 2(1) of Draft Ordinance 12-002 so that the General Obligation requirement clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The additional language is shown in yellow highlighted text below.

MOTION: "I move Amendment 1 as provided in Attachment 2 to April 2 Agenda Item"

AMENDMENTS:

SECTION 2 – PAGE 2 OF DRAFT ORDINANCE 12-002 IS AMENDED AS FOLLOWS:

(1) General Obligation. Proposed residential subdivisions shall ~~shall either provide a minimum of 778 square feet of park area per lot consistent with the requirements of DMMC 17.36.150(2) - DMMC 17.36.150(4) or make an in-lieu fee payment consistent with the requirements of DMMC 17.36.150(5) in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3.~~ maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Ordinance Classifying Certain
Firework Violations as Class 1 Civil
Infractions

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Police

DATE SUBMITTED: April 3, 2012

ATTACHMENTS:

1. Draft Ordinance No. 11-142

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: JA

Purpose and Recommendation

"The purpose of this report is to seek City Council approval to amend DMMC 9.42 to reclassify violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Suggested Motion

First Motion: "I move to suspend Rule 26(a) in order to enact Draft Ordinance 11-142 on first reading."

Second Motion: "I move to enact Draft Ordinance 11-142 classifying violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Background

Currently, the illegal possession or discharge of any amount of fireworks in the City of Des Moines is classified as a criminal misdemeanor. The vast majority of firework related offenses occur on holidays which are typically busy days for police officers. The officer time and effort involved in criminally citing an individual is higher than that involved in citing an individual civilly as there is a higher burden of proof involved in a criminal case as well as elevated rights for the individual being arrested. By citing

a violator civilly for violations related to the limited possession or discharge of fireworks, officers will be able to spend more time on higher priority calls.

Discussion

The possession and discharge of fireworks are legal in the state of Washington subject to the restrictions found in RCW 70.77. The City of Des Moines has previously passed an Ordinance that prohibits the possession and discharge of fireworks within city limits unless the City has issued a permit. Currently, the possession, discharge, or any other violation of DMMC 9.42 related to fireworks is a criminal misdemeanor. This subjects the violator to arrest, with a maximum penalty of 90 days in jail and a \$1,000 fine.

This Draft Ordinance proposes to decriminalize the limited possession and discharge of fireworks in the City of Des Moines. The decriminalization would only apply to violators possessing or discharging less than five pounds of fireworks. Those who possess more would still be subject to arrest.

The time involved in documenting and processing a criminal case is typically much greater than that of a civil infraction. A criminal case imposes a greater standard of proof on the City, which requires the officer to more fully document the evidence, provide greater detail in reports, and to spend more time in general on handling the matter. A civil infraction can generally be accomplished by filling out a simple citation. The majority of firework violations occur on or around busy holidays for police officers, and the reduced time spent on handling them will increase the amount of time spent on other matters.

A class 1 civil infraction imposes a maximum fine of \$513. There is no possibility of jail time. All illegal fireworks will still be subject to impound.

Changing this type of violation to an infraction would be consistent with enforcement efforts of surrounding communities. The Chief of Police has consulted with the cities of Renton, Tukwila, Burien, SeaTac, Kent and Federal Way and all of these cities utilize civil infractions for typical fireworks violations.

Generally, those contacted by police regarding firework violations are young. These types of violations are often times categorized as a nuisance although there remains concerns of life safety and the potential of damage to property. Handling the minor violations as infractions will avoid creating a criminal history record for violators which would likely have to be disclosed for employment, higher education or military enlistment reasons. More serious firework violations involving actual or potential risk to life safety or damage to property remain enforceable through other criminal codes such as reckless endangerment violation.

When a City or County adopts an ordinance that imposes greater restrictions on fireworks, the Ordinance must wait an entire calendar year before it goes into effect. As this ordinance lessens the penalty for certain firework violations, the requirement does not apply.

Alternatives

1. Pass the Draft Ordinance as presented.
2. Pass the Draft Ordinance with amendments.
3. Do not pass the Draft Ordinance.

Financial Impact

The police department does not believe this code change will have any significant financial impact to the city. Some minor cost saving may be realized because the proposed change will streamline the enforcement and prosecution of these types of violations.

Recommendation or Conclusion

This Draft Ordinance was presented to the Public Safety and Transportation Committee who approved its presentation to the entire Council. The Police Department recommends this Ordinance be enacted.

Concurrence

The Legal Department concurs.

CITY ATTORNEY'S FIRST DRAFT 2/24/2012

DRAFT ORDINANCE NO. 11-142

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to fireworks, amending DMMC 9.42.030 and 9.42.130, and classifying violations of chapter 9.42 DMMC as a class 1 civil infraction.

WHEREAS, RCW 70.77.547 allows for the civil enforcement of fireworks regulations, and

WHEREAS, the illegal possession or discharge of fireworks in the City of Des Moines has previously been classified as a criminal misdemeanor, and

WHEREAS, the officer time and effort involved in criminally citing an individual who violates this chapter can be burdensome as firework violations typically occur on busy holidays, and

WHEREAS, citing an individual civilly creates a lower burden of proof and reduces the requirements to write extensive reports, thereby reducing officer time involved with addressing firework violations, and

WHEREAS, the Council finds that a class 1 civil infraction imposes a significant and sufficient penalty on an individual who violates this chapter; now therefore,

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

Sec. 1. DMMC 9.42.030 and section 3 of Ordinance No. 1362 are amended to read as follows:

Fireworks prohibited. Except as authorized by a permit for the public display of fireworks, as defined in RCW 70.77.160, or for religious purposes as authorized by RCW 70.77.311(2), no person, firm or corporation shall manufacture, possess, sell, store, ignite, explode or discharge any fireworks or firecrackers within the City limits of the City of Des Moines. The manufacture, possession, sale,

discharge or storage of five (5) pounds or more of fireworks or firecrackers is a misdemeanor.

Sec. 2. DMMC 9.42.130 and section 13 of Ordinance No. 1362 are amended to read as follows:

Penalties.

(1) Unless otherwise noted, a violation or failure to comply with any part of this chapter is a class 1 civil infraction. Any person who violates any portion of this chapter shall be subject to having their fireworks confiscated as provided in RCW 70.77.435 and shall be guilty of a misdemeanor.

(2) A person is guilty of a separate offense for each day during which he commits, continues, or permits a action which violates violation of any provision of, or any order, rule, or regulation made pursuant to this chapter.

~~(3) The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means.~~

~~(4)~~ (3) Civil proceedings to enforce this chapter may be brought in the City of Des Moines Municipal Court or in the Superior Court for King County.

NEW SECTION. Sec. 3. Severability - Construction.

(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.

Ordinance No. _____
Page 3 of 3

NEW SECTION. Sec. 4. **Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval 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: _____

S-U-P-P-L-E-M-E-N-T-A-L A-G-E-N-D-A

**REGULAR MEETING
DES MOINES CITY COUNCIL**

April 12, 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

Briefing By Cleanscapes

CONSENT CALENDAR

Page 3

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the regular meetings of March 22, 2012

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers described as follows:

Claim checks that total \$448,676.83

Payroll fund transfers in the total amount of \$426,444.30

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$875,121.13

Page 7

Item 3: 2012 POVERTY BAY BREWS AND BLUES DRAFT RESOLUTION NO. 12-047

Motion 1 is to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina.

Motion 2 is to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provisions of support services and amenities for the event as identified therein, substantially in the form as attached.

Item 4: MOTION TO SETTLE THE MATTER OF MAUREEN RICHTER V. CITY OF DES MOINES

Motion is to approve settlement of 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 \$75,000.

EXECUTIVE SESSION

Acquisition of Real Estate Per RCW 42.30.110.(1)(b)

OLD BUSINESS

Page 21 1. 2nd Reading Ordinance No. 12-002, Park-In-Lieu Fee
Staff Presentation: Senior Planner Jason Sullivan

NEW BUSINESS

Page 35 1. Ordinance Decriminalizing Possession & Discharge of Fireworks
Staff Presentation: Police Chief John O'Leary

NEXT MEETING DATE – April 26, 2012, City Council Study Session

ADJOURNMENT

AGENDA
REGULAR MEETING
DES MOINES CITY COUNCIL

April 12, 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

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the regular meetings of March 22, 2012

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Motion is to approve for payment vouchers and payroll transfers described as follows:

Claim checks that total \$

Payroll fund transfers in the total amount of \$

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$

Item 3: 2012 POVERTY BAY BREWS AND BLUES DRAFT RESOLUTION NO.
12-047

Motion 1 is to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina.

Motion 2 is to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provisions of support services and amenities for the event as identified therein, substantially in the form as attached.

EXECUTIVE SESSION

Acquisition of Real Estate Per RCW 42.30.110.(1)(b)

OLD BUSINESS

1. 2nd Reading Ordinance No. 12-002, Park-In-Lieu Fee
Staff Presentation: Senior Planner Jason Sullivan

NEW BUSINESS

1. Ordinance Decriminalizing Possession & Discharge of Fireworks
Staff Presentation: Police Chief John O'Leary

NEXT MEETING DATE – April 26, 2012, City Council Study Session

ADJOURNMENT

MINUTES

**REGULAR MEETING
DES MOINES CITY COUNCIL**

March 29, 2012 - 7:30 p.m.

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

PLEDGE OF ALLEGIANCE - Councilmember Burrage led the flag salute.

ROLL CALL

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

Mayor Pro-Tem Matt Pina was absent. Councilmember Sheckler moved to excuse Councilmember Pina; Councilmember Musser, second; all the votes were ayes.

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; Interim Police Chief John O'Leary; Finance Director Paula Henderson; Finance Operations Manager Cecilia Pollock; Parks Recreation and Senior Services Director Patrice Thorell; Development Services Manager Robert Ruth; Senior Planner Jason Sullivan; Court Administrator Jennefer Johnson; CIP Project Manager Scott Romano; Policy Analyst Sue Anderson; City Clerk Sandy Paul

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Reported that she had photographed the interior of the Beach Park auditorium
- Attended a Farmer's Market meeting Monday, March 26

Councilmember Sheckler

- Attended the SCORE meeting this week and reported that SCORE passed its first audit
- Since the SCORE facility is located under SeaTac Airport flight pattern, he suggested that space on the large, flat roof be sold for advertising
- Reported from his book *776 of the Stupidest Things Ever Said by Politicians*

Councilmember Musser

- Reported on the walking tour of Beach Park and Marina by stakeholders on Monday March 26. The next meeting is May 8
- Announced a link on the Marina website through the city's website to the printed materials the stakeholders are using in their Marina/Beach Park Business Development Plan
- There will be a May 23 Community Open House at the Auditorium at Beach Park
- Reminded Council and the audience that Saturday night at 6:00 p.m. Sports Night would take place at the Fieldhouse. The Cove is catering. Wine and desserts will also be available
- The Des Moines Elementary PTA is holding its annual benefit auction at The Landmark on the Sound on April 20 with a catered dinner beginning at 6:30 p.m.

Councilmember Caldwell

- On Friday, March 23, members of the South Ministers took meals to feed 120 homeless at Seattle Pacific University. University students assisted as needed
- The Ski-hawks handicapped ski team annual banquet was held at the Ballard Elks Club on Sunday April 1. His son, Dan, is eligible to go to Korea with the Special Olympics
- Attended Port of Seattle meeting

- Adam Smith is holding a meeting at Kent City Hall on April 9, 10:00-11:00 a.m. This would be a good time for seniors to meet with him and discuss senior issues. A City van will be provided to take some seniors to Kent for the meeting.

PRESIDING OFFICER'S REPORT

- Mayor Kaplan said he believes in goal and objective setting then taking a temperature check to track progress. He commented on the progress in the setting of goals, and the action taken so far to address some of those goals

ADMINISTRATION REPORTS

- Police dept and court are working on a pilot program for electronic ticketing
- Electronic council packets are now posted on the City's website
- Attended the retirement celebration for Chief Rick Kieffer of Normandy Park with Assistant City Manager Lorri Ericson.
- Fifteen semifinalists for the Police Chief position were sent questionnaires; 3 candidates withdrew. Interviews may be held in May
- Farmers Market has requested to move the market to near the harbormaster's office. The fee is between \$80 and \$100 per day, but renting portable toilets will not be necessary, so the market will be saving money since the cost of the portable rest rooms is \$2000 per summer
- Planning Building Public Works Director Grant Fredricks provided a report on current Capital Improvement (CIP) Projects.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of March 8, 2012 City Council meeting as amended.

ACTION/DIRECTION

Councilmember Sheckler moved to adopt the Consent Agenda; Councilmember Musser, second. The motion passed 6-0.

OLD BUSINESS

1. NEIGHBORHOOD COMMERCIAL (NC) PERMITTED USES ORDINANCE/AMENDMENT TO SETTLEMENT AGREEMENT – 2ND READING

Staff Presentation was provided by Development Services Manager Robert Ruth.

ACTION/DIRECTION

Councilmember Sheckler moved to authorize the City Manager to sign the updated Settlement Agreement and Release included as Attachment 1 to the March 29, 2012 Administration Report superseding the June 3, 2005 Settlement Agreement and Release to allow the property owner of Zenith Viewpointe to substitute one residential dwelling for the existing commercial tenant space; Councilmember Scott, second. The motion passed. The vote was 6-0.

Councilmember Sheckler moved to adopt Draft Ordinance No. 12-013 amending Section 18.20.020 DMMC of the NC (Neighborhood Commercial) Zone allowing multiple dwelling units as a permitted use; Councilmember Musser, second. The motion passed, 6-0.

2. BUDGET PROCESS

Council Discussion

The first presentation was that of Assistant City Manager Lorri Erickson who presented staffing and budget information on the Personnel and Records Divisions as they relate to City Council Goals #1-9.

Judge Veronica Alicea-Galvan addressed Court case load, staffing and budget issues as they relate to Council goals #1, 3, and 6, to protect people and property, enhance and preserve livability, and provide efficient and effective customer service.

City Attorney Pat Bosmans spoke about the legal department. She also explained the division of staff hours as they relate to City Council goals #1, 6, 7, and 8.

Parks Recreation and Senior Services Director Patrice Thorell, speaking from an organization chart, related staffing and budget issues to City Council goals #1-9.

BREAK

The City Council took a 10 minute break from 9:10-9:20 p.m. The City Council meeting reconvened at 9:20 p.m.

BUDGET PROCESS (continued)

Finance Director Paula Henderson spoke about Finance Department staffing and budget levels that serve the rest of the City internally and externally and how their work relates to the City Council goal #6, to provide efficient and effective City service.

The Planning Building and Public Works budget was discussed at the March 10 retreat and was not discussed at this meeting.

City Manager Tony Piasecki outlined the Executive Department supporting actions, which is to implement Council direction and to oversee a good flow of information and all else that takes place throughout the City organization as it relates to accomplishing City Council goals.

Total full time equivalents (FTEs) are 137 with about 150 people employed in some capacity. Four or five of those are funded from capital accounts.

Mayor Kaplan explained the next steps in the process were to take the provided budget information and list it by priorities, applying dollars to each function, layering them according to mandates and what is necessary from a good government/best practices standpoint. The current budget will be organized by priorities, looking at current ongoing revenues and showing what falls below the line in terms of ongoing expenses. The following discussion will include what *should* the budget look like and what we would want it to look like.

ADJOURNMENT

There being no further business to come before the City Council, Councilmember Caldwell moved to adjourn; second by Councilmember Burrage. The motion passed, 6-0.

The meeting was adjourned at 10:05.

Respectfully submitted,

Sandy Paul CMC
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Poverty Bay Brews & Blues Festival
at the Des Moines Beach Park

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Legal Department

ATTACHMENTS:

1. Draft Resolution No. 12-047
2. Draft Agreement Between City of Des Moines and the Des Moines Rotary Club for 2012 Poverty Bay Brews & Blues Festival

DATE SUBMITTED: March 19, 2012

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: JS

Purpose and Recommendation

The purpose of this item is to seek Council approval of Draft Resolution No. 12-047 authorizing Poverty Bay Brews & Blues Festival on August 25, 2012, sponsored by the Rotary Club of Des Moines to be held at the Des Moines Beach Park and Marina.

Suggested Motions

First Motion: "I move to adopt Draft Resolution No. 12-047, authorizing the third annual Brews & Blues Festival on August 25, 2012, at the Des Moines Beach Park and Marina."

Second Motion: "I move to direct the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provision of support services and amenities for the event as identified therein, substantially in the form as attached."

Background

The Rotary Club of Des Moines has requested the use of the Des Moines Beach Park meadow, Founders Lodge and parking lot and Marina north parking lot to hold its third annual Poverty Bay Brews & Blues

Festival. Proceeds from the event will be used to provide the opportunity for music education for disadvantaged Highline School District students benefitting Des Moines youth.

Discussion

The Rotary Club of Des Moines requests that City Council approve Draft Resolution No. 12-047 authorizing the use of the Des Moines Beach Park and Marina for the third annual Poverty Bay Brews & Blues Festival. Rotary would provide event management, production and fund raising necessary for event production including \$2,000,000.00 event liability insurance coverage naming the City of Des Moines as an additional insured.

Rotary would work with City Departments to prepare the Beach Park and Marina event layout, parking lot management and pedestrian safety plans as required by the City's Special Event Permit to ensure a safe event open to the public on Saturday, August 25, 2012 between the hours of 12:00 p.m. and 8:00 p.m. The Rotary Club of Des Moines proposes to pay the city for the use of Beach Park facilities and will be responsible for providing event security officers, parking attendants, fencing, portable restrooms and garbage collection and removal. The Beach Park facility rental charge will cover the cost of on-site recreation facility support staff, water and power.

The City would assist the Rotary Club of Des Moines by promoting the event through its promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Rec & Roll Guide, City Web Page, Channel 21 and Seattle Southside Visitors Service.

The net proceeds from this event will be used to fund music programs within the Highline School District. The emphasis will be on obtaining instruments for low income students, beginning with elementary schools located in Des Moines. Music programs are often the first to go when schools face a budget crisis even though it has been shown that learning music enhances other learning skills. The Pacific Northwest is home to many great scholastic music programs that have been nationally recognized. The Rotary Club of Des Moines will use the funds to encourage such a program in South King County.

Alternatives

None provided.

Financial Impact

The Rotary Club of Des Moines requests that the City of Des Moines allow use of the Beach Park for the Poverty Bay Brews & Blues Festival and the north Marina parking lot for event parking. Facility rental charges and any city permit fees will be determined by the hours of park facilities use and impacts to other city services identified by city departments as part of the Special Event Permit process which is currently underway.

Staff anticipates minimal City support would be required because Rotary will provide and pay for event security officers, parking lot attendants, fencing, signage, portable restrooms, garbage collection and removal and any other event expenses.

Recommendation or Conclusion

Staff recommends that City Council approve Draft Resolution No. 12-047 for the third annual Rotary Club of Des Moines Poverty Bay Brews & Blues Festival.

CITY ATTORNEY'S FIRST DRAFT 03/16/2012

DRAFT RESOLUTION NO. 12-047

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Des Moines Rotary Club ("Rotary Club") to conduct its 2012 Poverty Bay Brews and Blues Festival ("Festival") at the Des Moines Beach Park and Marina and listing conditions under which such permission is granted.

WHEREAS, the Rotary Club wishes to conduct its third annual Festival in August 2012 at the Des Moines Beach Park and Marina, and

WHEREAS, the Rotary Club will solicit sponsors to assist in financing the Festival from hotels, motels, restaurants, suppliers, car rental companies, and other area business, and

WHEREAS, the Rotary Club has designed the Festival to raise funds for charitable, community, and educational projects supported by the Rotary Club, and to promote the Des Moines community and area businesses,

WHEREAS, the Festival will enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, the City of Des Moines wishes to permit the Rotary Club Festival; and, at the same time, be held harmless from any liability arising from the existence of such activity; now therefore,

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

Sec. 1. Permission to conduct the 2012 Poverty Bay Brews and Blues Festival ("Festival") on August 25, 2012 is granted to the Des Moines Rotary Club, subject to the following conditions:

(1) The Rotary Club shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of the Festival or its activities; and an authorized official of the Rotary Club shall sign a written agreement on behalf of the Rotary Club that approval of this 2012 Festival resolution does not constitute a waiver of the Rotary Club's obligation to defend and hold the City of Des Moines harmless

from any liability that may result from the conduct of the Festival event or its activities.

(2) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(3) The Rotary Club shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. The Rotary Club must remove all such signage within ten (10) days after the final day of the Festival.

(4) Normal fees for conduct of a community event shall be paid by the Rotary Club. Fees required by other governmental agencies, including the Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(5) An authorized official of the Rotary Club shall execute a written agreement, on behalf of the Rotary Club, acknowledging its responsibilities for the conduct of Festival activities and accepting such limitations as are contained in this resolution, in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(b) The hours of operation of the Festival shall occur within the following times:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary, following assessment of any security issue.

(c) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(d) The Rotary Club will use all reasonable efforts to advertise the Festival as a community festival.

(e) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors.

(f) All retail sales of food, beer, wine, and merchandise will be subject to permission of the Rotary Club.

(g) To enhance the security of the patrons of the Festival, the Rotary Club shall be required to fence areas in the Beach Park and is given permission to install tents within the fenced area as necessary for festival vendors and attendees. The tent(s) will meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or his designees for review and approval at least ninety (90) days before the date of the Festival.

(h) An admission fee will be charged by the Rotary Club.

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to the Rotary Club to use and occupy for the purpose of the Festival City facilities and property at the Des Moines Beach Park and Marina.

Sec. 3. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the City Currents, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

Resolution No. _____
Page 4 of 4

Sec. 4. The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

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:

Assistant City Attorney

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND
THE DES MOINES ROTARY CLUB
2012 POVERTY BAY BREWS AND BLUES FESTIVAL**

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and the DES MOINES ROTARY CLUB (hereinafter "Rotary Club") for the 2012 Poverty Bay Brews and Blues Festival.

WHEREAS, the City finds that the Festival enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, the Rotary Club, as sponsor of the Festival, carries out all activities as a Rotary Club function, and

WHEREAS, the City of Des Moines wishes to permit the Poverty Bay Brews and Blues Festival activities of the Rotary Club while at the same time being held harmless from any liability arising from the existence of such activities and to have the Rotary Club sponsor the Festival pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) The Rotary Club agrees as follows:

(a) The Rotary Club shall conduct the 2012 Festival in compliance with the conditions outlined in City of Des Moines Resolution No. _____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The Des Moines Rotary Club shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence of the City. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, the Des Moines Rotary Club shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and the Des Moines Rotary Club and their respective officers, agents, and employees, or any of them, the Des Moines Rotary Club shall satisfy the same.

(c) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as an additional named insured. Proof of such insurance shall be delivered to the City no later than thirty (30) days prior to the event.

(d) The Rotary Club shall remove all signage within ten (10) days after the final day of the Festival.

(e) The Rotary Club acknowledges its responsibilities for the conduct of Festival activities and accepts such limitations as are contained herein, in addition to such limitations as may be imposed by the City Council or City Manager.

(f) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(g) The date and hours of operation of the Festival shall be held within the following limits:

Saturday, August 25, 2012 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

(h) A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary following assessment of any security issues.

(i) The Rotary Club will use all reasonable efforts to advertise the Festival as a Community Festival.

(j) Retail sales of food, beer, and Brews and Blues merchandise will be subject to permission of the Rotary Club.

(k) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(l) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors inside the festival area.

(m) To enhance the security of the patrons of the Festival, the Rotary Club will be required to fence event areas in the Beach Park for use as the Festival grounds. Any tents shall meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or designees for review and approval at least ninety (90) days before the date of the Festival.

(n) An admission fee will be charged by the Rotary Club.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City grants permission to the Rotary Club to use and occupy, for the purpose of the Festival, City facilities and property at the Des Moines Beach Park for the main event venue and the Des Moines Marina parking lot for event parking.

(b) Normal City fees for conduct of this community event, and those fees required by other governmental agencies, including Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(c) The City authorizes the Rotary Club to utilize the official City of Des Moines logo in connection with the Festival.

(d) The City shall permit the Rotary Club to erect such special signage as is appropriate in the thirty (30) days prior to and during the event.

(e) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(f) The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(3) Duration of Agreement. This Agreement is solely for the 2012 Festival. The Agreement will commence upon date of execution and ends upon completion of all contractual obligations, execution of a new Contract, City's written termination of the Contract as described in section 4 of this Agreement, or the Rotary Club's decision not to have the Festival, whichever is sooner. Provided, however all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to the Rotary Club of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of the Rotary Club to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. The Rotary Club shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in Festival festivities on the basis of race, color, religion, creed, sex, national origin, sexual orientation, marital status, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

DES MOINES ROTARY CLUB

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. ____
In an Open Public Meeting on _____

Date _____

APPROVED AS TO FORM:

City Attorney

By _____
Its _____

Date _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Park Requirements for Subdivisions and Short
Plats (2nd Reading)

ATTACHMENTS:

1. Draft Ordinance 12-002 – Color
2. Requested Amendment – Color

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Planning, Building and
Public Works

DATE SUBMITTED: April 2, 2012

CLEARANCES:

☒ Legal PB

☐ Finance N/A

☐ Marina N/A

☒ Parks, Recreation & Senior Services

☒ Planning, Building & Public Works JA

☐ Police N/A

☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: JA

Purpose and Recommendation

The purpose of this Agenda Item is to bring back Draft Ordinance 12-002 related to modifications to the park requirements for short plats and subdivisions for second reading as directed by the City Council on February 23, 2012. Staff is recommending that the City Council adopt Draft Ordinance 12-002 in order to bring the City's park requirements for short plats and subdivisions in to compliance with state and case law. The City Council may adopt Draft Ordinance 12-002 by passing the following motion:

Suggested Motion:

Motion: "I move to adopt Draft Ordinance 12-002 amending the City park requirements established by DMMC 17.36.150."

Background

Applicants requesting to subdivide property are required to develop, dedicate and improve space for recreational use or provide a payment in lieu of this dedication in order to mitigate impacts on

the existing parks and recreational facilities within the City. Historically, the City has required that the applicant make an in-lieu payment instead of dedicating park space, given that the amount of park land typically required is less than one-half acre. Only a few projects meet the requirement to dedicate a minimum of one-half acre, given that land division must have a minimum of 30 lots in order to be required to dedicate a park with at least a minimum of one-half acre under the current requirements to maintain the existing ratio of park land to population.

While the City has the authority to collect park in-lieu fees, the Courts have held that the only rational, non-arbitrary way of determining the amount of the in-lieu fee is to base the amount of the fee on the value of the land that would have been required to be dedicated and not a generalized formula (*Vintage Construction Company, Inc. v. The City of Bothell* 83 Wash. App. 605, 922 P.2d 828). Therefore, when establishing the amount of the in-lieu fee, the City must relate the fee to the specific value of land that would have otherwise been dedicated to fulfill the requirement to provide "appropriate provisions" for parks and playgrounds as established by RCW 58.17.110(2).

In identifying what constitutes "appropriate provisions", the City should utilize the adopted level of service standards related to the underlying provision as directed by WAC 365-196-820(4). In the case of parks, the City's adopted Level of Service Standard is 6.5 acres per 1,000 people or 283 square feet per person (sf/person). The per person standard would be translated to a lot standard by multiplying the 283 sf/person by the average household size 2.75 persons per single family home as established by the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011; therefore, the amount of park area required per lot would be 778 square feet.

SEPA

The SEPA Official determined that the proposed text code amendments were categorically exempt from SEPA pursuant to WAC 197-11-800(19).

APPROVAL PROCESS REQUIREMENTS

Textual code amendments are Type IV land use actions as defined by DMMC 18.56.060; as such, public hearing with the City Council was held on February 23, 2012 as required by DMMC 18.56.180.

Further, DMMC 17.36.150 is classified as a development regulation under the Growth Management Act as defined in RCW 36.70A.030(7); therefore, the amendments were required to be forwarded to the Department of Commerce for review and comment by the Department and other State agencies. The required 60 day review period concluded on April 9, 2012 and as of the date of this Agenda Item, the City has not received any comments from the Department of Commerce or other State agencies.

Discussion

On February 23, 2012, the City Council held a public hearing on Draft Ordinance 12-002 to consider modifying the park requirements established by DMMC 17.36.150. At the time of the public hearing, the Department of Commerce's 60 day comment period had not expired and as a result the City Council could not adopt the Draft Ordinance and therefore moved the Draft Ordinance to a second reading on April 12, 2012. During the public hearing, the City Council amended Finding of Fact No. 1 to reflect that it is the "City responsibility" to ensure that subdivisions provide appropriate provisions for parks. This amendment has been incorporated into the City Council's First Draft of Ordinance 12-002 (Attachment 1).

Staff was also asked to prepare an amendment to the General Obligation requirement in Section 2(1) of Draft Ordinance 12-002 to clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The proposed amendment language is provided in Attachment 2 to this Agenda Item. Staff received no other questions or comments since the initial public hearing on February 23, 2012.

Alternatives

The City Council has the following alternatives:

- (1) The City Council may adopt Draft Ordinance 12-002.
- (2) The City Council may amend Draft Ordinance 12-002 and then adopt amended version of Draft Ordinance 12-002.
- (3) The City Council may decline to act on Draft Ordinance 12-002.

Financial Impact

Modification to the park in-lieu fee provisions are required to ensure that the City can continue to collect the in-lieu fees as offsetting mitigation for the development. Removal of these in-lieu fees would negatively impact the funding mechanism adopted by the Parks Master Plan to provide for additional park facilities to meet the City's adopted level of service standard.

Recommendation and Conclusion

Staff recommends that modifications to the current park in-lieu fee formula be made to ensure that the fee is collected consistent with both state and case law.

Concurrence

The Parks, Recreation, and Senior Services Department concurs with the above recommendation regarding the modification to the park in-lieu calculation methodology and the development of a park impact fee program.

CITY COUNCIL'S FIRST DRAFT
02/23/2012

DRAFT ORDINANCE NO. 12-002

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON amending DMMC 17.36.150 relating to park requirements for subdivisions and short plats within the City of Des Moines.

WHEREAS, the City of Des Moines has adopted DMMC 17.36.150 to ensure subdivisions and shorts plats provide appropriate provisions for parks space as required RCW 58.17.110(2), and

WHEREAS, such park requirements have been in effect since 1992 without modification, and

WHEREAS, changes in state law and case law have called into question the legality and enforceability of certain provisions relate to the City's methodology for collecting park in-lieu fees, and

WHEREAS, clear and predictable development regulations to encourage efficient permitting is a planning goal established by the Growth Management Act (Chapter 36.70A RCW), and

WHEREAS, the Des Moines Planning Agency at its January 9, 2012 regular meeting recommended that the City Council amend the park in-lieu provisions of the City Subdivision Code, DMMC 17.36.150, and

WHEREAS, the Finance and Economic Development Committee has determined that modifications to the City's park in-lieu provisions are required to facilities economic growth within the City, and

WHEREAS, notice of the public hearing was given to the public pursuant to DMMC 17.44.030, and

WHEREAS, such public hearing was held on February 23, 2012 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the recommended amendments to DMMC 17.36.150 are appropriate to provide a clear, concise, and legal method of enforcing the park in-lieu

requirements needed to promote the health and welfare of the citizens; now therefore,

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

Sec. 1. Findings of fact. The findings of fact and conclusions set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to amend the park in-lieu requirements for new subdivisions and short plats.

Sec. 2. DMMC 17.36.150 and section 67 of Ordinance No. 931 is amended to read as follows:

Parks.

(1) **General Obligation.** Proposed residential subdivisions shall provide a minimum of 778 square feet of park area per lot in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3. maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.

(2) Decision by the CityCriteria for City Acceptance of a Mini-Park. The community development director shall

~~evaluate the proposed dedication of land to determine its usability for recreation purposes. Considerations in this evaluation shall include access to the site, size, topography, location, and shape of the proposed recreation area and the ability of the area to be combined with adjacent property. The city shall not find a division of land as meeting the obligation of this section unless the land proposed to be dedicated will reasonably meet the basic parks needs of the eventual users of the division of land. Applicants proposing to develop a Mini-Park in order to fulfill the general obligation to provide appropriate provisions for parks and playgrounds as established in DMMC 17.36.150(1) of this section shall comply with the following criteria:~~

~~(a) Use/Description: The proposed Mini-Park shall be designed and improved as play space for toddlers and young children to serve the basic needs of the neighborhood.~~

~~(b) The amenities within the Mini-Park shall include sand play areas, play apparatus, play equipment, picnic area, sports courts, and sanitation accommodations.~~

~~(c) Size: The proposed Mini-Park shall be a minimum of 0.5 acres~~

~~(3) Tracts Required. Dedicated Recreational areas shall be located in a separate tract which provides for public recreation use. The area dedicated under this section shall become the property of the city shall be deeded to the City, which shall thereafter assume all maintenance and other ownership responsibilities.~~

~~(4) Lot Area. The area of the recreation Mini-Park tract shall not be included in the compilation of lot area for any lot.~~

~~(5) Payment in Lieu of Dedication Mini-Park Development. If the city finds that the land proposed to be dedicated developed as a Mini-Park under this section does not reasonably meet the criteria established in DMMC 17.36.150(2) then basic recreation needs of the eventual~~

~~users and the community, or that the land would best serve recreational needs by remaining undeveloped, or if the applicant chooses not to dedicate recreation space and the community development director determines that it would be in the best public interest not to provide such dedication and/or improvement, the applicant may voluntarily agree to~~shall make an in-lieu cash payment to the ~~city~~ City which shall be deposited into the ~~city~~ City's ~~park~~ MCI fundFund. The in-lieu amount for dedication shall be based on the following formula: equal to five percent of the market value of all lots within the subdivision. The in-lieu amount for improvement shall be the current maximum improvement cost per square foot for five percent of the total lot area, exclusive of rights of way and tracts, within the subdivision. Market value shall be established by a real estate appraisal submitted by the applicant. If land is dedicated, but not improved, only the fee in lieu of improvement shall be required. The in-lieu cash payment shall be used for the acquisition and development of parks determined necessary as a consequence of the proposed development subdivision or plat. Such payment shall be managed, utilized or refunded in accordance with chapter 82.02 RCW, as presently constituted or as may be subsequently amended

Total Number of Lots within the subdivision equals (=) X

Total site area of the proposed subdivision equals (=) Y

Total appraised value of all property within the proposed subdivision as determined by the King County Assessor's website at the time of approval of the final plat documents equals (=) Z

In-lieu Fee equals (=) Z multiplied by ((X multiplied by 778 square feet) divided by Y).

Sec. 3. Severability - Construction.

(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.

Sec. 4. Effective date. This ordinance shall take effect and be in full force thirty (30) 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: _____

EXHIBIT A TO DRAFT ORDINANCE NO. 12-002

FINDINGS of FACT

1. The City must ensure that ~~All subdivisions must ensure that provide~~ appropriate provisions are made for open spaces, parks, recreation, and playgrounds pursuant to RCW 58.17.110(2).
2. When draft development regulations "appropriate provisions" should be defined in a manner consistent with the City's adopted level of service ("LOS") standards related to the underlying provision pursuant to WAC 365-196-820(4).
3. All subdivisions must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.16.130(2)(c).
4. All short plats must provide adequate provisions for open spaces, parks and playgrounds pursuant to DMMC 17.12.110(3).
5. The City's adopted Level of Service Standard for Park Space is 6.5 acres per 1,000 people or 283 square feet per person (sf/person) pursuant to the *City of Des Moines 2010 Parks, Recreation, and Senior Services Master Plan* adopted November 5, 2009 and Goal 6-01-06 of the Recreational Element of the *Des Moines Comprehensive Plan*.
6. Within the City of Des Moines 2.75 individuals reside in each single family residential homes pursuant to the Office of Financial Management's *Official Base 2000 Population and Housing by Structure Type and Group Quarters Used for the Development of Population Estimates*, Revised July 2011, Table 2.
7. The amount park in-lieu is based on the value of the total amount of land needed to provide 778 square feet of park space as established by the appraised land value determined by the King County Assessor.
8. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-03-02 states that the City should, "[U]tilize the Comprehensive Plan as the policy basis for preparing neighborhood plans, establishing

development regulations, prioritizing capital improvement construction, reviewing individual development proposals and making other decisions affecting the growth and development of Des Moines and the surrounding area.

9. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should "review and amend as appropriate the Zoning Code, Subdivision Code and other development regulations to establish development standards that are clear and predictable, that simplify the review process, and adapt to varied site or neighborhood conditions.
10. The General Planning Element of the *Des Moines Comprehensive Plan*, Strategy 1-04-03(2) states that the City should, "[C]onsistently and equitably enforce development standards. If such enforcement is not possible, re-evaluate the standards and amend them to be more precisely defined.
11. The Land Use Element of the *Des Moines Comprehensive Plan*, Policy 2-03-03 states that the City should, "[E]nsure that future development has adequate public facilities and services or such services can be concurrently provided.
12. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should "[R]equire that new development maintain and enhance on-site open spaces, and provide on-site recreation facilities in new subdivisions and multifamily developments or pay appropriate in-lieu fees as required by the DMMC.
13. The Land Use Element of the *Des Moines Comprehensive Plan*, Strategy 2-04-16 states that the City should, [E]stablish standards for new development to provide on- and off-site roadways, utilities and other public facilities as necessary to serve the additional demand generated by the development.

CONCLUSIONS

1. Based Findings of Fact 1 - 7, all subdivisions and short plats must provided 778 square feet of park space per lot or pay an in-lieu fee amount equal to the value of 778 square feet per lot in order to ensure that every subdivision and short plat provides appropriate provisions

for park space concurrently with the development of the associated housing.

2. Findings of Fact 1 - 13, implement the policies and strategies of the *Des Moines Comprehensive Plan* by establishing development regulations which ensure that public facilities are provided concurrently with development in a consistent and equitably manner.

REQUESTED AMENDMENT 1 (General Obligation Modification)

DESCRIPTION:

Amendment 1 will modify Section 2(1) of Draft Ordinance 12-002 so that the General Obligation requirement clearly state that an applicant is required to either dedicate park space or pay an in-lieu fee. The additional language is shown in yellow highlighted text below.

MOTION: "I move Amendment 1 as provided in Attachment 2 to April 2 Agenda Item"

AMENDMENTS:

SECTION 2 – PAGE 2 OF DRAFT ORDINANCE 12-002 IS AMENDED AS FOLLOWS:

(1) General Obligation. Proposed residential subdivisions shall ~~shall~~ either provide a minimum of 778 square feet of park area per lot consistent with the requirements of DMMC 17.36.150(2) - DMMC 17.36.150(4) or make an in-lieu fee payment consistent with the requirements of DMMC 17.36.150(5) in order to comply with the level of service standard of 6.5 acres of park land per 1,000 population established in the City of Des Moines 2010 Parks, Recreation and Senior Services Master Plan, Section 2.3. ~~maintain the current ratio of park land to population within the city and provide for recreational needs of the future residents of the proposed subdivision. This obligation shall be met by dedicating to the city and improving usable property for recreation use within the subdivision or on an off-site property. The amount of property to be dedicated for recreation use shall not be less than five percent of the total area within the subdivision devoted to developable lots. Improvements shall include landscaping, irrigation, a combination of active and passive use amenities; provided, however, that the applicant shall not be required to spend for materials and labor more than \$3.00, in 1992 dollars, per square foot of the area required to be dedicated for recreation improvements. The maximum required improvement cost shall be adjusted annually by the community development director in accordance with a construction cost index established by the community development director.~~

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Ordinance Classifying Certain
Firework Violations as Class 1 Civil
Infractions

FOR AGENDA OF: April 12, 2012

DEPT. OF ORIGIN: Police

DATE SUBMITTED: April 3, 2012

ATTACHMENTS:

1. Draft Ordinance No. 11-142

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AA

Purpose and Recommendation

"The purpose of this report is to seek City Council approval to amend DMMC 9.42 to reclassify violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Suggested Motion

First Motion: "I move to suspend Rule 26(a) in order to enact Draft Ordinance 11-142 on first reading."

Second Motion: "I move to enact Draft Ordinance 11-142 classifying violations related to the limited possession or discharge of fireworks as class 1 civil infractions."

Background

Currently, the illegal possession or discharge of any amount of fireworks in the City of Des Moines is classified as a criminal misdemeanor. The vast majority of firework related offenses occur on holidays which are typically busy days for police officers. The officer time and effort involved in criminally citing an individual is higher than that involved in citing an individual civilly as there is a higher burden of proof involved in a criminal case as well as elevated rights for the individual being arrested. By citing

a violator civilly for violations related to the limited possession or discharge of fireworks, officers will be able to spend more time on higher priority calls.

Discussion

The possession and discharge of fireworks are legal in the state of Washington subject to the restrictions found in RCW 70.77. The City of Des Moines has previously passed an Ordinance that prohibits the possession and discharge of fireworks within city limits unless the City has issued a permit. Currently, the possession, discharge, or any other violation of DMMC 9.42 related to fireworks is a criminal misdemeanor. This subjects the violator to arrest, with a maximum penalty of 90 days in jail and a \$1,000 fine.

This Draft Ordinance proposes to decriminalize the limited possession and discharge of fireworks in the City of Des Moines. The decriminalization would only apply to violators possessing or discharging less than five pounds of fireworks. Those who possess more would still be subject to arrest.

The time involved in documenting and processing a criminal case is typically much greater than that of a civil infraction. A criminal case imposes a greater standard of proof on the City, which requires the officer to more fully document the evidence, provide greater detail in reports, and to spend more time in general on handling the matter. A civil infraction can generally be accomplished by filling out a simple citation. The majority of firework violations occur on or around busy holidays for police officers, and the reduced time spent on handling them will increase the amount of time spent on other matters.

A class 1 civil infraction imposes a maximum fine of \$513. There is no possibility of jail time. All illegal fireworks will still be subject to impound.

Changing this type of violation to an infraction would be consistent with enforcement efforts of surrounding communities. The Chief of Police has consulted with the cities of Renton, Tukwila, Burien, SeaTac, Kent and Federal Way and all of these cities utilize civil infractions for typical fireworks violations.

Generally, those contacted by police regarding firework violations are young. These types of violations are often times categorized as a nuisance although there remains concerns of life safety and the potential of damage to property. Handling the minor violations as infractions will avoid creating a criminal history record for violators which would likely have to be disclosed for employment, higher education or military enlistment reasons. More serious firework violations involving actual or potential risk to life safety or damage to property remain enforceable through other criminal codes such as reckless endangerment violation.

When a City or County adopts an ordinance that imposes greater restrictions on fireworks, the Ordinance must wait an entire calendar year before it goes into effect. As this ordinance lessens the penalty for certain firework violations, the requirement does not apply.

Alternatives

1. Pass the Draft Ordinance as presented.
2. Pass the Draft Ordinance with amendments.
3. Do not pass the Draft Ordinance.

Financial Impact

The police department does not believe this code change will have any significant financial impact to the city. Some minor cost saving may be realized because the proposed change will streamline the enforcement and prosecution of these types of violations.

Recommendation or Conclusion

This Draft Ordinance was presented to the Public Safety and Transportation Committee who approved its presentation to the entire Council. The Police Department recommends this Ordinance be enacted.

Concurrence

The Legal Department concurs.

CITY ATTORNEY'S FIRST DRAFT 2/24/2012

DRAFT ORDINANCE NO. 11-142

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to fireworks, amending DMMC 9.42.030 and 9.42.130, and classifying violations of chapter 9.42 DMMC as a class 1 civil infraction.

WHEREAS, RCW 70.77.547 allows for the civil enforcement of fireworks regulations, and

WHEREAS, the illegal possession or discharge of fireworks in the City of Des Moines has previously been classified as a criminal misdemeanor, and

WHEREAS, the officer time and effort involved in criminally citing an individual who violates this chapter can be burdensome as firework violations typically occur on busy holidays, and

WHEREAS, citing an individual civilly creates a lower burden of proof and reduces the requirements to write extensive reports, thereby reducing officer time involved with addressing firework violations, and

WHEREAS, the Council finds that a class 1 civil infraction imposes a significant and sufficient penalty on an individual who violates this chapter; now therefore,

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

Sec. 1. DMMC 9.42.030 and section 3 of Ordinance No. 1362 are amended to read as follows:

Fireworks prohibited. Except as authorized by a permit for the public display of fireworks, as defined in RCW 70.77.160, or for religious purposes as authorized by RCW 70.77.311(2), no person, firm or corporation shall manufacture, possess, sell, store, ignite, explode or discharge any fireworks or firecrackers within the City limits of the City of Des Moines. The manufacture, possession, sale,

discharge or storage of five (5) pounds or more of fireworks or firecrackers is a misdemeanor.

Sec. 2. DMMC 9.42.130 and section 13 of Ordinance No. 1362 are amended to read as follows:

Penalties.

(1) Unless otherwise noted, a violation or failure to comply with any part of this chapter is a class 1 civil infraction. Any person who violates any portion of this chapter shall be subject to having their fireworks confiscated as provided in RCW 70.77.435 ~~and shall be guilty of a misdemeanor.~~

(2) A person is guilty of a separate offense for each day ~~during which he commits, continues, or permits a~~ action which violates ~~violation of~~ any provision of, or any order, rule, or regulation made pursuant to this chapter.

~~(3) The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means.~~

~~(4)~~ (3) Civil proceedings to enforce this chapter may be brought in the City of Des Moines Municipal Court or in the Superior Court for King County.

NEW SECTION. Sec. 3. Severability - Construction.

(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.

Ordinance No. _____
Page 3 of 3

NEW SECTION. Sec. 4. **Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval 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: _____

[illegible]

Congressman Adam Smith's Budget Handout

Total Revenue & GDP 1993-2010 (In Billions) Source: OMB

Year	Total Revenue	Total GDP	Revenue as % of GDP
1993	\$1,154.3	\$6,587.3	18%
1994	\$1,258.6	\$6,976.6	18%
1995	\$1,351.8	\$7,341.1	18%
1996	\$1,453.1	\$7,718.3	19%
1997	\$1,579.2	\$8,211.7	19%
1998	\$1,721.7	\$8,663.0	20%
1999	\$1,827.5	\$9,208.4	20%
2000	\$2,025.2	\$9,821.0	21%
2001	\$1,991.1	\$10,225.3	19%
2002	\$1,853.1	\$10,543.9	18%
2003	\$1,782.3	\$10,980.2	16%
2004	\$1,880.1	\$11,676.0	16%
2005	\$2,153.6	\$12,428.6	17%
2006	\$2,406.9	\$13,206.5	18%
2007	\$2,568.0	\$13,861.4	19%
2008	\$2,524.0	\$14,334.4	18%
2009	\$2,105.0	\$13,937.5	15%
2010	\$2,162.7	\$14,359.7	15%
2011	\$2,303.5	\$14,958.6	15%

HISTORICAL FEDERAL BUDGET

(IN BILLIONS OF DOLLARS)

SOURCE: CBO

Year	Revenues	Spending	Deficit	Fed Debt
1993	1,154	1,410	(255)	(4,351)
1994	1,259	1,462	(203)	(4,643)
1995	1,352	1,516	(164)	(4,921)
1996	1,453	1,561	(107)	(5,181)
1997	1,579	1,601	(22)	(5,369)
1998	1,722	1,653	69	(5,478)
1999	1,828	1,702	126	(5,606)
2000	2,025	1,789	236	(5,629)
2001	1,991	1,863	128	(5,770)
2002	1,853	2,011	(158)	(6,198)
2003	1,783	2,160	(378)	(6,760)
2004	1,880	2,293	(413)	(7,355)
2005	2,154	2,472	(318)	(7,905)
2006	2,407	2,655	(248)	(8,451)
2007	2,568	2,729	(161)	(8,951)
2008	2,524	2,978	(455)	(9,986)
2009	2,105	3,518	(1,413)	(11,876)
2010	2,162	3,456	(1,294)	(13,529)
2011	2,303	3,603	(1,300)	(14,764)

City of Des Moines
Senior Services Advisory Committee
Thursday, April 5th, 2012
2pm

MEETING MINUTES

Present: Sue Padden John Mc Evoy
Novella Perry Dan Caldwell
Rita Lambert

Excused: Gloria Nava Jill Martin
Florence McMullin

John officially called the meeting to order at 2:05pm. Meeting held at Des Moines Activity Center in the Mt. Rainier Room.

Approval of February 9th minutes

Dan motioned and Vella seconded to approve the February 9th meeting minutes as written.

Committee Vacancy

Sue reported that we are still recruiting for one more committee member. Jill volunteered at our last meeting to be the Normandy Park representative. This allows us to recruit for a Des Moines resident. Sue noted that she has an article in the Spring *City Currents* about the vacancy, Dan will speak to some members of his church, and Vella will speak with a few folks that she feels would be a contribution to our committee.

Drug Take Back

Sue reported that the next drug take back date for the Des Moines and Normandy Park communities is Saturday, April 28th. The police department will have posters out in the community soon. Due to funding issues, this may be the last Drug Take Back event sponsored by DEA. State bill SB5234 to put the cost of collecting unused meds back to the pharmaceutical companies did not pass this last session. John reported that Rep. Upthegrove noted that the bill needs to be re-written. There is still a fear of handling controlled substances. Vella reported that a local Walgreen's pharmacist told her friend to grind up her pills in her blender, mixed with coffee grounds and throw it away. How can they still promote this poor method of disposing of medicines?! Staff will announce the next drugs take back during lunch the week prior to April 28th at the activity center. The police will probably send out flyers again to all of the area retirement committees. Sue reported that the Des Moines Legacy Foundation thanked this committee for supporting take back your medicines. They feel it is important for our parks, our residents and our community. They agreed to fund an additional \$300 for small medicine collection bags that this committee can pass out throughout the community to remind residents to dispose of their medicines properly and safely.

Legislative Updates*

Jill and John attended Senior Lobby Day on Thursday, February, 23rd in Olympia. Governor Gregoire spoke to the senior group. They were able to meet with Legislative representatives Tina Orwall, and Dave Upthegrove. Senator Keiser was not available. The two subjects that Jill and John spoke to our electeds about were the Drug Take Back program and the Senior Services Act funding. Upthegrove reported that the legislature agreed NOT to make cuts to this act. John said that was worth the entire trip. He felt it was a very productive trip.

Aging Your Way Summit

Sue provided a summary of the Aging Your Way Summit held at South Seattle Community College on March 21st. The summit brought all 12 Aging Your Way forums together for continued brainstorming and sharing of ideas for aging in place in our communities. The focus was a positive approach; that aging is an economic and social viability. Key note speaker, Jim Diers, said that all of the community groups had common threads: housing, local transportation, life long learning, health and wellness, local economies, community connections, and arts and entertainment. Des Moines projects with volunteer committees are: Crosswalk flags, art in empty downtown store fronts, community awareness, and multi-generational projects. Boomers want intergenerational, multi-cultural, interdependent and sustainable programs supported by technology. If the committee is interested in participating in one of the Des Moines projects, Sue can connect you with the volunteer citizen leader for the project. John felt that the committee should help with the pedestrian safety. John will take the lead on this.

Latino Program Updates*

Sue reported for Gloria that our next big event will be Diversity Desserts Day on May 17th.

Advisory Committee Awareness*

John reported that Rita will visit the center on Monday, April 9th and Vella will visit on Monday, May 14th. John is waiting to hear from Florence about a spring date that she can visit the center to talk with our lunch crowd.

NLC Prescription Drug Discount Card

Sue reported that press was going out this month about the National League of Cities and City of Des Moines Prescription Drug Discount card program. Council approved the program at their February 23rd meeting. Sue is hearing from some residents that they like the idea of using the card for their pets' medicines.

Next Meeting

Our next meeting will be Thursday, June 7th, 2pm at Des Moines Activity Center.

Consent Calendar – Substitute Motion

ITEM #4

Motion is to approve settlement of 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, upon execution of a satisfactory settlement agreement on Plaintiff's contract claims to issue a check in the amount of \$75,000.

THAT
CONCLUDES
THE CONSENT
CALENDAR
YOUR HONOR.

PROSSER WINTER

BS ①
PC ②

PROPOSED AMENDMENT 2
LIGHT BLUE PAPER
(In-Lieu Credit for Existing Dwelling Units)

DESCRIPTION:

This amendment will modify Section 2(5) of Draft Ordinance 12-002 so that the in-lieu fee calculation takes into account existing residential units located within a proposed subdivision that will either remain or be demolished and replaced as these units are included in the existing park area to population ratio and as such do not require mitigation through the payment of the park in-lieu fee. The new language is shown in bold below.

MOTION: "I move Amendment 2 on light blue paper"

AMENDMENTS:

SECTION 2(5) – PAGES 3 and 4 OF DRAFT ORDINANCE 12-002 IS AMENDED AS FOLLOWS:

~~Payment in Lieu of Dedication Mini-Park Development. If the city finds that the land proposed to be dedicated developed as a Mini-Park under this section does not reasonably meet the criteria established in DMMC 17.36.150(2) then basic recreation needs of the eventual users and the community, or that the land would best serve recreational needs by remaining undeveloped, or if the applicant chooses not to dedicate recreation space and the community development director determines that it would be in the best public interest not to provide such dedication and/or improvement, the applicant may voluntarily agree to shall make an in-lieu cash payment to the city City which shall be deposited into the city City's park MCI fundFund. The in-lieu amount for dedication shall be based on the following formula: equal to five percent of the market value of all lots within the subdivision. The in-lieu amount for improvement shall be the current maximum improvement cost per square foot for five percent of the total lot area, exclusive of rights-of-way and tracts, within the subdivision. Market value shall be established by a real estate appraisal submitted by the applicant. If land is dedicated, but not improved, only the fee in lieu of improvement shall be required. The in-lieu cash payment shall be used for the acquisition and development of parks determined necessary as a consequence of the proposed development subdivision or plat. Such payment shall be managed,~~

~~utilized or refunded in accordance with chapter 82.02 RCW, as presently constituted or as may be subsequently amended~~

Total Number of Existing Residential Units equals (=) W

Total Number of Lots within the subdivision equals (=) X

Total site area of the proposed subdivision equals (=) Y

Total appraised value of all property within the proposed subdivision as determined by the King County Assessor's website at the time of approval of the final plat documents equals (=)

Z

In-lieu Fee equals (=) Z multiplied by (((X-W) multiplied by 778 square feet)) divided by Y).