

AGENDA

DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines

September 26, 2013 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

- Page 1
- PUBLIC HEALTH-SEATTLE & KING COUNTY OUTREACH AND ENROLLMENT CAMPAIGN "COVERAGE IS HERE KING COUNTY"
 - CRIME STATISTIC BRIEFING
 - SOUNDERS SPONSORED TURF WAR CHALLENGE

CONSENT CALENDAR

- Page 7 Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers included in the attached list and further described as follows:
Claim Checks: \$579,592.16
Payroll Fund Transfers: \$840,432.57
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$1,420,024.73
- Page 9 Item 2: NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PHASE II APPEAL
Motion is to approve the first Amendment to the August 13, 2012 ILA between the Coalition Cities amending Paragraph 4.1 to contribute an additional \$7,500.00 to the NPDES Coalition Fund for the City's share of continued litigation costs and expenses in the appeal of the NPDES Phase II Permits; to authorize a contingency in the amount of \$7,500.00; and to authorize the City Manager to sign the First Amendment to the August 13, 2012 ILA reflecting the City's additional contribution to the litigation expenses, substantially in the form as attached.
- Page 19 Item 3: AMENDMENT TO CITY MANAGER'S EMPLOYMENT AGREEMENT
Motion is to approve the amendment to the City Manager's Employment Agreement, suspending the cost of living (COLA) formula contained in section 7 for 2013 and providing a COLA formula for 2013 equal to that provided to all other City employees.

NEW BUSINESS

Page 23 Item 1: GENERAL AND STREET FUNDS 2013 YEAREND/2014 PROPOSED REVENUE ESTIMATES

Staff Presentation: Finance Director Paula Henderson

Page 37 Item 2: 2014 PRELIMINARY BUDGET OVERVIEW – GENERAL & STREET FUNDS

Staff Presentation: Finance Director Paula Henderson

Page 39 Item 3: AMENDMENTS TO TITLES 12 DMMC

Staff Presentation: City Attorney Pat Bosmans

NEXT MEETING DATE

October 3, 2013 Regular City Council Meeting

ADJOURNMENT

ADMINISTRATION REPORT ITEM #1:

PUBLIC HEALTH-SEATTLE & KING COUNTY
OUTREACH AND ENROLLMENT CAMPAIGN
“COVERAGE IS HERE KING COUNTY”

Des Moines Council to be Briefed on New Health Insurance Enrollment Efforts

Des Moines— Nearly 5,000, or 27% percent of people in the City of Des Moines are without health insurance. That's a threat not only to their personal health, but to their pocketbook, and to the local economy.

And, that profile should change dramatically over the next several months, thanks to Washington's new Health Benefit Exchange, a resource to buy affordable health insurance.

The Des Moines City Council will be briefed on October 7 on Coverage is Here King County—the countywide effort to enroll newly eligible residents in health insurance through the Washington Health Benefit Exchange. Enrollment begins October 1, 2013, and coverage begins on January 1, 2014.

Nearly 2,000 of Des Moines residents will be eligible for free insurance through a greatly expanded Medicaid program, and another nearly 2,400 will be able to take advantage of the subsidies available through the Exchange. Overall, King County has 180,000 residents who are newly eligible for free or low-cost health insurance.

When people no longer have to worry about falling ill – or possible bankruptcy due to medical bills – they're liberated to become more productive in the local economy.

Purchasing insurance will be easier than ever, but many people will still have questions or need help with the online-based enrollment. In Des Moines, HealthPoint, SeaMar, Open Arms Perinatal, Solid Ground, Washington CAN, and World Relief will provide in-person enrollment assistance from October 2013 through March of 2014.

In addition, partners like the Des Moines Public Libraries, UW Neighborhood Clinic and the Des Moines Food Bank will hold enrollment events to raise awareness about the insurance options available to residents of Des Moines.

BACKGROUND

New insurance options in Washington

The Affordable Care Act gave states the option of both expanding Medicaid and starting a health benefit exchange in order to reduce the number of uninsured.

The State of Washington opted to extend Medicaid benefits to all individuals under 138 percent of the Federal Poverty Level, which is \$15,865 for an individual. , The full cost of the expanded Medicaid program will be covered by the federal government for the first three years of the program (rather than the state's current financial responsibility of 50 percent for Medicaid patients). The federal government's share will gradually decrease to 90 percent by 2020.

The State of Washington agreed to plan and implement a state-based health benefit exchange, which is a marketplace for individuals and small businesses to compare and purchase health insurance. Individuals and families with incomes between 139 percent and 400 percent of the Federal Poverty Level will be eligible for subsidies (technically a tax credit, but available immediately) through the exchange, making insurance options more affordable. The State's exchange, called the Washington HealthPlanFinder, will begin enrollment on October 1, 2013 and insurance coverage begins on January 1, 2014.

Some individuals will remain uninsured, even after Medicaid expands and the Health Benefit Exchange are in place. They include undocumented immigrants, who are not eligible to receive Medicaid or purchase insurance through the exchange, and individuals who choose to pay a fine in order to opt-out of coverage.

Coverage is Here King County

In partnership with cities and local organizations, Public Health – Seattle & King County has launched a campaign called "Coverage is Here King County" to raise awareness of the new health insurance coverage available to all residents and to help them enroll.

The countywide effort to enroll 180,000 newly eligible King County residents in Medicaid and the exchange includes hundreds of community partners, who will provide a range of services ranging from outreach events to enrollment assistance.

FACT
SHEETCoverage
is Here
King County

Des Moines

Partners:

- Des Moines Food Bank
- UW Neighborhood Clinic in Des Moines
- HealthPoint Midway
- Des Moines Public Libraries

Upcoming Events:

Des Moines Food Bank
Enrollment drop-in:

10/15 - 5-8pm

10/25 - 10am-1pm

11/6 - 10am-1pm

HealthPoint Midway

Enrollment:

8am-5pm every Saturday in
October

Woodmont Library

Enrollment:

10/26 - 1-5pm

Des Moines Library

Enrollment:

10/12 - 1-5pm

11/7 - 4-8pm

For more information, visit:
kingcounty.gov/coveragePublic Health
Seattle & King County

King County Goal:

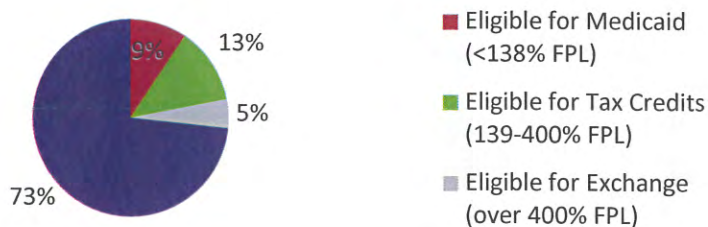
Increase access to health coverage Health

Reform is here and big changes are coming. Starting this fall, Des Moines residents will have a new way to find, compare and enroll in affordable health insurance coverage. It's called Washington Healthplanfinder.

Enrollment begins on Oct. 1, 2013 for coverage that begins Jan. 1, 2014.

King County has made it a countywide priority to ensure all residents who are newly eligible for health coverage are enrolled. Opportunities to insure residents are through:

- *Medicaid*, which will expand by increasing the income eligibility to 138% of the Federal Poverty Level (FPL). This increase will allow about 80,000 people in King County, who are currently uninsured, to become eligible for Medicaid.
- Our state's Health Benefit Exchange, called *Washington Healthplanfinder*, which will give consumers and small businesses a new way to find, compare and enroll in affordable health insurance. Subsidized premiums and tax credits will be available to the approximately 100,000 King County residents with incomes 139%-400% of poverty.

City of Des Moines Health Insurance
Profile

Federal Poverty Levels by Income
 100% = \$11,490 (\$23,550 for family of four)
 138% = \$15,856 (\$32,499 for family of four)
 400% = \$45,960 (\$94,200 for family of four)

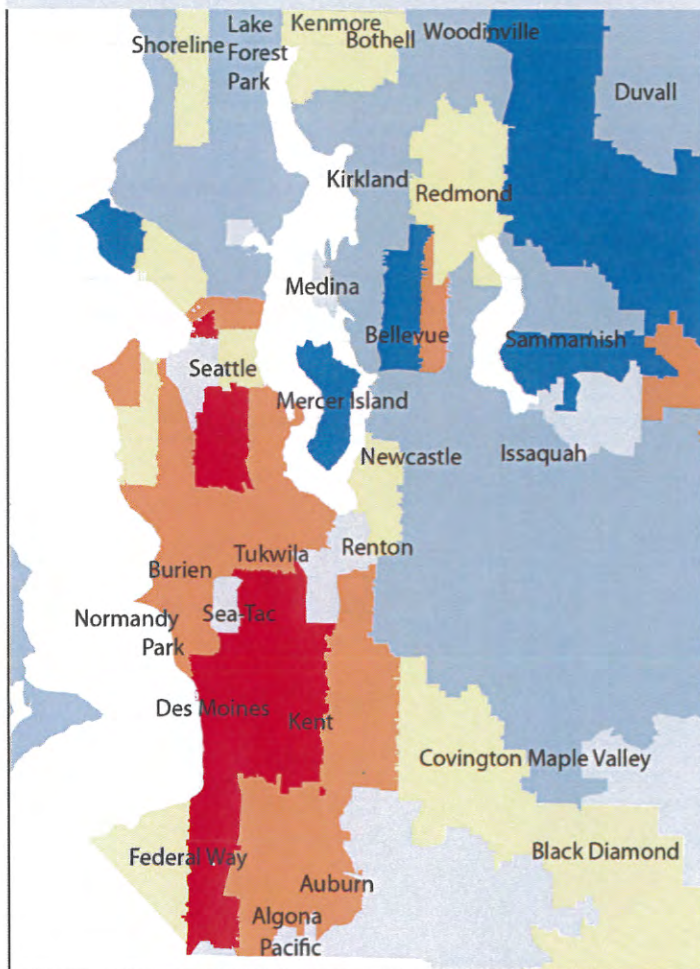
- **4,963 people are uninsured**, which is about 27% of the population in the City of Des Moines.
- Of the uninsured, **1,739 people will be eligible for Medicaid** through the expansion.
- Of the uninsured, **2,348 will be eligible for subsidies and tax credits** through the Health Benefit Exchange.

Health insurance access in King County

Coverage is Here King County: Our best opportunity to address health inequity

Wide disparities exist in King County related to place, race/ethnicity, education and income. In fact, King County has some of the greatest disparities in the U.S. in a number of determinants of health, including health coverage. Lack of health insurance is much more common in some communities. For example, 30% of residents in SeaTac are uninsured, while only 2% of residents in Mercer Island are uninsured.

Map 1: Percentage of uninsured King County residents before health reform (3% - 30%)



Map 2: Anticipated Percentage of uninsured King County residents after health reform (1% - 10%)



CITY OF DES MOINES
Voucher Certification Approval

26-Sep-13

Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **September 26, 2013** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer.

Claims Vouchers:		Numbers				Amounts
Total A/P Checks/Vouchers		137209	-	137349	141	576,315.27
Electronic Wire Transfers	1	MERITAIN HEALTH				3,276.89
Subtotal for this Council Packet						579,592.16
Voided Claim Checks this check run:						0.00
Voided Claim Checks from previous check runs						0.00
Total Claims/Wire Transfers/Voids						142 579,592.16

Payroll Vouchers:		DISBURSED 09/05/13				Amounts
Payroll Checks	18307	-	18320	=	14	16,828.63
Direct Deposit	360001	-	360154	=	154	270,002.70
Payroll Taxes						61,313.11
Wage/Garnishments						744.07
Voids					0	0.00
Electronic Wire Transfers						82,455.22
ICMA 401 Forfeitures						(1,098.48)
Total Claims						430,245.25

Payroll Vouchers:		DISBURSED 09/20/13				Amounts
Payroll Checks	18321	-	18335	=	15	16,674.43
Direct Deposit	380001	-	380135	=	135	257,223.56
Payroll Taxes						56,952.58
Wage/Garnishments						744.07
Voids					0	0.00
Electronic Wire Transfers						79,277.97
ICMA 401 Forfeitures						(685.29)
Total Claims						410,187.32
Total certified Wire Transfers,Voids, A/P & Payroll vouchers for Sept 26, 2013						1,420,024.73

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL

City of Des Moines, WA

SUBJECT: National Pollution Discharge
Elimination System (NPDES) Permit
Phase II Appeal

FOR AGENDA OF: September 26, 2013

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: September 13, 2013

ATTACHMENTS:

1. First Amendment to the 2012 ILA between Auburn, Bainbridge Island, Bellevue, Burlington, Des Moines, Everett, Issaquah, Kent, Mount Vernon, Renton, SeaTac, Snoqualmie and Sumner and Cowlitz County Regarding Legal Services

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation:

The purpose of this item is to seek City Council approval to execute an amendment to Paragraph 4.1 of the August 13, 2012 Interlocal Agreement with the Coalition of Washington Cities for legal expenses. The City's original share of litigation expenses in the NPDES Permit Phase II Appeal was approved by Council on October 4, 2012 in the amount of \$15,000.00, the amount applied to participants that have a population between 10,000 and 30,000. The City has been asked for an additional \$7,500.00 to cover the additional legal costs associated with the appeal of the NPDES Phase II Permits. Although it is not anticipated, staff is asking for an additional \$7,500.00 to be authorized as a contingency. These amounts will come from the City's SWM Utility Operations Fund. The recommendation of staff is to approve the First Amendment to the 2012 ILA between the Coalition Cities.

Suggested Motion

MOTION: I move to approve the First Amendment to the August 13, 2012 ILA between the Coalition Cities amending Paragraph 4.1 to contribute an additional \$7,500.00 to the NPDES Coalition Fund for the City's share of continued litigation costs and expenses in the appeal of the NPDES Phase II Permits; to authorize a contingency in the amount of \$7,500.00; and to authorize the City Manager to sign the First Amendment to the August 13, 2012 ILA reflecting the City's additional contribution to the litigation expenses, substantially in the form as attached.

Background:

A Phase II National Pollutant Discharge Elimination System (NPDES) Permit is required under provisions of the Federal Clean Water Act and requires government agencies in Washington to develop and maintain storm water programs. On August 1, 2012, the Washington State Department of Ecology (DOE) issued the Western Washington Phase II Municipal Stormwater Permit which imposed a number of new conditions on municipalities and governmental entities, including the City of Des Moines.

A number of public agencies ("Coalition Cities") adversely impacted by the new NPDES conditions, including the City of Des Moines, entered into an ILA on August 13, 2012, to collectively pay for legal services to represent the Coalition's interests in any legal challenges to the NPDES Phase II permits (litigation).

Discussion

The law firm of Foster Pepper was retained by the Coalition to provide legal representation of the Coalition's interests regarding this highly complex and specific area of law. The basis for the Coalition's appeal is that the Permit issued by Ecology imposes highly prescriptive obligations that largely eliminate the previous flexibility and reasonableness afforded to local governments. Additionally, it is the Coalition's position that if not altered, the new requirements would significantly interfere with other governmental functions that local governments are obligated to undertake, unreasonably restrict growth and economic development, and impose economic hardships.

The potential impacts of the DOE Standards on members of the Coalition are significant and far-reaching. By appealing the Phase II permit requirements, the Coalition hopes to reduce the burden placed on government agencies, both financially and legally. The cost of not pursuing the appeal would likely result in much higher costs to the City in the future.

Government agencies, including the City of Des Moines, previously participated in an appeal of an earlier NPDES Permit which resulted in a more favorable outcome than if the Permit had not been appealed. In that appeal, the City contributed \$38,333.33.

Alternatives

Withdraw from the Appeal.

Financial Impact

Des Moines' share of the legal fees and costs will be \$7,500.00, plus a contingency of \$7,500.00, for a total of \$15,000.00. This money will come from the SWM Utility Operations Fund. No General Fund money will be used.

Recommendation

Legal and Planning, Building & Public Works recommend the City Council approve the contributions to the Coalition.

FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITIES OF AUBURN, BAINBRIDGE ISLAND, BELLEVUE, BOTHELL, BREMERTON, BURLINGTON, CAMAS, DES MOINES, EVERETT, FERNDAL, ISSAQUAH, KELSO, KENT, KIRKLAND, LONGVIEW, LYNNWOOD, MOUNT VERNON, POULSBO, RENTON, SAMMAMISH, SEATAC, SNOQUALMIE AND SUMNER AND COWLITZ COUNTY REGARDING LEGAL SERVICES

THE INTERLOCAL AGREEMENT ("Agreement") is entered into between the Cities of Auburn, Bainbridge Island, Bellevue, Bothell, Bremerton, Burlington, Camas, Des Moines, Everett, Ferndale, Issaquah, Kelso, Kent, Kirkland, Longview, Lynnwood, Mount Vernon, Poulsbo, Renton, Sammamish, SeaTac, Snoqualmie, Sumner and Cowlitz County is hereby amended as follows:

Paragraph 4.1 of the Interlocal is hereby amended to read as follows:

4.1 The Legal Services' fees and costs shall be shared by members of the Coalition based upon the cost-sharing formula set forth in the First Amended Exhibit "A" attached hereto and incorporated by this reference. This obligation shall continue through conclusion of the Legal Services as provided in Paragraph 2 above, unless a member of the Coalition terminates its participation in this Agreement as provided in Paragraph 5. Members of the Coalition hereby authorize said fees and costs up to \$675,000. Provided, however, any increase in the cost of legal services that would require additional payments from any Coalition members in excess of the obligations set forth in the First Amended Exhibit "A" shall require amendment of this Agreement unless an individual Coalition member expressly volunteers to increase its share without the necessity of amendment of this Interlocal Agreement.

All other provisions of the Interlocal Agreement remain in full force and effect.

IN WITNESS, the parties below execute this First Amendment to the Coalition Interlocal Agreement which shall become effective as of _____, 2013.

AUBURN: CITY OF AUBURN By: _____ Print Name: _____ Its: _____ Date: _____	BAINBRIDGE ISLAND: CITY OF BAINBRIDGE ISLAND By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____	NOTICES TO BE SENT TO: _____

_____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	_____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____

BELLEVUE: CITY OF BELLEVUE By: _____ Print Name: _____ Its: _____ Date: _____	BOTHELL: CITY OF BOTHELL By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
BREMERTON: CITY OF BREMERTON By: _____ Print Name: _____ Its: _____ Date: _____	BURLINGTON: CITY OF BURLINGTON By: _____ Print Name: _____ Its: _____ Date: _____

NOTICES TO BE SENT TO: _____ _____ _____ _____	NOTICES TO BE SENT TO: _____ _____ _____ _____
() _____ - _____ (Telephone) () _____ - _____ (Facsimile)	() _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____	APPROVED AS TO FORM: _____

CAMAS: CITY OF CAMAS By: _____ Print Name: _____ Its: _____ Date: _____	COWLITZ COUNTY: COWLITZ COUNTY By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____
DES MOINES: CITY OF DES MOINES	EVERETT: CITY OF EVERETT

By: _____ Print Name: _____ Its: _____ Date: _____	By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____
FERNDAL: CITY OF FERNDAL By: _____ Print Name: _____ Its: _____ Date: _____	ISSAQUAH: CITY OF ISSAQUAH By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	
KELSO:	KENT:

CITY OF KELSO By: _____ Print Name: _____ Its: _____ Date: _____	CITY OF KENT By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____

KIRKLAND: CITY OF KIRKLAND By: _____ Print Name: _____ Its: _____ Date: _____	LONGVIEW: CITY OF LONGVIEW By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____

LYNNWOOD: CITY OF LYNNWOOD By: _____ Print Name: _____ Its: _____ Date: _____	MOUNT VERNON: CITY OF MOUNT VERNON By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____

POULSBO: CITY OF POULSBO By: _____ Print Name: _____ Its: _____ Date: _____	RENTON: CITY OF RENTON By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____	NOTICES TO BE SENT TO: _____ _____ _____ _____

_____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	_____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____	APPROVED AS TO FORM: _____

SAMMAMISH: CITY OF SAMMAMISH By: _____ Print Name: _____ Its: _____ Date: _____	SEA-TAC CITY OF SEA-TAC By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____	APPROVED AS TO FORM: _____

SNOQUALMIE: CITY OF SNOQUALMIE By: _____ Print Name: _____ Its: _____ Date: _____	SUMNER: CITY OF SUMNER By: _____ Print Name: _____ Its: _____ Date: _____
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NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO:
_____	_____
_____	_____
_____	_____
() _____ - _____ (Telephone)	() _____ - _____ (Telephone)
() _____ - _____ (Facsimile)	() _____ - _____ (Facsimile)
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendment to City Manager's
Employment Agreement

ATTACHMENTS:

1. Amendment to City Manager's
Employment Agreement

FOR AGENDA OF:

DEPT. OF ORIGIN:

DATE SUBMITTED:

CLEARANCES:

☒ Legal TG

☐ Finance

☐ Marina

☐ Parks, Recreation & Senior Services

☐ Planning, Building & Public Works

☐ Police

☐ Courts

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AF

Purpose and Recommendation

The purpose of this report is to seek City Council approval of an amendment to the City Manager's employment agreement regarding a cost of living adjustment for 2013.

Suggested Motion

"I move to approve the amendment to the City Manager's Employment Agreement, suspending the cost of living (COLA) formula contained in section 7 for 2013 and providing a COLA formula for 2013 equal to that provided to all other City employees."

Background

The City Manager's employment agreement contains an annual cost of living adjustment (COLA) that adjusts the compensation of the City Manager annually on the first day of January of each year in an amount equal to one-hundred percent (100%) of the annual Seattle CPI-U as measure in August of the previous year.

Discussion

For 2013, the COLA formula will be as follows:

- a. One percent (1.0%) effective January 1, 2013;
- b. An additional one percent (1.0%) effective July 1, 2013; and
- c. An additional seven tenths of one percent (0.7%) effective November 1, 2013; provided that the General and Street Fund revenues are projected to exceed the budgeted figure of \$16,739,381 by at least one percent (1.0%), excluding one-time revenues (permitting, sales tax and B&O tax) associated with the Artemis Hotel Project grant revenue, and operating transfers (except transfers the General Fund receives from the Marina and Surface Water Management Funds shall be included).

Alternatives

None offered.

Financial Impact

If the final 0.7% increase occurs, the financial impact of this formula for 2013 is approximately \$2,700.

Recommendation or Conclusion

Concurrence

**AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT**

WHEREAS, Anthony A. Piasecki, hereafter referred to as Mr. Piasecki or City Manager, has served as City Manager for the City of Des Moines since May 3, 2002 under an employment agreement; and

WHEREAS, the parties wish to make an amendment to the agreement as follows;

NOW THEREFORE, it is agreed that the employment agreement between Mr. Piasecki and the City of Des Moines is amended as follows:

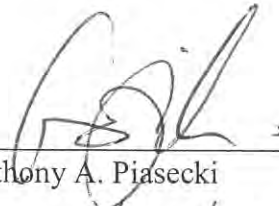
Section 1. The Cost of Living Adjustment formula in Section 7 is hereby suspended for 2013. The Cost of Living Adjustment for 2013 shall be as follows:

- a. One percent (1.0%) effective January 1, 2013;
- b. An additional one percent (1.0%) effective July 1, 2013; and
- c. An additional seven tenths of one percent (0.7%) effective November 1, 2013; provided that the General and Street Fund revenues are projected to exceed the budgeted figure of \$16,739,381 by at least one percent (1.0%), excluding one-time revenues (permitting, sales tax and B&O tax) associated with the Artemis Hotel Project grant revenue, and operating transfers (except transfers the General Fund receives from the Marina and Surface Water Management Funds shall be included).

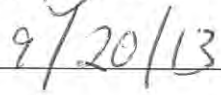
CITY OF DES MOINES

Dave Kaplan, Mayor

Date



Anthony A. Piasecki

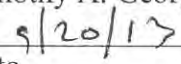


Date

Approved as to form:



Timothy A. George, Asst. City Attorney



Date

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: General and Street Funds 2013
Yearend/ 2014 Proposed Revenue Estimates

ATTACHMENTS:

Attachment 1: PowerPoint Presentation

FOR AGENDA OF: September 26, 2013

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: September 18, 2013

CLEARANCES:

☒ Finance pl

☐ Legal N/A

☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☐ Planning, Building & Public Works N/A

☐ Police N/A

☐ Court N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to provide the City Council with 2013 yearend and 2014 proposed revenue estimates for the General and Street Funds. The year 2012 was the final year for reporting the Levy Lid Lift financial results separately.

Background

The general governmental operating funds for the City include the General and Street Funds. These two funds are supported by general taxes, licenses, fees, permits, intergovernmental revenues, and other miscellaneous revenues. The General and Street Funds include expenditures for general governmental purposes: legislative, executive, judicial, legal, finance, police, public works, community development, and parks, recreation, senior services and programs. Therefore, the financial performance of the two funds is presented combined.

Discussion for 2013 Yearend & 2014 Proposed Revenue Estimates

The 2014 estimates for recurring revenues for the General and Street Funds are 11.8% above the 2012 actual results, 4.7% above the 2013 adopted budget, and 6.9% above the 2013 yearend estimated revenues. The increases primarily relate to building and development permitting revenue estimates from projects exceeding \$15 million in value that are now included in base revenues. One-time revenues are defined to be sales and business and occupation taxes received from development projects exceeding 15 million in valuation.

The following schedule provides the 2013 yearend and 2014 proposed revenue estimates for the General and Street Funds, 2013 year-to-date through July, and 2013 adopted budget by revenue source. The 2012 actual results include the General, Street, and Levy Lid Lift Funds.

General Fund for the Years 2012-2014:

	2012 Actual	2013			Variance	2014	Variance
		Adopted Budget	7 Mo 31-Jul	Year End Estimate	% Chg	Preliminary	% Chg
					12 Act-13 YE	Budget	13 Bgt-14 Bgt
Revenues							
Taxes	\$ 8,940,619	\$ 9,734,952	\$ 5,578,207	\$ 9,767,409	9.2%	\$ 9,765,772	0.3%
Licenses & Permits	1,671,150	1,954,742	986,925	2,099,896	25.7%	2,660,343	36.1%
Intergovernmental	994,695	533,439	266,644	593,047	-40.4%	537,300	0.7%
Charges for Services	845,777	1,310,652	852,987	1,208,182	42.8%	1,771,231	35.1%
Fines & Forfeits	613,877	1,094,550	482,458	852,015	38.8%	870,200	-20.5%
Interfund Revenues	1,071,874	1,267,504	592,662	1,120,773	4.6%	1,244,170	-1.8%
Interest Earnings	24,825	26,000	13,829	21,723	-12.5%	22,000	-15.4%
Arts Commission	10,722	43,000	10,615	25,513	137.9%	29,270	-31.9%
Recreation Programs	764,436	945,379	520,860	896,356	17.3%	984,195	4.1%
Sr. Services Programs	87,571	98,490	49,267	86,038	-1.8%	96,750	-1.8%
Miscellaneous	64,450	47,337	36,349	45,384	-29.6%	37,553	-20.7%
Sale of Capital Assets	6,424	-	-	-	-100.0%	-	N/A
Insurance Recoveries	4,014	5,000	-	-	-100.0%	5,000	0.0%
Subtotal Recurring Revenues	\$ 15,100,433	\$ 17,061,045	\$ 9,390,803	\$ 16,716,336	10.7%	\$ 18,023,784	5.6%
One-Time Revenues	5,145	222,198	-	705	-86.3%	776,310	249.4%
Operating Transfer-in	258,764	-	-	14,362	N/A	-	N/A
TOTAL REVENUES	\$ 15,364,342	\$ 17,283,243	\$ 9,390,803	\$ 16,731,403	8.9%	\$ 18,800,094	8.8%

Street Fund for the Years 2012-2014:

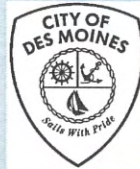
	2012 Actual	2013			Variance % Chg 12 Act-13 YE	2014 Preliminary Budget	Variance % Chg 13 Bgt-14 Bgt
		Adopted Budget	7 Mo 31-Jul	Year End Estimate			
Revenues							
Taxes	\$ 19,571	\$ 19,000	\$ 11,573	\$ 24,276	24.0%	\$ 24,000	26.3%
Intergovernmental	990,263	1,064,847	555,494	1,048,587	5.9%	981,492	-7.8%
Charges for Services	125	-	-	-	-100.0%	-	N/A
Interfund Revenues	-	26,640	9,360	17,309	N/A	-	-100.0%
Interest Earnings	400	350	234	358	-10.4%	400	14.3%
Miscellaneous	1,363	1,000	3,371	6,389	368.8%	1,000	0.0%
Insurance Recoveries	-	5,000	-	-	N/A	5,000	0.0%
Subtotal Recurring Revenues	\$ 1,011,721	\$ 1,116,837	\$ 580,032	\$ 1,096,919	8.4%	\$ 1,011,892	-9.4%
One-Time Revenues	-	-	-	-	N/A	-	N/A
TOTAL REVENUES	\$ 1,011,721	\$ 1,116,837	\$ 580,032	\$ 1,096,919	8.4%	\$ 1,011,892	-9.4%

Levy Lid Lift Fund for the Years 2012-2014:

	2013				Variance	2014	Variance
	2012 Actual	Adopted	7 Mo	Year End	% Chg	Preliminary	% Chg
		Budget	31-Jul	Estimate	12 Act-13 YE	Budget	13 Bgt-14 Bgt
Revenues							
Taxes	\$ 895,008	\$ -	\$ -	\$ -	-100.0%	\$ -	N/A
Charges for Services	19,280	-	-	-	-100.0%	-	N/A
Miscellaneous	7,532	-	-	-	-100.0%	-	N/A
TOTAL REVENUES	\$ 921,821	\$ -	\$ -	\$ -	-100.0%	\$ -	N/A

Combined:

Taxes	\$ 9,855,198	\$ 9,753,952	\$ 5,589,780	\$ 9,791,685	-0.6%	\$ 9,789,772	0.4%
Licenses & Permits	1,671,150	1,954,742	986,925	2,099,896	25.7%	2,660,343	36.1%
Intergovernmental	1,984,958	1,598,286	822,138	1,641,634	-17.3%	1,518,792	-5.0%
Charges for Services	865,182	1,310,652	852,987	1,208,182	39.6%	1,771,231	35.1%
Fines & Forfeits	613,877	1,094,550	482,458	852,015	38.8%	870,200	-20.5%
Interfund Revenues	1,071,874	1,294,144	602,022	1,138,082	6.2%	1,244,170	-3.9%
Interest Earnings	25,224	26,350	14,063	22,081	-12.5%	22,400	-15.0%
Arts/Recreation/Sr. Programs	862,729	1,086,869	580,742	1,007,907	16.8%	1,110,215	2.1%
Miscellaneous	73,346	48,337	39,721	51,773	-29.4%	38,553	-20.2%
Sale of Capital Assets	6,424	-	-	-	-100.0%	-	N/A
Insurance Recoveries	4,014	10,000	-	-	-100.0%	10,000	0.0%
Total Recurring Revenues	\$ 17,033,975	\$ 18,177,882	\$ 9,970,835	\$ 17,813,255	4.6%	\$ 19,035,676	4.7%
One-Time Revenues	5,145	222,198	-	705	-86.3%	776,310	249.4%
Operating Transfer-in	258,764	-	-	14,362	N/A	-	N/A
TOTAL REVENUES	\$ 17,297,884	\$ 18,400,080	\$ 9,970,835	\$ 17,828,322	3.1%	\$ 19,811,986	7.7%



City of Des Moines

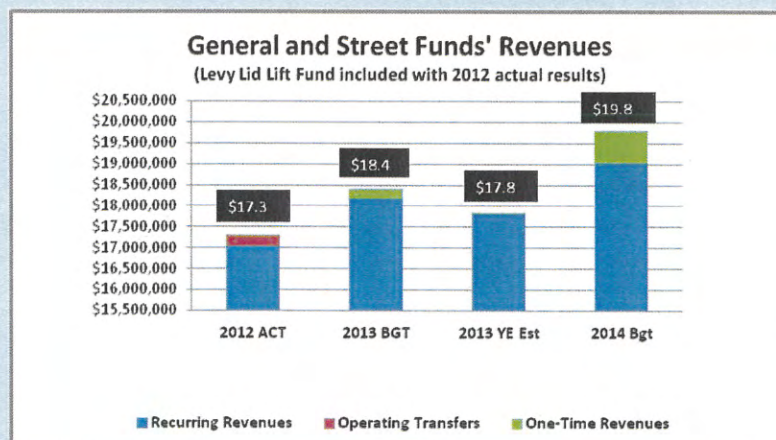
2013 Yearend – 2014 Revenue Estimates General and Street Funds

Presented by
Paula Henderson
Finance Director
9/26/13

Attachment 1

1

General and Street Funds 2012 – 2014 Revenues



Attachment 1

2

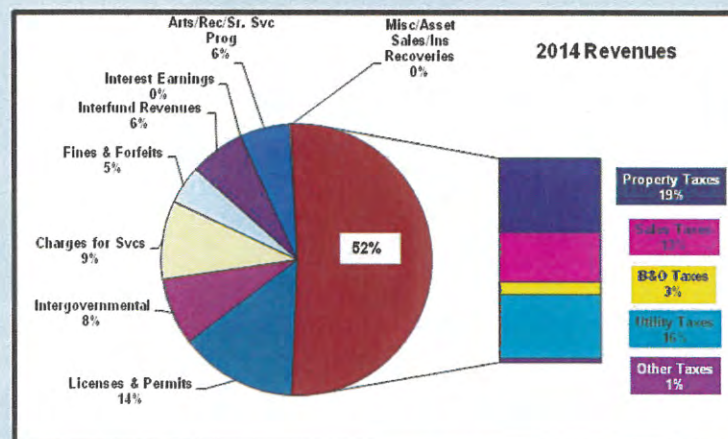
Revenues By Source General and Street Funds (Levy Lid Lift Fund included with 2012 actual results)

	2012 Act	2013 YE Est	% CHG	2014 BGT	% CHG
Taxes	\$ 9,855,198	\$ 9,791,685	-0.6%	\$ 9,789,772	0.0%
Licenses & Permits	1,671,150	2,099,896	25.7%	2,660,343	26.7%
Intergovernmental	1,984,958	1,641,634	-17.3%	1,518,792	-7.5%
Charges for Services	865,182	1,208,182	39.6%	1,771,231	46.6%
Fines & Forfeits	613,877	852,015	38.8%	870,200	2.1%
Interfund Revenues	1,071,874	1,138,082	6.2%	1,244,170	9.3%
Interest Earnings	25,224	22,081	-12.5%	22,400	1.4%
Arts/Rec/Sr. Svc Prog	862,729	1,007,907	16.8%	1,110,215	10.2%
Miscellaneous	73,345	51,773	-29.4%	38,553	-25.5%
Sale of Capital Assets	6,424	-	-100.0%	-	-
Insurance Recoveries	4,014	-	-100.0%	10,000	-
Total	\$ 17,033,975	\$ 17,813,255	4.6%	\$ 19,035,676	6.9%
One-time Revenues	5,145	\$ 705		776,310	
Operating Tsf-In	258,764	14,362		-	
Total Revenues	\$ 17,297,884	\$ 17,828,322	3.1%	\$ 19,811,986	11.1%

Attachment 1

3

Revenues By Source General and Street Funds

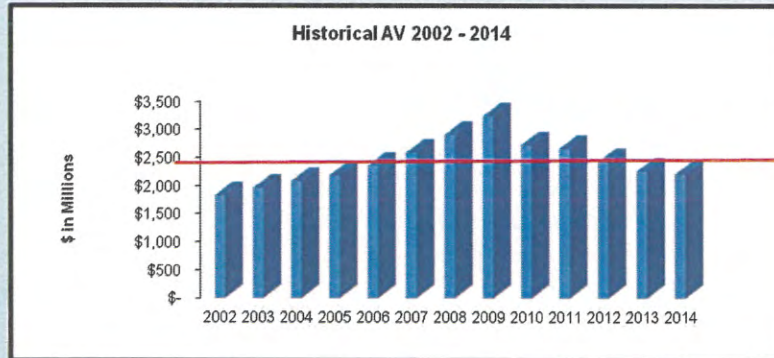


Attachment 1

4

Property Taxes (Assessed Valuation)

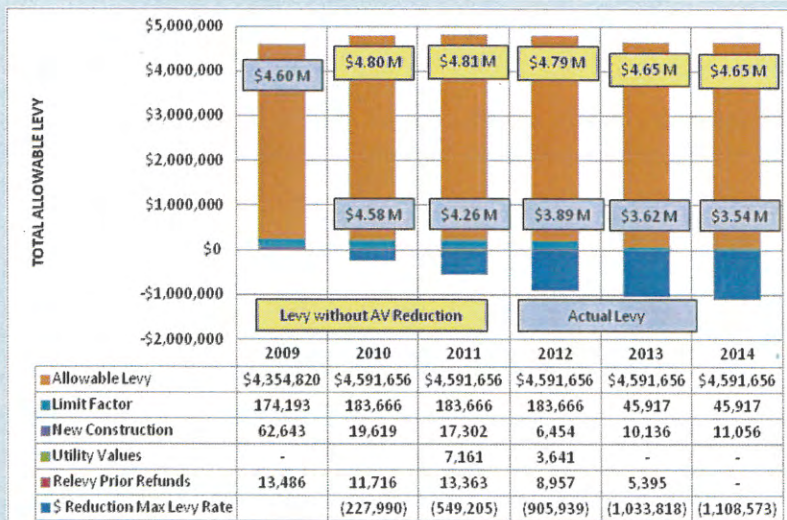
- 2.19% decline in assessed valuation for 2014 Levy
- Revenue loss = \$79,230
- Maximum levy rate = \$1.60/\$1,000 AV



Attachment 1

5

Property Taxes (Levy)



Attachment 1

6

Sales Taxes

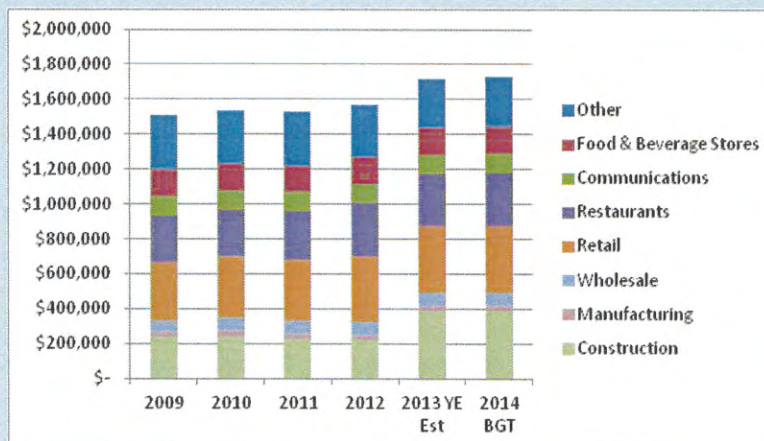
- Recurring sales tax – 0.8% increase
- CJ sales taxes – improving trends

	2012 ACT	2013 YE EST	2014 BGT
Recurring	\$ 1,563,963	\$ 1,714,633	\$ 1,727,500
% Chg Prior Yr		9.6%	0.8%
Local Criminal Justice	\$ 613,646	\$ 654,596	\$ 687,300
Total Sales Taxes	\$ 2,177,609	\$ 2,369,229	\$ 2,414,800
% Chg Prior Yr		8.8%	1.9%
One-Time:			
SCORE	\$ 5,145	\$ -	-
Artemis Hotel	-	570	228,037
Barcelona Mixed Use	-	-	91,093
DMCBP (Panattoni)	-	-	308,105
Total One-Time	\$ 5,145	\$ 570	\$ 627,235

Attachment 1

7

Base Sales Taxes by Category



Attachment 1

8

Business and Occupation Tax

- Adopted by Council on December 2, 2004

	2012 ACT	2013 YE EST	2014 BGT
Recurring	\$ 534,260	\$ 581,169	\$ 585,000
% Chg Prior Yr		8.8%	0.7%
One-Time:			
Artemis Hotel	\$ -	\$ 135	\$ 54,198
Barcelona Mixed Use			21,650
DMCBP (Panattoni)			73,227
Total One-Time	\$ -	\$ 135	\$ 149,075

Attachment 1

9

Utility Taxes

- Overall increase 0.3% for 2014
- Slower growth for electricity and natural gas
- Revenues trending lower for telephone utilities

	2012 ACT	2013 YE EST	2014 BGT
Electricity	\$ 1,090,383	\$ 1,094,902	\$ 1,105,900
Natural Gas	411,812	386,937	390,800
Solid Waste	207,339	205,251	208,300
Cable TV	474,342	504,094	519,200
Telephone	796,932	742,063	715,600
City Utilities	137,803	141,591	144,700
Total	\$ 3,118,611	\$ 3,074,838	\$ 3,084,500
% Chg Prior Yr		-1.4%	0.3%

Attachment 1

10

Other Taxes

- Overall increase 21.4%
- Leasehold tax base for 2014 = \$105,000 plus DMCBP \$11,416
- Gambling & parking taxes modest growth from 2012

	2012 ACT	2013 YE EST	2014 BGT
Leasehold	\$ 105,670	\$ 87,091	\$ 116,416
Gambling	19,714	24,836	25,000
Parking	19,606	24,276	24,000
Total	\$ 144,990	\$ 136,203	\$ 165,416
% Chg Prior Yr		-6.1%	21.4%

Attachment 1

11

Franchise Fees

- Overall increase 2.0%
- Cable TV Franchise Fee = 5%
- Solid Waste Franchise Fee = 13%

	2012 ACT	2013 YE EST	2014 BGT
Cable TV	\$ 407,716	\$ 414,926	\$ 423,200
Solid Waste	485,664	496,611	506,500
WD #54	5,000		
Lakehaven	5,000		
Total	\$ 903,380	\$ 911,537	\$ 929,700
% Chg Prior Yr		0.9%	2.0%

Attachment 1

12

Licenses & Permits

- Building permit activity now includes fees for projects > \$15 Million

	2012 ACT	2013 YE EST	2014 BGT
Business Licenses	\$ 163,180	\$ 158,901	\$ 160,000
Building Permits - Base	416,077	591,352	600,000
Artemis		360,971	
Landmarque (16 Homes)			28,288
Barcelona Mixed Use			380,362
DMCBP-Panattoni			403,366
Land Clearing Permits - Base	63,144	26,905	38,460
Artemis		7,814	
Barcelona Mixed Use			8,267
DMCBP	83,536		69,600
Animal Licenses	35,254	35,380	35,300
Other	6,580	7,036	7,000
Total	\$ 767,771	\$ 1,188,359	\$ 1,730,643
% Chg Prior Yr		54.8%	45.6%

Attachment 1

13

Intergovernmental Revenues

- Federal, state & local grants
- Local government assistance
- State shared revenues including fuel taxes
- Transportation Benefit District vehicle license fees

	2012 ACT	2013 YE EST	2014 BGT
Grants	472,789	147,659	95,505
City Assistance	66,002	81,424	80,500
State Shared Rev	465,394	363,964	361,295
Fuel Tax	606,480	611,914	606,492
Vehicle License Fees	374,293	436,673	375,000
Total	\$ 1,984,958	\$ 1,641,634	\$ 1,518,792
% Chg Prior Yr		-17.3%	-7.5%

Attachment 1

14

Charges for Services – General Government

	2012 ACT	2013 YE EST	2014 BGT
Local Gov't Shared Services	\$ 165,563	\$ 152,360	\$ 156,208
Court	\$ 137,804	\$ 131,865	\$ 130,200
Engineering - Base	126,825	197,940	171,980
Artemis		84,134	
Barcelona Mixed Use			133,126
DCBP-Panattoni			98,824
Zoning - Base	142,620	117,183	118,800
Barcelona Mixed Use			16,124
DCBP-Panattoni			129,649
Plan Check Fees - Base	205,625	216,748	218,384
Artemis		223,212	
Barcelona Mixed Use			247,235
DCBP-Panattoni			262,188
Judson Park Mitigation Fees	12,880	13,228	13,413
False Alarm Reg	47,028	44,267	50,000
Miscellaneous	26,837	27,245	25,100
Total	\$ 865,182	\$ 1,208,182	\$ 1,771,231
% Chg Prior Yr		39.6%	46.6%

Attachment 1

15

Culture & Recreation – Arts Commission

	2012 ACT	2013 YE EST	2014 BGT
4Culture Grant/Sustaining	\$ -	\$ 7,500	\$ 7,500
4Culture Grant/Sculpture Proj			1,500
Charges for Services	6,505	6,200	5,000
Sponsorships		2,000	12,270
Contributions	4,217	9,813	3,000
Total	\$ 10,722	\$ 25,513	\$ 29,270
% Chg Prior Yr		138.0%	14.7%

Attachment 1

16

Culture & Recreation – Recreation Programs

	2012 ACT	2013 YE EST	2014 BGT
DHHS/CDC-Comm Transformation Grant	\$ -	\$ 11,960	\$ 35,760
Charges for Services	633,867	708,072	762,800
Facility Rentals	100,324	175,382	185,635
Contributions	190	942	
NRPA Grant/Summer Lunch Prog	30,000		
Miscellaneous	55		
Total	\$ 764,436	\$ 896,356	\$ 984,195
% Chg Prior Yr		17.3%	9.8%

Attachment 1

17

Culture & Recreation – Sr. Services/Programs

	2012 ACT	2013 YE EST	2014 BGT
Normandy Park Sr. Svcs	\$ 23,490	\$ 23,042	\$ 25,000
Charges for Services	60,065	58,434	67,300
Contributions	4,015	4,562	3,650
Miscellaneous			800
Total	\$ 87,570	\$ 86,038	\$ 96,750
% Chg Prior Yr		-1.7%	12.5%

Attachment 1

18

Interfund Revenues

- **Revenues include:**
- Indirect costs to enterprise funds for general governmental services
- Reimbursements from CIP funds for project mgt & accounting services

	2012 ACT	2013 YE EST	2014 BGT
Marina	\$ 618,500	\$ 635,200	\$ 644,100
Surface Wtr Mgt	\$ 185,000	\$ 190,000	\$ 192,700
Proj Mgt & Acctg	268,374	312,882	407,370
Total	\$ 1,071,874	\$ 1,138,082	\$ 1,244,170
% Chg Prior Yr		6.2%	9.3%

Attachment 1

19

Fines & Forfeits

	2012 ACT	2013 YE EST	2014 BGT
Fines & Forfeits	\$ 282,967	\$ 352,741	\$ 350,000
ASE - Woodmont	330,910	270,143	270,200
ASE - Midway		229,131	250,000
Total	\$ 613,877	\$ 852,015	\$ 870,200
% Chg Prior Yr		38.8%	2.1%

Attachment 1

20

Interest Earnings

- Cash levels and Fed Policy impacting revenues
- August 2013 LGIP rate = 0.12%
- Purchased Investments earning average 0.376% Yield

	2012 ACT	2013 YE EST	2014 BGT
General Fund*	\$ 24,825	\$ 21,723	\$ 22,000
Street Fund	400	358	400
Total	\$ 25,225	\$ 22,081	\$ 22,400
% Chg Prior Yr		-12.5%	1.4%
*Includes Levy Lid Lift			

Attachment 1

21

Miscellaneous Revenues – General Government

- Various revenues included in this category
- Rentals & leases, L & I dividends, contributions & donations
- Judgments & settlements, ICMA forfeitures, sale of unclaimed property, NSF fees, reimbursements for jury duty

	2012 ACT	2013 YE EST	2014 BGT
Rentals & Leases	\$ 16,503	\$ 16,916	\$ 17,153
Contributions	594	539	400
SJI Grant/Court Bgt Assessment	36,000		
NRPA Grant/Sonju Garden Project		6,264	
ICMA Forfeitures	10,633	17,812	20,000
Sale of Capital Assets	6,424		
Other	3,191	10,242	1,000
Total	\$ 73,345	\$ 51,773	\$ 38,553
% Chg Prior Yr		-29.4%	-25.5%

Attachment 1

22

Other Financing Sources

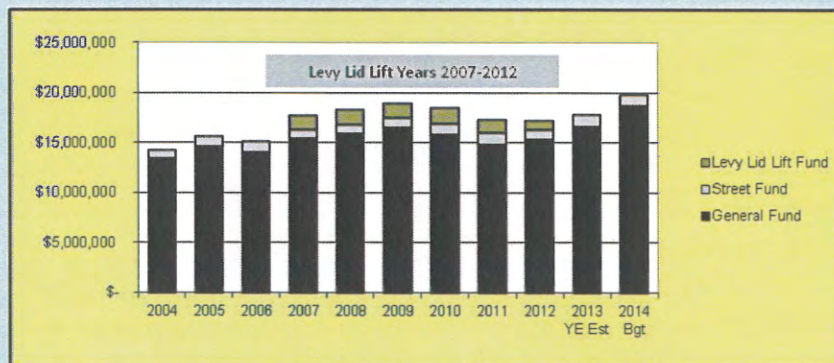
	2012 ACT	2013 YE EST	2014 BGT
Operating Transfer-In	258,764	14,362	-
Insurance Recoveries	4,014		10,000
Total	\$ 262,778	\$ 14,362	\$ 10,000
% Chg Prior Yr		-94.5%	-30.4%

Attachment 1

23

General, Street & Levy Lid Lift Funds

- Revenues 2004 - 2014



Attachment 1

24

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
2014 Preliminary Budget Overview – General &
Street Funds

ATTACHMENTS:

FOR AGENDA OF: September 26, 2013

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: September 19, 2013

CLEARANCES:

☒ Finance pk

☐ Legal N/A

☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☐ Planning, Building & Public Works N/A

☐ Police N/A

☐ Court N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

This agenda item provides an overview of the preliminary 2014 base budget for the General and Street Funds.

Background

The General and Street Funds 2014 preliminary base budget has a combined \$1,198,167 budget shortfall. The estimated 2014 base revenues total \$19,035,676. The 2014 proposed base expenditures total \$20,233,843. The base budget restores Police Officer positions previously frozen in 2013, as well as, restoring equipment rental and computer equipment assessments. The 2014 preliminary base budget exceeds the 2013 adopted budget by \$2,132,248. Changes are identified below:

<i>2014 Budget Changes</i>	<i>Amount</i>
COLA*	\$137,514
Salary Adjustments	47,201
Restore Frozen Positions	311,033
Personnel Benefits*	628,431
Supplies	1,137
Police Dispatch Services	80,192
Other Miscellaneous Charges & Services	28,119
Computer Operations Assessments	(102,515)
Computer Replacement Assessments	60,362
Equipment Operations Assessments	61,144
Equipment Replacement Assessments	877,691
Insurance Assessments	(12,969)

Intergovernmental Services	43,037
Capital Outlay	(22,500)
Transfers	(5,629)
Total	\$2,132,248

* Include Vacant Positions

The following is a list of budget balancing strategies used in prior years that could be utilized to close the budget gap.

<i>Budget Balancing Strategies</i>	<i>Amount</i>	<i>Budget Gap</i>
Budget Gap		\$(1,198,167)
75% One-time Sales and B & O Taxes	\$582,233	
Defer 100% Equipment Replacement Assessments	877,691	
Defer 50% Computer Eqp Replacement Assessments	59,663	
Freeze 4 Vacant Patrol Officer Positions	476,736	
Freeze Vacant Associate Engineer Position	143,017	
Freeze Vacant Building Inspector Position	100,760	
Total	\$2,240,100	

The City Council may utilize all of these items to balance the budget, or selectively consider those items that result in less impact to service levels.

Alternatives

The City Council may provide alternative budget recommendations not considered by the City Manager.

Recommendation

The outcome of these budget discussions by the City Council is to provide direction on finalizing the 2014 budget for the General and Street Funds.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL

City of Des Moines, WA

SUBJECT: Amendments to Titles 12 DMMC.

FOR AGENDA OF: September 26, 2013

ATTACHMENTS:

1. Draft Ordinance No. 13-166
2. Koegen Edwards 8/28/13 Memorandum
Re: Proposed Title 12 Amendments

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: September 18, 2013

CLEARANCES:

- [X] Legal PB
 [] Finance NA
 [] Marina NA
 [] Parks, Recreation & Senior Services NA
 [X] Planning, Building & Public Works PJB
 [] Police NA
 [] Courts NA

APPROVED BY CITY MANAGER
 FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to revise Title 12 DMMC to bring uniformity to the Title, to organize the Title in a manner that is easier to search, and to ensure compliance with current state law and case law. Staff intends to bring similar agenda items before the City Council to address revisions to Titles 13 and 14 DMMC (October 3rd), Titles 16 and 17 DMMC (October 10th), and Title 18 DMMC (October 24th).

Suggested Motions

TWO MOTIONS:

FIRST MOTION: “To suspend Rule 26(a) in order to enact Draft Ordinance No. 13-166 on first reading.”

SECOND MOTION: “To enact Draft Ordinance No. 13-166, repealing and replacing Title 12 DMMC, entitled *Streets, Sidewalks, and Public Places*.”

Background

The City Attorney seeks to make certain amendments to the City Code, specifically Titles 12, 13, 14, 16, 17, and 18 DMMC, to bring uniformity to the Titles, to organize the Titles in a manner that is easier to search and to ensure compliance with current state law and case law. The purpose and intent of the amendments to be brought to the Council over the next several months is to provide uniformity and consistency within our DMMC and not to make substantive or policy changes. The DMMC will also include any textual code amendments the Council has passed up to this point. We have asked that these amendments to the various titles and chapters be effective on January 1, 2014 so that delays between changes to the individual titles and chapters will be referenced correctly in January; i.e., a change to a term or definition in Title 18 that effects a section in Title 12 will be accurate once all effected titles are enacted.

Discussion

Over the last six months, the staff of the Legal Department and the Planning, Building and Public Works Department, along with Mike Connelly of Koegen Edwards, LLP, have met to discuss how to better organize the DMMC so that it is user friendly and consistent with current statutes and case law. This effort has required input from the Departments that read and enforce the DMMC routinely. While the amendments to Titles 12 DMMC are minimal; changing references to Departments and Directors, we have also checked for any authorities cited (state law, WAC references and references to adopted codes, Building, Fire, etc.) to ensure their accuracy. Some definitions have been eliminated because the terms are defined in other chapters or because the words have a plain meaning; antiquated references such as to telegraph as a communication system were also eliminated.

Another example of amendments is the Title 12 DMMC, references to “latecomer agreements” are now referred to as “street assessment reimbursement contracts” to provide consistency with chapter 12.35 DMMC – “Assessment Reimbursement Contracts”. Parties can still search for a latecomer agreement but will be referred to the chapter on “street assessment reimbursement contracts.”

While working through the drafts as presented by Mike Connelly City staff recommends the following changes to #10, 12 and 15 of the *Memorandum for Proposed Title 12 Amendments*:

1. Former chapter 12.65 DMMC was recommended to be incorporated into the City’s Comprehensive Plan and the City’s adopted street development standards. However, the Planning, Building and Public Works Director recommends that the Neighborhood Traffic Program be changed to Neighborhood Traffic *Calming* Program and that certain portions of it remain in the DMMC as guidance for the establishment of standards and programs and be renumbered as chapter 12.65.
2. Chapter 12.60 “Bicycle, Pedestrian and Transit Facilities in the Right-of-Way” was recommended for incorporation into the City’s adopted street standards. However, the Planning, Building, and Planning and Public Works Director recommends that it remain in the DMMC as required for certain grant programs and that the chapter be renumbered chapter 12.60. DMMC.
3. Chapter 12.55 “Interpretation of Title 12 DMMC” will be moved to become chapter 12.02 DMMC.

We intend to bring Titles 13 and 14 to Council on October 3, Titles 16 and 17 DMMC to Council on October 10, 2013 and Title 18 DMMC on October 24, 2013. Title 18 is the land use Title and will require review by the Department of Commerce before it will be set for consideration.

We also hope that in making the DMMC more user friendly that citizens hoping to develop property in the city or to simply remodeling their current home can get to the information they need in a more comprehensive manner.

Alternatives

Recommendation or Conclusion

Staff recommends passage on first reading of Draft Ordinance Nos. 13-166.

CITY ATTORNEY'S FIRST DRAFT 9/19/2013

DRAFT ORDINANCE NO. 13-166

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to streets, sidewalks, and public places; replacing Title 12 DMMC; and repealing the previously codified provisions of Title 12 DMMC and underlying ordinances.

WHEREAS, Title 12 DMMC, entitled "Streets, Sidewalks, and Public Places," contains many ordinances pertaining to the regulations of streets, sidewalks, and public places, and

WHEREAS, numerous amendments to Title 12 DMMC since 1979 have adversely affected the Title's organization, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to establish comprehensive, uniform, and current provisions for the City's Streets, Sidewalks, and Public Places Code; now therefore,

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

Title 12 DMMC and all underlying Ordinances are hereby repealed and replaced with the following:

**Chapter 12.01
General Provisions**

Sections:

- 12.01.010 Title.
- 12.01.020 Application.
- 12.01.030 Purpose.
- 12.01.040 Authority.
- 12.01.050 Definitions.
- 12.01.060 Rules of Construction.
- 12.01.070 Liability.
- 12.01.080 Violations and penalties.
- 12.01.090 Severability.
- 12.01.100 Appeals.

Draft Ordinance No. 13-166.2
9/19/13

Ordinance No. ____
Page 2 of 79

1
2 **Sec. 1. 12.01.010. Title.** This Title shall be
3 entitled "Streets, Sidewalks, and Public Places." This chapter
4 shall be entitled "General Provisions."

5
6 **Sec. 2. 12.01.020. Application.** This Title shall
7 apply to the use, improvement and development of rights-of-way,
8 streets and the utilities contained therein. This chapter shall
9 apply to all chapters contained in Title 12 DMMC.

10
11 **Sec. 3. 12.01.030. Purpose.** It is the purpose of
12 this Title and the chapters contained herein, to establish
13 provisions relating to the use and improvement of rights-of-way
14 and the open streets, walkways and utilities contained therein.
15 These provisions provide for and promote the health, safety and
16 welfare of the general public, and are not intended to create or
17 otherwise establish or designate a particular class or group of
18 persons who will or should be especially protected or benefited
19 by the terms of this chapter or procedures adopted under this
20 chapter.

21
22 **Sec. 4. 12.01.040. Authority.**

23
24 The Planning, Building and Public Works Director shall
25 have the power to:

26
27 (1) Prepare and adopt procedures as needed to implement
28 this Title and to carry out the responsibilities of the
29 department. Such procedures do not require approval of the City
30 Council unless specifically set forth herein;

31
32 (2) Administer and coordinate the enforcement of this
33 Title and all procedures adopted under this Title relating to
34 the use of rights-of-way;

35
36 (3) Advise the City Council, City Manager, and other
37 City departments on matters relating to use of the right-of-way;

38
39 (4) Carry out such other responsibilities as required
40 by this Title, state law, or other codes, ordinances,
41 resolutions, or procedures of the City;
42

Ordinance No. ____
Page 3 of 79

(5) Request the assistance of other City departments to administer and enforce this Title; and

(6) Assign the responsibility for interpretation and application of specified procedures to the traffic engineer.

Sec. 5. 12.01.050. Definitions - Use of words and phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings. Words not defined shall have the meanings set forth in the most recent version of the Merriam-Webster Dictionary.

"Assessment reimbursement area" means all real properties that will benefit from a street system improvement.

"Campus" means a development site under a single public or private ownership, upon which a structure or structures exist. By way of illustration and not limitation, a campus includes a public or private school, a multifamily development, a retirement housing facility, a nursing home facility, a continuing care retirement community, a boarding home, a hospital, a recreational facility, a business park, and a shopping center.

"Citation and notice" means a written document initiating a criminal proceeding after an arrest and issued by an authorized peace officer, in accordance with the Criminal Rules for Courts of Limited Jurisdiction.

"Complaint" means a written document certified by the City Attorney initiating a criminal proceeding in accordance with the Criminal Rules for Courts of Limited Jurisdiction.

"Department" means the Planning, Building and Public Works Department.

"Developer" means the owner, developer, and/or building permit applicant who is required by any ordinance of the City, or as the result of review under state law, or in connection with any discretionary decision of the City Council to construct street system improvements which do not abut the development site ("off-site street system improvements").

Ordinance No. ____
Page 4 of 79

1
2 "Development" means a private improvement to real
3 property requiring electrical or communication services
4 including, but not limited to, such services being distributed
5 to subdivisions, short subdivisions, planned unit developments,
6 or single-family or commercial building sites.

7
8 "Development site" means the lot or lots upon which real
9 property improvements are proposed to be constructed.

10
11 "Directive memorandum" means a letter from the City to a
12 right-of-way use permittee, notifying the recipient of specific
13 nonconforming or unsafe conditions and specifying the date by
14 which corrective action must be taken.

15
16 "Electrical or communication systems" means facilities
17 carrying electrical energy, including but not limited to,
18 electric power, telephone, and cable television services;
19 provided however, that the term shall not include the following
20 facilities:

21
22 (a) Electrical utility substations, pad-mounted
23 transformers, and switching facilities not located on the public
24 right-of-way;

25
26 (b) Electrical transmission systems of a voltage
27 of 55 kV or more;

28
29 (c) Street lighting standards;

30
31 (d) Telephone pedestals, cross-connect terminals,
32 repeaters, and cable warning signs;

33
34 (e) Municipal equipment, including but not
35 limited to traffic control equipment, and police and fire
36 sirens;

37
38 (f) Temporary services for construction or
39 replacement of existing overhead facilities due to damage by
40 natural or man-made causes.

41
42 "Franchised utilities" means utilities that have City
43 approval to use City right-of-way for the purpose of providing

Ordinance No. ____
Page 5 of 79

1 their services within the City, whether by written franchise
2 granted by the City or otherwise.

3
4 "Frontage" means that portion of the development site
5 abutting public right-of-way; provided, however, in the case of
6 development sites which are not substantially rectangular, such
7 as "pipe-stem" lots, the frontage shall be equal to the greatest
8 linear distance of the lot which is parallel to the public
9 right-of-way. In the case of corner lots, "frontage" means any
10 portion of the development site abutting any public right-of-
11 way.

12
13 "Fronting" means abutting a public right-of-way or public
14 rights-of-way.

15
16 "Minor addition, rebuild, replacement, or relocation"
17 includes the installation of secondary conductors, changing wire
18 size or type, pole replacement, relocation of poles at a
19 distance of not more than 50 feet, replacing secondary wire with
20 primary wire to serve not more than two new customers, hardware
21 replacement on existing poles, and the like.

22
23 "New electrical or communication service" means
24 installation of service lines to a building where none existed
25 before, and shall not include restorations and repairs.

26
27 "Nonconforming paved street surface" means asphaltic
28 concrete or cement concrete street surface that does not conform
29 with the current "City of Des Moines Street Development
30 Standards," but that the Planning, Building and Public Works
31 Director finds to be adequate for projected vehicular traffic.

32
33 "Nonprofit" means not for a monetary gain unless for
34 charitable purposes.

35
36 "Notice of violation" means a document mailed to a
37 permittee or unauthorized user and posted at the site of a
38 nonconforming or unsafe condition.

39
40 "Off-site street system improvements" means street system
41 improvements required to be similarly constructed on public
42 right-of-way between the development site and a paved street
43 surface.

Ordinance No. ____
Page 6 of 79

1
2 "On-site street system improvements" means street system
3 improvements that are required to be constructed on public
4 right-of-way adjacent to the frontage of the development site
5 and extending to the centerline of the public right-of-way.
6

7 "Oral directive" means a directive given orally by City
8 personnel to correct or discontinue a specific condition.
9

10 "Paved street surface" means street surface that is
11 either standard street surface or nonconforming paved street
12 surface.
13

14 "Permit" means a document issued by the City granting
15 permission to engage in an activity not allowed without a
16 permit.
17

18 "Private use" means use of the public right-of-way for
19 the benefit of a person other than as a thoroughfare for any
20 type of vehicles, pedestrians, or equestrians.
21

22 "Procedure" means a procedure adopted by the Planning,
23 Building and Public Works Director, to implement this chapter,
24 or to carry out other responsibilities as may be required by
25 state law, this chapter or by other codes, ordinances, or
26 resolutions of the City or other agencies.
27

28 "Planning, Building and Public Works Director" means the
29 Planning, Building and Public Works Director or his/her
30 designated representative.
31

32 "Real property improvements" means:
33

34 (a) Construction of a structure on an unimproved
35 lot, except for one single-family residence;
36

37 (b) Additions, alterations, or repairs to an
38 existing structure other than one single-family residence, where
39 square footage is added to the structure, or the construction of
40 accessory buildings as defined in Title 18 DMMC, except for one
41 single-family residence; or
42

Ordinance No. ____
Page 7 of 79

1 (c) Construction of an additional structure or
2 structures on a campus.

3
4 "Right-of-way" means all public streets, alleys, and
5 property granted or reserved for, or dedicated to, public use
6 for streets and alleys, together with public property granted or
7 reserved for, or dedicated to, public use for walkways,
8 sidewalks, trails, shoulders, drainage ditches, bike ways and
9 horse trails, whether improved or unimproved, including the air
10 rights, subsurface rights, and easements related thereto.

11
12 "Sidewalk routes" means sidewalk routes shown on a map
13 prepared by the Planning, Building and Public Works Director and
14 adopted by the City Council by resolution or by ordinance
15 pursuant to the comprehensive plan.

16
17 "Standard street surface" means street surface that is
18 paved in accordance with current "City of Des Moines Street
19 Development Standards."

20
21 "Stop work notice" means a notice posted at the site of
22 an activity that requires all work to be stopped until the City
23 approves continuation of work.

24
25 "Street assessment reimbursement contract" means
26 contracts authorized by chapter 35.72 RCW, for street system
27 improvements.

28
29 "Street system improvements" include a half street
30 section of street pavement (including appropriate subpaving
31 preparation), surface water drainage facilities, sidewalks where
32 required, curbs, gutters, street lighting, right-of-way
33 landscaping (including street trees where required), and other
34 similar improvements as required by the "City of Des Moines
35 Street Development Standards."

36
37 "Street use official" means the designated employees of
38 the Planning, Building and Public Works Department responsible
39 for inspecting the installation of warning and safety devices in
40 the public right-of-way and restoration of public rights-of-way
41 disturbed by work.

Ordinance No. ____
Page 8 of 79

1 "Surface water drainage facilities" means piped and
2 covered surface water drainage, including catch basins, and such
3 detention, retention, and biofiltration as the Planning,
4 Building and Public Works Director shall require in accordance
5 with sound engineering principles and the adopted ordinances and
6 policies of the City.

7
8 "Underground location service" means the underground
9 utilities location center that will locate all underground
10 utilities prior to an excavation.

11
12 "Unpaved street surface" means street surface that is
13 neither standard nor nonconforming paved street surface.

14
15 "Unsafe condition" means any condition which the
16 Planning, Building and Public Works Director determines is a
17 hazard to health, or endangers the safe use of the right-of-way
18 by the public, or does or may impair or impede the operation or
19 functioning of any portion of the right-of-way, or which may
20 cause damage thereto.

21
22 **Sec. 6. 12.01.060. Rules of construction.** The
23 following rules of construction shall apply unless inconsistent
24 with the obvious meaning in the context of the provision.

25
26 (1) Tense. Words used in the present tense shall
27 include the future tense.

28
29 (2) Number. Words used in the singular shall include
30 the plural, and words used in the plural shall include the
31 singular.

32
33 (3) Shall, Will, May, Should. The words "shall" and
34 "will" are mandatory. The words "may" and "should" are
35 permissive.

36
37 (4) Headings. In the event that there is any conflict
38 or inconsistency between the heading of a chapter, section, or
39 paragraph of this Code, and the content thereof, the said
40 heading shall not affect the scope, meaning, or intent of the
41 content.

Ordinance No. ____
Page 9 of 79

1 (5) Citations. Citations to state or federal laws
2 shall mean that law as presently constituted or as it may be
3 subsequently amended in the future.
4

5 **Sec. 7. 12.01.070. Liability.** It is the specific
6 intent of this Title and procedures adopted under this Title to
7 place the obligation of complying with the requirements of this
8 Title upon the permittee, and no provision is intended to impose
9 any duty upon the City, or any of its officers, employees, or
10 agents. Nothing contained in this Title is intended to be or
11 shall be construed to create or form the basis for liability on
12 the part of the City, or its officers, employees, or agents, for
13 any injury or damage resulting from the failure of the permittee
14 to comply with the provisions of this Title, or by reason or in
15 consequence of any act or omission in connection with the
16 implementation or enforcement of this Title or any procedures
17 adopted under this Title by the City, its officers, employees,
18 or agents.
19

20 **Sec. 8. 12.01.080. Violations and penalties.**
21

22 (1) Violation. No person shall violate or fail to
23 comply with the provisions of this Title.
24

25 (2) Civil infraction. A violation or a failure to
26 comply with the provisions of this Title is a civil infraction
27 and a violator may be penalized as is more specifically set
28 forth in chapter 1.24 Civil Infractions.
29

30 (3) Civil violation and penalty. A violation or a
31 failure to comply with the provisions of this Title is further a
32 civil violation and may be penalized and or abated as is set
33 forth in chapter 1.28 Civil Violations and Penalties.
34

35 (4) Criminal penalty. In addition to or as an
36 alternative to any other penalty provided in this Title or by
37 law, a person convicted of a violation of this Title is guilty
38 of a gross misdemeanor. Upon conviction a person may also be
39 ordered to abate, discontinue or correct a violation of this
40 Title.
41

42 (5) Superior Court - Civil action. In addition to or
43 an alternative to any other penalty provided in this Title or by

Ordinance No. ____
Page 10 of 79

law, a violation or a failure to comply with the provisions of this Title may be enforced by a civil action filed in King County Superior Court in any manner allowed by law.

Sec. 9. 12.01.090. Severability. The provisions of this Title are severable. If any section, sentence, clause or phrase of this Code is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of the Code.

Sec. 10. 12.01.100. Appeals. Appeals of decisions made pursuant to this Title shall be as set forth in the applicable chapter and pursuant to chapter 18.20 DMMC.

Chapter 12.02 Interpretation of Title 12 DMMC

Sections:

12.02.010	Title.
12.02.020	Application.
12.02.030	Purpose.
12.02.040	Authority.
12.02.050	Interpretation.
12.02.060	Appeal.

Sec. 11. 12.02.010. Title. This chapter shall be entitled "Interpretation of Title 12 DMMC."

Sec. 12. 12.02.020. Application. This chapter shall apply to the interpretation of Title 12 DMMC.

Sec. 13. 12.02.030. Authority. This chapter is adopted pursuant to the authority set forth in DMMC 12.01.040 and other applicable laws.

Sec. 14. 12.02.040. Interpretation.

(1) Interpretation of this Title 12 shall be responsibility of the Planning, Building and Public Works Director.

Ordinance No. _____
 Page 11 of 79

(2) Interpretations of this Title 12 may be initiated by the submittal of a written request to the City Manager or the City Manager's designee.

(3) Requests for interpretations of code shall be processed as a Type I land use action.

(4) The City Manager or the City Manager's designee shall periodically submit to the City Council a summary of the interpretations requested and the corresponding interpretations made by the Planning, Building and Public Works Director. As needed, the summary shall include recommendations regarding the need for textual code amendments that would clarify DMMC provisions.

Sec. 15. 12.02.060. Appeal. A decision of the Planning, Building and Public Works Director made in accordance with this chapter shall be considered a final administrative decision. A person aggrieved by such decision of the Planning, Building and Public Works Director may appeal such decision to the Hearing Examiner in accordance with DMMC 18.20.150 and 18.20.160 and chapter 18.240 DMMC.

Chapter 12.05 Use and Maintenance of Public Rights-of-Way.

Sections:

12.05.010	Title.
12.05.020	Application.
12.05.030	Purpose.
12.05.040	Authority.
12.05.050	Right-of-way use permits.
12.05.060	Applications and processing of permits.
12.05.070	Permit fees and charges.
12.05.080	Specifications.
12.05.090	Permit exception.
12.05.100	Revocation of permits.
12.05.110	Renewal of permits.
12.05.120	Performance deposits/insurance.
12.05.130	Guarantee.
12.05.140	Inspections.

Ordinance No. ____
Page 12 of 79

1 12.05.150 Correction and discontinuance of unsafe,
2 nonconforming, or unauthorized conditions.
3 12.05.160 Warning and safety devices.
4 12.05.170 Clearance for fire equipment.
5 12.05.180 Protection of adjoining property - Access.
6 12.05.190 Preservation of monuments.
7 12.05.200 Protection of watercourses.
8 12.05.210 Excavated material.
9 12.05.220 Backfilling.
10 12.05.230 Right-of-way restoration.
11 12.05.240 Coordination of right-of-way construction.
12 12.05.250 Duty to maintain clean rights-of-way.
13 12.05.260 Billings and collections.
14 12.05.270 Appeals.
15 12.05.280 Hold harmless

16
17 **Sec. 16. 12.05.010. Title.** This chapter shall be
18 entitled "Use and Maintenance of Public Rights-of-Way."
19

20 **Sec. 17. 12.05.020. Application.**
21

22 (1) This chapter and the procedures adopted under this
23 chapter shall be applicable to all right-of-way throughout the
24 City.
25

26 (2) It is unlawful for anyone to make private use of
27 any public right-of-way without a right-of-way use permit issued
28 by the City, or to use any right-of-way without complying with
29 all the provisions of a permit issued by the City.
30

31 (3) Additional permits for any use may be required by
32 other City codes or ordinances. The City does not waive its
33 right to use of the right-of-way by issuance of any permit under
34 the provisions of this chapter.
35

36 **Sec. 18. 12.05.030. Purpose.** It is the purpose of
37 this chapter, in order to protect the interest of the public
38 health, safety, and welfare; to provide for the issuance of
39 right-of-way use permits to regulate activities within the
40 right-of-way in the City, provide for the maintenance of the
41 right-of-way and provide for the fees, charges, warranties, and
42 procedures required to administer the permit process.
43

Ordinance No. ____
Page 13 of 79

1 **Sec. 19. 12.05.040. Authority.** Rights-of-way permits
2 shall be issued by the Planning, Building and Public Works
3 Director or approved by the City Council as is set forth in DMMC
4 12.05.060.

5
6 **Sec. 20. 12.05.050. Right-of-way use permits.**

7
8 (1) The following types of right-of-way use permits are
9 established:

10 (a) Type A - Short-term, non-invasive

11
12 (i) Type A permits may be issued for use of
13 a right-of-way for 72 or less continuous hours which do not
14 involve the physical disturbance of the right-of-way.

15
16 (ii) This type of use may involve disruption
17 of pedestrian and vehicular traffic or access to private
18 property including temporary street closures and may require
19 inspections, cleanup, and police surveillance.

20
21 (b) Type B - Invasive.

22
23 (i) Type B permits may be issued for use of
24 a right-of-way for activities that will alter the appearance of
25 or disturb the surface, supersurface, or subsurface of the
26 right-of-way on a temporary or permanent basis.

27
28 (c) Type C - Long-term, non-invasive.

29
30 (i) Type C permits may be issued for use of
31 a right-of-way for activities for extended periods of time but
32 which will not physically disturb the right-of-way.

33
34 (ii) The use of a right-of-way for
35 structures, facilities, and uses that involve capital
36 expenditures and long-term commitments of use require this type
37 of permit.

Ordinance No. ____
Page 14 of 79

1 **Sec. 21. 12.05.060. Applications and processing of**
2 **permits.**

3
4 (1) To obtain a right-of-way use permit the applicant
5 shall file an application with the Planning, Building and Public
6 Works Department.

7
8 (2) Every application shall include the location of the
9 proposed right-of-way use, a description of the use, the planned
10 duration of the use, applicant contact information, and all
11 other information which may be required as specified in
12 procedures adopted under this chapter, and shall be accompanied
13 by payment of the required fees.

14
15 (3) The Planning, Building and Public Works Director
16 shall examine each application submitted for review and approval
17 to determine if it complies with the applicable provisions of
18 this chapter and procedures adopted under this chapter. Other
19 departments that have authority over the proposed use or
20 activity may be required to review and approve or disapprove the
21 application. The Planning, Building and Public Works Director
22 may inspect the right-of-way proposed for use to determine any
23 facts which may aid in determining whether a permit should be
24 granted. If the Planning, Building and Public Works Director
25 finds that the application conforms to the requirements of this
26 chapter and procedures adopted under this chapter, that the
27 proposed use of such right-of-way will not unduly interfere with
28 the rights and safety of the public, and if the application has
29 not been disapproved by a department with authority, the
30 Planning, Building and Public Works Director may approve the
31 permit, and may impose such conditions thereon as are reasonably
32 necessary to protect the public health, welfare, and safety and
33 to mitigate any impacts resulting from the use.

34
35 Notwithstanding the above, City Council approval by resolution
36 shall be required for a right-of-way use permit for any use or
37 event that is outside of the City's ordinary course of business
38 and:

39 (a) Involves the use of a City right-of-way for
40 more than 24 hours; or

41
42 (b) Shuts down a major arterial street for more
43 than 24 hours; or

Ordinance No. —
Page 15 of 79

1
2 (c) Charges an admission fee; or
3

4 (d) Allows concessions for sale of food, drinks,
5 merchandise or services; or
6

7 (e) Where the expected attendance at the event
8 utilizing the right of way, is over 100 persons.
9

10 (4) All applications for permits will be submitted 90
11 days or more before the planned need for the permit unless the
12 time period is waived, in writing, by the Planning, Building and
13 Public Works Director for good cause.
14

15 (5) Upon submittal of a completed application, the
16 Planning, Building and Public Works Department shall collect
17 from the applicant an application fee in the amount set forth in
18 the current fee schedule adopted by the City Manager.
19

20 **Sec. 22. 12.05.070. Permit fees and charges. The fee**
21 **for each permit shall be set forth in a fee schedule to be**
22 **adopted by the City Manager.**
23

24 (1) Application fee. A nonrefundable application fee
25 shall be charged for each right-of-way use permit application
26 that is accepted for processing. This fee covers the costs of
27 initial processing, counter service, and recordkeeping. The
28 application fee shall be the same for all types of right-of-way
29 use permits.
30

31 (2) Daily use fee. All permits shall include a fee for
32 each day (or part thereof) of use of the right-of-way. The fee
33 will compensate the City for monitoring and inspecting the site.
34

35 (3) Large structure move charges. When a permit
36 allowing a large structure to be moved over the City's right of
37 way, is issued, the City shall impose an additional charge based
38 on the actual cost to compensate for its time and expense. These
39 costs may include the costs for street crews, signal crews, and
40 police, if required to assist in the move. A minimum fee will be
41 established and charged at the time of such permit issuance. A
42 refundable deposit will also be required. Costs for damage to
43 City property occurring as a result of the move, or assistance

Ordinance No. ____
Page 16 of 79

1 on the house move by City crews, shall either be deducted from
2 the deposit or billed to the house or building mover and
3 permittee directly.
4

5 (4) Repair and replacement charges. If the City should
6 incur any costs in repairing or replacing any property as the
7 result of a permittee's actions, the costs of repair and
8 replacement will be charged to the permittee. These charges will
9 be for the actual costs to the City.
10

11 (5) Persons using rights-of-way by permit will be
12 required and shall agree to protect, defend, save, and hold the
13 City, its elected and appointed officials and employees, while
14 acting within the scope of their duties, harmless from and
15 against all claims, demands, and causes of action of any kind or
16 character, including the cost of defense thereof, arising in
17 favor of a person or group's members or employees or third
18 parties on account of any action, including but not limited to
19 personal injuries, death, or damage to property arising out of
20 the use of City rights-of-way, or in any way arising out of the
21 acts or omissions of the person, group, and/or its agents,
22 employees or representatives.
23

24 (6) During all periods of use, persons using City
25 rights-of-way by permit shall obtain and maintain public
26 liability insurance in such form and amounts as determined and
27 approved by the City.
28

29 (7) Costs. The permittee shall reimburse the City its
30 costs of supporting the event, including, but not limited to,
31 police, parks, marina, and public works costs.
32

33 (8) Waiver of fees and costs.
34

35 (a) Franchised utilities which must apply for
36 permits because of City-initiated construction projects may be
37 granted a waiver by the Planning, Building and Public Works
38 Director of normal permit fees. This provision shall only apply
39 to work that would not normally have been done by the utility.
40

41 (b) The City Council may, in its sole discretion,
42 waive normal permit fees and the reimbursement of the City's

Ordinance No. _____
Page 17 of 79

1 costs of supporting an event if it finds that there is or has
2 been a significant public benefit for the event.

3
4 **Sec. 23. 12.05.080. Specifications.** All work to be
5 performed under any permit issued under this chapter shall
6 conform to all other City codes and ordinances, the current
7 Street Development Standards of the Planning, Building and
8 Public Works Department, and all other standards used by the
9 City in the administration of this Title.

10
11 **Sec. 24. 12.05.090. Permit exception.**

12
13 (1) A right-of-way use permit shall not be required of
14 franchised utilities or City contractors when responding to
15 emergencies that require work in the right-of-way, such as water
16 or sewer main breaks, gas leaks, downed power lines, or similar
17 emergencies; provided, that the Department shall be notified by
18 the responding utility or City contractor verbally or in
19 writing, as soon as practicable following onset of an emergency.
20 Nothing in this chapter shall relieve a responding utility or
21 City contractor from the requirement to obtain a right-of-way
22 use permit after beginning emergency work in the right-of-way.

23
24 (2) Permits shall not be required for routine
25 maintenance and construction work performed by City utilities
26 and City maintenance crews.

27
28 **Sec. 25. 12.05.100. Revocation of permits.**

29
30 (1) The Planning, Building and Public Works Director
31 may revoke or suspend any permit issued under this chapter
32 whenever:

33
34 (a) The work does not proceed in accordance with
35 the plans as approved, or conditions of approval, or is not in
36 compliance with the requirements of this chapter or procedures,
37 or other City ordinances, resolutions, or state law;

38
39 (b) The City has been denied access to
40 investigate and inspect how the right-of-way is being used;

41
42 (c) The permittee has made a misrepresentation of
43 a material fact in applying for a permit;

Ordinance No. ____
Page 18 of 79

1
2 (d) The progress of the approved activity
3 indicates that it is or will be inadequate to protect the public
4 and adjoining property or the street or utilities in the street,
5 or any excavation or fill endangers or will endanger the public,
6 the adjoining property or street, or utilities in the street.
7

8 (2) Upon suspension or revocation of a permit, all use
9 of the right-of-way shall cease, except as authorized or
10 directed by the Planning, Building and Public Works Director.
11

12 **Sec. 26. 12.05.110 Renewal of permits.** Each permit
13 shall be of a duration as specified on the permit and may not be
14 renewed. If continued use of the right-of-way is desired by the
15 permittee after expiration of a permit, he/she must apply for a
16 new permit.
17

18 **Sec. 27. 12.05.120 Performance deposits/insurance.**
19

20 (1) If the Planning, Building and Public Works Director
21 determines that there is a potential for injury, damage, or
22 expense to the City as a result of damage to persons or property
23 arising from an applicant's proposed use of any right-of-way,
24 the applicant shall be required to make a cash deposit with the
25 City Clerk or to provide a security device or insurance in a
26 form acceptable to the Planning, Building and Public Works
27 Director for the activities described in the subject permit. The
28 amount of the cash deposit, security device, or insurance shall
29 be determined by the Planning, Building and Public Works
30 Director.
31

32 (2) The requirements for performance deposits and
33 insurance are based on considerations of applicant's prior
34 performance, nature of the proposed use, cost of the activity,
35 length of use, public safety, potential damage to right-of-way,
36 and potential liability or expense to the City.
37

38 **Sec. 28. 12.05.130. Guarantee.** When there is a need
39 to ensure conformance with the City's Street Development
40 Standards, City or state construction standards, or other
41 requirements, the applicant shall be required to provide a
42 guarantee of workmanship and materials for a period of ten (10)
43 years. Such guarantee may be in the form of a cash deposit or a

Ordinance No. ____
Page 19 of 79

1 security device in a form and amount approved by the Planning,
2 Building and Public Works Director.

3
4 **Sec. 29. 12.05.140. Inspections.** As a condition of
5 issuance of any permit or authorization which requires approval
6 of the Planning, Building and Public Works Department, each
7 applicant shall be required to consent to inspections by the
8 Planning, Building and Public Works Department or any other
9 appropriate City department.

10
11 **Sec. 30. 12.05.150. Correction and discontinuance of**
12 **unsafe, unconforming, or unauthorized conditions.**

13
14 (1) Whenever the Planning, Building and Public Works
15 Director determines that any condition on any right-of-way is in
16 violation of, or any right-of-way is being used contrary to any
17 provision of this chapter or procedures adopted under this
18 chapter or other applicable codes or standards, or without a
19 right-of-way use permit, the Planning, Building and Public Works
20 Director may order the correction or discontinuance of such
21 condition or any activity causing such condition.

22
23 (2) The Planning, Building and Public Works Director is
24 authorized to order correction or discontinuance of any such
25 condition or activities following the methods specified in
26 procedures adopted pursuant to this chapter.

27
28 (3) The Planning, Building and Public Works Director
29 shall also have all powers and remedies which may be available
30 under state law, this chapter, and procedures adopted under this
31 chapter for securing the correction or discontinuance of any
32 condition specified in this section.

33
34 (4) The Planning, Building and Public Works Director is
35 authorized to use any or all of the following methods in
36 ordering correction or discontinuance of any such conditions, or
37 activities as the Planning, Building and Public Works Director
38 determines appropriate:

39
40 (a) Serving of oral or written directives to the
41 permittee or other responsible person requesting immediate
42 correction or discontinuance of the specified condition;
43

Ordinance No. _____
Page 20 of 79

1 (b) Service of a written notice of violation,
2 ordering correction or discontinuance of a specific condition or
3 activity within five days of notice, or such other reasonable
4 period as the Planning, Building and Public Works Director may
5 determine;

6
7 (c) Revocation of previously granted permits
8 where the permittee or other responsible person has failed or
9 refused to comply with requirements imposed by the City related
10 to such permits;

11
12 (d) Issuance of an order to immediately stop work
13 until authorization is received from the City to proceed with
14 such work;

15
16 (e) Service of summons and complaint certified by
17 the City Attorney or a citation and notice to appear by an
18 arresting peace officer upon the permittee or other responsible
19 person who is in violation of this chapter or other City
20 ordinances.

21
22 (5) Any object or thing which shall occupy any right-
23 of-way without a permit is a nuisance. The Planning, Building and
24 Public Works Department may attach a notice to any such object
25 or thing stating that if it is not removed from the right-of-way
26 within 24 hours of the date and time stated on the notice, the
27 object or thing may be taken into custody and stored at the
28 owner's expense. The notice shall provide an address and phone
29 number where additional information may be obtained. If the
30 object or thing is a hazard to public safety, it may be removed
31 summarily by the City. Notice of such removal shall be
32 thereafter given to the owner, if known. This section shall not
33 apply to motor vehicles.

34
35 (6) All expenses incurred by the City in abating the
36 condition or any portion thereof shall constitute a civil debt
37 owing to the City jointly and severally by such persons who have
38 been given notice or who own the object or thing or placed it in
39 the right-of-way, which debt shall be collectible in the same
40 manner as any other civil debt.

41
42 (7) The City shall also have all powers and remedies
43 which may be available under law, this chapter, and procedures

Ordinance No. ____
Page 21 of 79

1 adopted under this chapter for securing the correction or
2 discontinuance of any conditions specified by the City.

3
4 **Sec. 31. 12.05.160. Warning and safety devices.**

5
6 (1) Warning lights, safety devices, signs, and
7 barricades shall be provided on all rights-of-way when at any
8 time there might be an obstruction or hazard to vehicular or
9 pedestrian traffic. All obstructions on rights-of-way shall have
10 sufficient barricades and signs posted in such a manner as to
11 indicate plainly the danger involved. Warning and safety devices
12 may be removed when the work for which the right-of-way use
13 permit has been granted is complete and the right-of-way
14 restored to the conditions directed by the Planning, Building
15 and Public Works Department.

16
17 (2) As a condition for the issuance of any right-of-way
18 use permit, the traffic engineer may require an applicant to
19 submit a traffic detour plan showing the proposed detour routing
20 and location and type of warning lights, safety devices, signs,
21 and barricades intended to protect vehicular or pedestrian
22 traffic at the site for which the right-of-way use permit is
23 requested. If a traffic plan is required, no right-of-way use
24 permit shall be issued until the traffic plan is approved.

25
26 (3) Unless otherwise specified in adopted right-of-way
27 use procedures, the current editions of the following standard
28 manuals shall apply to the selection, location, and installation
29 of required warning and safety devices; provided, that the
30 traffic engineer may impose additional requirements if site
31 conditions warrant such enhanced protection of pedestrian or
32 vehicular traffic:

33
34 (a) Manual on Uniform Traffic Control Devices for
35 Streets and Highways, as adopted by the Federal Highway
36 Administration;

37
38 (b) Street Development Standards, Planning,
39 Building and Public Works Department;

40
41 (c) Part VIII, "Regulations for Use of Public
42 Streets and Projections over Public Property," Uniform Building
43 Code.

Ordinance No. _____

Page 22 of 79

1
2 (4) Any right-of-way use permit that requires a partial
3 lane or street closure shall require a licensed flag person,
4 properly attired, or an off-duty police officer for the purpose
5 of traffic control during the construction.
6

7 (5) All decisions of the designated street use official
8 shall be final in all matters pertaining to the number, type,
9 locations, installation, and maintenance of warning and safety
10 devices in the public right-of-way during any actual work or
11 activity for which a duly authorized right-of-way use permit has
12 been issued.
13

14 (6) Any failure of a permit holder to comply with the
15 oral or written directives of the street use official related to
16 the number, type, location, installation, or maintenance of
17 warning and safety devices in the public right-of-way shall be
18 handled as provided for in this chapter.
19

20 **Sec. 32. 12.05.170. Clearance for fire equipment.**
21 All excavation work shall be performed and conducted so as not
22 to interfere with access to fire stations and fire hydrants.
23 Materials or obstructions shall not be placed within 15 feet of
24 fire hydrants. Passageways leading to fire escapes or
25 firefighting equipment shall be kept free from obstructions at
26 all times.
27

28 **Sec. 33. 12.05.180. Protection of adjoining property**
29 **- Access.** The permittee shall at all times and at the
30 permittee's expense, preserve, and protect from injury any
31 adjoining property by providing proper foundations and taking
32 other measures which, in the opinion of the Planning, Building
33 and Public Works Director, are suitable for such purposes. The
34 permittee shall at all times maintain adequate access to all
35 property adjoining the excavation or work site.
36

37 **Sec. 34. 12.05.190. Preservation of monuments.** The
38 permittee shall not disturb any surface monuments or hubs found
39 on the line of excavation work until ordered to do so by the
40 Planning, Building and Public Works Director. All street
41 monuments, property corners, bench marks, and other monuments
42 disturbed during the progress of the work shall be replaced by

Ordinance No. ____
Page 23 of 79

1 the Planning, Building and Public Works Director, and the cost
2 of the same shall be paid by the permittee.

3
4 **Sec. 35. 12.05.200. Protection of watercourses.** The
5 permittee shall provide for the flow of all watercourses,
6 sewers, or drains intercepted during the excavation work and
7 shall replace the same in as good condition as it/he/she found
8 them, or shall make such provisions for them as the Planning,
9 Building and Public Works Director may direct. The permittee
10 shall not obstruct the gutter of any street, but shall use all
11 proper measures to provide for the free passage of surface
12 water. The permittee shall make provision to take care of all
13 surplus water, muck, silt, slickings, or other runoff pumped
14 from excavations or resulting from sluicing or other operations,
15 and shall be responsible for any damage resulting from
16 its/his/her failure to so provide.

17
18 **Sec. 36. 12.05.210. Excavated materials.** All
19 excavated material which is piled adjacent to the excavation
20 shall be piled and maintained in such manner so as not to
21 endanger those working in the excavation or pedestrians or users
22 of the right-of-way. When the confines of the area being
23 excavated are too small to permit the piling of excavated
24 material beside the excavation, the Planning, Building and
25 Public Works Director shall have the authority to require the
26 permittee to haul the excavated material to a storage site and
27 then rehaul it to the excavation at the time of backfilling. It
28 is the responsibility of the permittee to secure the necessary
29 permission and make all necessary arrangements for any required
30 storage and disposal of excavated material.

31
32 **Sec. 37. 12.05.220. Backfilling.** Backfilling in a
33 right-of-way opened or excavated pursuant to a permit issued
34 under the provisions of this chapter shall be compacted to a
35 degree equivalent to that of the undisturbed ground in which the
36 excavation was begun, unless the Planning, Building and Public
37 Works Director determines a greater degree of compaction is
38 necessary to produce a satisfactory result. All backfilling
39 shall be accomplished according to City standards and
40 specifications and shall meet the approval of the Planning,
41 Building and Public Works Director. All backfills shall be
42 inspected and approved by the Planning, Building and Public
43 Works Director prior to any overlaying or patching.

Ordinance No. _____
Page 24 of 79

Sec. 38. 12.05.230. Right-of-way restoration.

(1) Permanent restoration of the right-of-way shall be made by the permittee in strict accordance with the standards and specifications of the City and in a manner meeting the approval of the Planning, Building and Public Works Director. Permanent restoration may include overlays of portions of the right-of-way which have been disrupted by the excavation work.

(2) The permittee shall guarantee and maintain the site of the excavation work to City standards and specifications for a period of not less than 10 years following the completion of the restoration and acceptance by the City. Acceptance or approval of any excavation work or right-of-way restoration by the Planning, Building and Public Works Director shall not prevent the City from asserting a claim against the permittee and his or its surety under the surety bond required by this chapter for incomplete or defective work, if such incompleteness or defective work is discovered within the period of guarantee and maintenance. The presence of the Planning, Building and Public Works Director during the performance of an excavation work shall not relieve the permittee of its responsibilities under this chapter.

Sec. 39. 12.05.240. Coordination of right-of-way construction. The applicant, at the time of submitting an application for a Type C right-of-way use permit, shall notify all other public and private utility entities known to be using or proposing to use the same right-of-way of the applicant's proposed construction and the proposed timing of such construction. Such entity notified may, within seven days of such notification, request of the Planning, Building and Public Works Director a delay in the commencement of such proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the applicant. The Planning, Building and Public Works Director may delay the commencement date for the applicant's right-of-way construction for 90 days or less, except in case of emergencies, if he/she finds that such delay will reduce inconvenience to City right-of-way uses from construction activities and he/she finds that such delay will not create undue economic hardship on the applicant.

Ordinance No. _____
 Page 25 of 79

Sec. 40. 12.05.250. Duty to maintain clean rights-of-way. No person shall willfully or negligently cause or allow dirt, mud, rocks, vegetation, grease, oil, or other foreign material or substance to be deposited, stored, abandoned, discharged, or spread on a public street, alley, sidewalk, walkway, trail, shoulder, or drainage ditch; provided, however, nothing contained in this chapter shall require an adjacent property owner to maintain any drainage ditch.

Sec. 41. 12.05.260. Billings and collections. The Planning, Building and Public Works Department, jointly with the Finance Director, may establish administrative rules and procedures pertaining to the billing and collection of fees and charges adopted pursuant to this chapter.

Sec. 42. 12.05.270. Appeals. A decision of the Planning, Building and Public Works Director made in accordance with this chapter shall be considered a final administrative decision. A person aggrieved by such decision of the Planning, Building and Public Works Director may appeal such decision to the Hearing Examiner in accordance with DMMC 18.20.150 and 18.20.160 and chapter 18.240 DMMC. The City Manager or the City Manager's designee may at any time prior to the decision of the Hearing Examiner review and revise such decision by the Planning, Building and Public Works Director. If a resolution by the City Council is required any appeal shall be only to the Superior Court as allowed by law.

Sec. 43. 12.05.280. Hold harmless. As a condition to the issuance of any permit under this chapter, the permittee shall agree to defend, indemnify, and hold harmless the City, its officers, employees, and agents, for any and all suits, claims, or liabilities caused by or arising out of any use authorized by any such permit.

Chapter 12.10 Vacation of Public Rights-Of-Way

Sections:

12.10.010	Title.
12.10.020	Application.
12.10.030	Purpose.

Ordinance No. ____
 Page 26 of 79

1 12.10.040 Authority
 2 12.10.050 Road classification.
 3 12.10.060 Procedures.
 4 12.10.070 Fees and compensation.
 5 12.10.080 Condition precedent.
 6 12.10.090 Manner of payment.
 7 12.10.100 Appeal.

8
 9 **Sec. 44. 12.10.010. Title.** This chapter shall be
 10 entitled "Vacation of Public Rights-of-Way."
 11

12 **Sec. 45. 12.10.020. Application.** This chapter shall
 13 apply to the vacation of public rights-of-way within the City.
 14

15 **Sec. 46. 12.10.030. Purpose.** The purpose of this
 16 chapter is to set forth the process and procedures for the
 17 vacation of public rights-of-way and to make provisions for
 18 compensation as set forth below.
 19

20 **Sec. 47. 12.10.040. Authority.** Petitions for the
 21 vacation of City rights-of-way may be granted by the City
 22 Council in accordance with the provisions of chapter 35.79 RCW.
 23

24 **Sec. 48. 12.10.050. Road classification.** For the
 25 purposes of this chapter, all public rights-of-way within the
 26 City are declared to be within one of three classes:
 27

28 (1) All streets or alleys that have been part of a
 29 dedicated public right-of-way for 25 years or more, all rights-
 30 of-way conveyed to or held by the City for transportation
 31 purposes for which public funds have been expended in the
 32 acquisition, improvement or maintenance of such rights-of-way
 33 interests, and rights-of-way that abut a body of fresh or salt
 34 water, are classified Class A rights-of-way.
 35

36 (2) All City rights-of-way conveyed to or held by the
 37 City for transportation purposes for which no public funds have
 38 been expended in the acquisition of the same, excluding any
 39 Class A rights-of-way and any rights-of-way subject to being
 40 vacated by the provisions of section 32, chapter 19, Laws of
 41 1889-90, are classified Class B rights-of-way.
 42

Ordinance No. ____
Page 27 of 79

1 (3) All City rights-of-way originally conveyed to the
2 City by a party who subsequently petitions for the vacation of
3 said rights-of-way for which no public expenditures have been
4 made in the acquisition of the same and any rights-of-way or
5 portions thereof subject to being vacated by the provisions of
6 section 32, chapter 19, Laws of 1889-90; or any other rights-of-
7 way not included within Classes A or B are classified Class C
8 rights-of-way.

9
10 **Sec. 49. 12.10.060. Procedures.** The procedures for
11 the vacation of the public rights-of-way shall be as follows:

12
13 (1) The petition for rights-of-way vacation is filed
14 with the Planning, Building and Public Works Director on a form
15 prescribed by the Planning, Building and Public Works Director,
16 and shall contain sufficient facts to enable the Planning,
17 Building and Public Works Director to determine whether the
18 petition(s) have complied with the provisions in this section
19 and chapter 35.79 RCW as presently constituted or as may be
20 subsequently amended.

21
22 (2) After a review of the petition, the Planning,
23 Building and Public Works Director shall make a recommendation
24 to the City Council who shall proceed under the provision cited
25 in this section.

26
27 **Sec. 50. 12.10.070. Fees and compensation.**

28
29 (1) Each petition must be accompanied by an application
30 fee to be set by administrative order of the City Manager or the
31 City Manager's designee. Such fee is used to defray examination,
32 report, publication, investigation, and other costs connected
33 with the applications. Such fee shall not be returned to the
34 petitioner.

35
36 (2) The amount of compensation, if required by this
37 chapter, is determined by the City Council according to the
38 following criteria:

39
40 (a) Vacation of all City rights-of-way included
41 in Class A, if granted, shall require compensation at the full
42 appraised value as of the effective date of the vacation; or,
43 which amount, for the purposes of this chapter, may be

Ordinance No. ____
Page 28 of 79

1 determined from the records of the King County Department of
2 Assessments or by informal or formal appraisal; provided, that
3 the City Council shall have the authority to accept real
4 property of equal or greater value in lieu of cash compensation.
5

6 (b) Vacation of all City rights-of-way included
7 in Class B, if granted, shall require compensation at 50 percent
8 of the full appraised value as of the effective date of the
9 vacation, which amount, for the purposes of this chapter, may be
10 determined from the records of the King County Department of
11 Assessments or by informal or formal appraisal.
12

13 (c) Vacation of all City rights-of-way included
14 in Class C, if granted, requires no compensation.
15

16 (d) When a right-of-way is vacated for a
17 governmental agency, compensation shall be in accordance with
18 the classification of the right-of-way.
19

20 (e) The City Council may waive some or all of the
21 compensation for any classification of right-of-way, if it
22 determines and makes written findings that such action would
23 benefit the residents of the City.
24

25 **Sec. 51. 12.10.080. Condition precedent.** Subsequent
26 to City Council approval, payment of compensation as ordered by
27 the City Council is a condition precedent to the final vacation
28 of any public right-of-way and shall be paid to the City by
29 responsible parties within 90 days of receipt of the request for
30 compensation prepared by the City. In the event of the failure
31 of the responsible parties to pay such sum within 90 days, the
32 petition of vacation shall be denied.
33

34 **Sec. 52. 12.10.090. Manner of payment.** Payment is
35 made to the Finance Director and shall be credited as follows:
36

37 (1) Revenue received by the City as compensation for
38 the area vacated, excluding revenue received as compensation for
39 vacation of rights-of-way that abut a body of fresh or salt
40 water, shall be dedicated to the acquisition, improvement,
41 development, and related maintenance of public transportation
42 capital projects within the City.
43

Ordinance No. ____
 Page 29 of 79

(2) Revenue received by the City as compensation for vacation of rights-of-way that abut a body of fresh or salt water shall be dedicated to the acquisition of additional beach or water access, acquisition of additional public view sites to a body of water, or acquisition of additional moorage or launching areas.

Sec. 53. 12.10.100. Appeal. A decision of the City Council may be appealed to the King County Superior Court to the extent allowed by law.

Chapter 12.15 Street Development Standards

Sections:

12.15.010 Title.
 12.15.020 Application.
 12.15.030 Purpose.
 12.15.040 Authority.
 12.15.050 Street development standards.
 12.15.060 Street Development Standards, filed and maintained in the office of City Clerk.

Sec. 54. 12.15.010. Title. This chapter shall be entitled "Street Development Standards."

Sec. 55. 12.15.020. Application. This chapter shall be applicable to all street, work and sidewalk development within the City.

Sec. 56. 12.15.030. Purpose. The purpose of this chapter is to adopt the City's street development standards.

Sec. 57. 12.15.040. Authority. Street development standards are adopted pursuant to the general police powers granted to the City pursuant to chapter 35.63 RCW.

Sec. 58. 12.15.050. Street Development Standards. Streets and sidewalks in the City shall be constructed in accordance with the provisions of a document entitled "City of Des Moines Street Development Standards." The Street Development

Ordinance No. ____
 Page 30 of 79

Standards shall be approved by the City Council and amended as is necessary by approval of the City Council.

Sec. 59. 12.15.060. The City Clerk shall file, maintain and make available for public inspection a current version of the "City of Des Moines Street Development Standards."

Chapter 12.20 Street System Improvement Requirements

Sections:

12.20.010	Title.
12.20.020	Application.
12.20.030	Purpose.
12.20.040	Authority
12.20.050	Street system improvements required as a condition of building permit approval.
12.20.060	All development sites shall be served by paved streets.
12.20.070	Development sites fronting unpaved street surface.
12.20.080	Development sites fronting paved street surface.
12.20.085	Special provisions, construction of one single-family residence
12.20.090	Special provisions.
12.20.100	SEPA review.
12.20.110	Street system improvements assessment reimbursement agreements.
12.20.120	Appeals.

Sec. 60. 12.20.010. Title. This chapter shall be entitled "Street System Improvement Requirements."

Sec. 61. 12.20.020. Application. This chapter shall apply to property owners constructing real property improvements unless specifically excepted by the City's street development standards, adopted by chapter 12.15 DMMC. Persons constructing real property improvements are responsible for street system improvements to the extent those street system improvements do not exist at the time of building permit application.

Ordinance No. ____
Page 31 of 79

1 **Sec. 62. 12.20.030. Purpose.** It is the intent and
2 policy of this chapter that all persons constructing "real
3 property improvements" on lots abutting public rights-of-way are
4 responsible for street system improvements, constructed in
5 accordance with the "City of Des Moines Street Development
6 Standards," and the provisions of this chapter, on public
7 rights-of-way adjacent to such lots, and in limited
8 circumstances, on public rights-of-way which connect to a paved
9 street surface. The fundamental principle of this chapter is
10 that the owner, developer, and/or building permit applicant for
11 proposed real property improvements is responsible for
12 constructing street system improvements as defined in this
13 chapter, or paying a street system improvement fee in lieu of
14 construction as provided for in this chapter.

15
16 **Sec. 63. 12.20.040. Authority.** The Planning,
17 Building and Public Works Director, subject to the authority of
18 the City Manager or the City Manager's designee, has the
19 authority to require improvement as more specifically set forth
20 in this chapter.

21
22 **Sec. 64. 12.20.050. Street system improvements**
23 **required as a condition of building permit approval.**
24

25 (1) General Obligation. As a condition of building
26 permit approval, the developer shall construct street system
27 improvements in accordance with this chapter.

28
29 (2) Payment of Street System Improvement Fee in Lieu of
30 Construction, Based upon Anticipated Public Development. If the
31 Planning, Building and Public Works Director finds that a
32 required street system improvement will be destroyed, altered or
33 otherwise made obsolete due to development plans of the City or
34 another governmental entity within six years, the Planning,
35 Building and Public Works Director may require the developer
36 make an in-lieu cash payment to the City. As determined by the
37 Planning, Building and Public Works Director, the cash payment
38 shall be based on the estimated cost of the improvements plus
39 engineering and administrative costs. If the anticipated public
40 project does not occur, the City will complete the improvements
41 required under this chapter.
42

Ordinance No. ____
Page 32 of 79

1 **Sec. 65. 12.20.060. All development sites shall be**
2 **served by paved streets.** All development sites shall be served
3 by a paved street surface which connects to an existing paved
4 street surface.

5
6 **Sec. 66. 12.20.070. Development sites fronting**
7 **unpaved street surface.** If the development site fronts an
8 unpaved street surface, the developer is required to construct
9 street system improvements in accordance with this section.

10
11 (1) If the distance of the development site along a
12 connecting right-of-way from a paved street surface is not
13 greater than two times the frontage of the development site or
14 the frontage of the development site is greater than 150 feet,
15 the developer shall construct complete street system
16 improvements, as defined in chapter 12.15 DMMC, along the
17 frontage of the development site and extending off-site to a
18 paved street surface.

19
20 (2) If the distance of the development site along a
21 connecting right-of-way from a paved street surface is greater
22 than two times the frontage of the development site and the
23 frontage of the development site is 150 feet or less, the
24 developer shall construct street pavement, surface water
25 drainage facilities, and curb and gutter along the right-of-way
26 frontage of the development site and shall construct street
27 pavement off-site to connect with a paved street surface.

28
29 **Sec. 67. 12.20.080. Development sites fronting paved**
30 **street surface.** If the development site fronts a paved street
31 surface, the developer shall construct street system
32 improvements along the right-of-way frontage of the development
33 site in accordance with this section.

34
35 (1) The developer shall construct surface water
36 drainage facilities.

37
38 (2) The developer shall construct sidewalks if the
39 development site fronts a sidewalk route.

40
41 (3) The developer shall construct curb, gutter, and
42 right-of-way landscaping.

Ordinance No. ____
Page 33 of 79

1 (4) If the developer is required to construct either
2 curb, gutter, and sidewalk or solely curb and gutter, the
3 developer is required to construct such street pavement as is
4 necessary to provide continuity between the sidewalk, curb, and
5 gutter or curb and gutter and the paved street surface.
6

7 **Sec. 68. 12.20.085. Special provisions, construction**
8 **of one single-family residence.** Notwithstanding "Real property
9 improvements" defined in the provisions of DMMC 12.01.050 that
10 exclude construction of one single-family residence from the
11 definition of real property improvements, the developer of one
12 single-family residence shall construct the following street
13 system improvements as a condition of building permit approval:
14

15 (1) If the development site fronts entirely on an
16 unpaved street surface, the developer shall construct a half-
17 street section of street pavement along the frontage of the
18 development site abutting the unpaved surface or, in the
19 alternative, the property owner shall enter into an agreement
20 with the City waiving the right of the property owner under RCW
21 35.43.180 to protest formation of a local improvement district
22 for the construction of a paved street surface and surface water
23 drainage facilities. The agreement shall specify the
24 improvements to be financed by the district and shall set forth
25 the effective term of the agreement, which shall not exceed 10
26 years. The agreement shall be recorded with the King County
27 Auditor;
28

29 (2) If the development site is a corner lot and fronts
30 on both a paved street surface and an unpaved street surface,
31 the developer shall construct half-street section of street
32 pavement and surface water drainage facilities along the
33 frontage of the development site abutting the unpaved street
34 surface;
35

36 (3) If the development site is contiguous to a parcel
37 that is served by paved street surface, the developer shall
38 construct a half-street section of street pavement and surface
39 water drainage facilities along the frontage of the development
40 site abutting the existing paved street surface;
41

Ordinance No. ____
Page 34 of 79

1 (4) Surface water drainage facilities in all cases,
2 whether the development site fronts a paved street surface or an
3 unpaved street surface; and
4

5 (5) If the development site fronts a paved street
6 surface, minor edge improvements to the street pavement as
7 required by the Planning, Building and Public Works Director.
8

9 **Sec. 69. 12.20.090. Special provisions.** The following
10 special provisions shall apply to additions, alterations,
11 repairs, accessory buildings, and campus additions:
12

13 (1) In the case of real property improvements
14 consisting of additions, alterations, or repairs to an existing
15 structure where square footage is added to the structure, or the
16 construction of accessory buildings as defined in Title 18 DMMC,
17 street system improvements shall be constructed, to be selected
18 by the Planning, Building and Public Works Director, the cost of
19 which is not more than ten percent (10%) of the total cost of
20 the improvement. The Planning, Building and Public Works
21 Director is authorized to waive construction of street system
22 improvements if the Planning, Building and Public Works Director
23 has made a written finding that the street system improvements
24 required to be constructed in accordance with this section will
25 be negligible and not in the public interest.
26

27 (2) In the case of real property improvements
28 consisting of construction of an additional structure or
29 structures on a private campus, such street system improvements
30 shall be constructed, to be selected by the Planning, Building
31 and Public Works Director, the cost of which is not more than 10
32 percent of the total cost of the improvement. In the case of
33 real property improvements consisting of construction of an
34 additional structure or structures on a campus owned by a public
35 entity, street system improvements shall be constructed along
36 the full frontage.
37

38 (3) In the case of corner lots or other development
39 sites fronting more than one right-of-way, should the cost of
40 the real property improvement be such that street system
41 improvements would not be required on all rights-of-way fronting
42 the development site, street system improvements shall be

Ordinance No. ____
Page 35 of 79

constructed on the right-of-way or rights-of-way selected by the Planning, Building and Public Works Director.

Sec. 70. 12.20.100. SEPA review. Nothing contained in this chapter shall be construed to limit the responsible official in directing construction of additional street system improvements as mitigation measures under chapter 16.05 DMMC and the State Environmental Policy Act (SEPA) or a discretionary decision of the City Council.

Sec. 71. 12.20.110. Street system improvements assessment reimbursement agreements. A developer required to construct off-site street system improvements as required by this chapter shall be entitled to reimbursement as provided in chapter 12.35 DMMC.

Sec. 72. 12.20.120. Appeals. Discretionary decisions of the Planning, Building and Public Works Director made in accordance with this chapter are subject to appeal as either an appeal from administrative decisions and may be appealed to the Hearing Examiner pursuant to DMMC 18.20.150 and 18.20.160 and chapter 18.240 DMMC, or as part of the underlying application process as set forth in chapter 18.20 DMMC.

Chapter 12.25 Underground Utility Requirements

Sections:

- 12.25.010 Title.
- 12.25.020 Application.
- 12.25.030 Purpose.
- 12.25.040 Authority.
- 12.25.050 Requirements for electrical or communication systems.
- 12.25.060 Minor additions, rebuilds, and replacements.
- 12.25.070 Requirement for no increase in poles, exception.
- 12.25.080 Requirements for service lines in non-single-family residential areas.
- 12.25.090 Requirements for service lines in single-family residential areas.
- 12.25.100 Landscaping and screening.
- 12.25.110 Improvement of streets, utility undergrounding.

Ordinance No. ____
Page 36 of 79

- 1 12.25.120 Cost.
- 2 12.25.125 Variance procedure.
- 3 12.25.130 Joint trenches for several utilities.
- 4 12.25.140 Notice requirements of service availability and
- 5 noncompliance action.
- 6 12.25.150 Mandatory disconnection/ removal of overhead
- 7 services - Owner objections - Public hearing -
- 8 Final action.
- 9 12.25.155 Undergrounding of utilities local improvement
- 10 district.
- 11 12.25.160 Undergrounding of utilities in Pacific Ridge.
- 12 12.25.170 Appeal.

13
14 **Sec. 73. 12.25.010. Title.** This chapter shall be
15 entitled "Underground Utilities Requirements."
16

17 **Sec. 74. 12.25.020. Application.** The provisions of
18 this chapter shall apply to all new electrical or communication
19 systems, including but not limited to, electric power,
20 telephone, and cable television facilities.
21

22 **Sec. 75. 12.25.030. Purpose.** The purpose of this
23 chapter is to establish minimum requirements and procedures for
24 the underground installation and relocation of electrical and
25 communication facilities within the City. It is the policy of
26 the City to require the underground installation of all new
27 electrical and communication facilities, with certain exceptions
28 noted in this chapter. The City Council finds that the
29 convenience, health, safety, and general welfare of the
30 residents of the community require that all new facilities
31 specified in this chapter be installed underground.
32

33 **Sec. 76. 12.25.040. Authority.** The Planning,
34 Building and Public Works Director, under the authority of the
35 City Manager or the City Manager's designee, shall have the
36 authority to impose conditions as set forth in this chapter.
37

38 **Sec. 77. 12.25.050. Requirements for electrical or**
39 **communication systems.** All electrical or communication systems
40 located in public rights-of-way and private roads shall be
41 installed underground by the utility owning such facility:
42

Ordinance No. ____
Page 37 of 79

1 (1) When it becomes necessary to move, remove, or
2 relocate existing electrical or communication system overhead
3 facilities for a distance of 500 feet or more because of
4 development; or
5

6 (2) When electrical or communication system facilities
7 are extended beyond those facilities existing on March 27, 1993,
8 including proposals requiring dedication of land for rights-of-
9 way or easements for public facilities.
10

11 **Sec. 78. 12.25.060. Minor additions, rebuilds, and**
12 **replacements.** Minor additions, rebuilds, and replacements may
13 be constructed aurally in accordance with this section:
14

15 (1) Minor additions of new secondary electrical
16 facilities may be constructed aurally where existing facilities
17 are aerial.
18

19 (2) A minor rebuild, replacement, or relocation of
20 existing aerial facilities that does not alter the essential
21 system configuration may be constructed aurally.
22

23 (3) When there is casualty damage to an overhead
24 service system, the facilities may be restored aurally.
25

26 (4) Installation of additional conductors to provide
27 one three-phase circuit is allowed on existing aerial
28 facilities.
29

30 (5) Reconductoring for routine maintenance which does
31 not constitute a major rebuild is allowed on existing aerial
32 facilities. Routine maintenance is also allowed on existing
33 aerial facilities for pole replacements and replacement of
34 miscellaneous hardware.
35

36 (6) No work permitted by this subsection shall result
37 in an increase in the number of utility poles.
38

39 **Sec. 79. 12.25.070. Requirement for no increase in**
40 **poles, exception.** No installation of underground facilities
41 shall result in an increase in poles, except an additional pole
42 may be installed if an existing pole that is suitable as a
43 termination pole for underground installation is not available

Ordinance No. _____
Page 38 of 79

1 within 300 feet of the closest property line of the development
2 site.

3
4 **Sec. 80. 12.25.080. Requirements for service lines in**
5 **non-single family residential areas.** In all areas of the City
6 zoned in Title 18 DMMC for uses other than single-family
7 residential, all new electrical or communication service lines
8 from either existing overhead or underground facilities to the
9 service connection of new and existing structures shall be
10 installed underground.

11
12 **Sec. 81. 12.25.090. Requirements for service lines in**
13 **single-family residential areas.** In all areas of the City zoned
14 in Title 18 DMMC for uses as single-family residential, all
15 electrical or communication service lines from either existing
16 overhead or underground facilities to the service connection of
17 new structures shall be installed underground.

18
19 **Sec. 82. 12.25.100. Landscaping and screening.** All
20 work performed under this chapter shall conform with the
21 applicable provisions of chapter 18.195 DMMC (Landscaping and
22 Screening).

23
24 **Sec. 83. 12.25.110. Improvement of streets, utility**
25 **undergrounding.** The City Council, when ordering the improvement
26 of a street, shall determine whether the relocation of
27 electrical and communication systems underground is required,
28 and if so, the manner of payment.

29
30 **Sec. 84. 12.25.120. Cost.**

31
32 (1) The cost and expense of relocating an existing
33 facility, or installing new facilities, underground is borne by
34 the serving utilities, the owners of the real property served,
35 or persons applying for such underground service in accordance
36 with the applicable filed tariffs, rules, regulations, or the
37 policies of the respective utilities furnishing such service, or
38 as may be agreed upon by contract between the utility and such
39 owner or applicant.

40
41 (2) The cost and expense of relocating an existing
42 facility, or installing new facilities, underground, may be
43 financed by a local improvement district or as otherwise

Ordinance No. ____
Page 39 of 79

1 permitted by law, as further authorized by chapters 35.43 and
2 35.96 RCW as presently constituted or as may be subsequently
3 amended, and in accordance with DMMC 12.25.140.
4

5 **Sec. 85. 12.25.125. Variance procedure.**
6

7 (1) All applications for variances from the foregoing
8 underground requirements shall first be filed with the Hearing
9 Examiner through the City Clerk. The provisions of the Hearing
10 Examiner Code are followed as it relates to fees, hearings,
11 notices, decisions, appeals, and the like.
12

13 (2) A variance shall not be granted by the Hearing
14 Examiner unless the Hearing Examiner finds that the utility
15 owner or user or other affected party can demonstrate that it
16 would be an undue hardship to place the facilities concerned
17 underground. For purposes of this chapter, undue hardship is
18 intended to mean a technological or environmental difficulty
19 associated with the particular facility or with the particular
20 real property involved.
21

22 (3) When granting a variance, the Hearing Examiner may
23 attach conditions to the granting of said variance including
24 placing a time limit on the duration of such variance.
25

26 **Sec. 86. 12.25.130. Joint trenches for several**
27 **utilities.** Where several utilities' facilities are planned or
28 required in the same corridor, every effort shall be made by the
29 utilities to use joint trenches for such facilities.
30

31 **Sec. 87. 12.25.140. Notice requirements of service**
32 **availability and noncompliance action.** When service from
33 underground electrical or communication service facilities
34 becomes available by virtue of undergrounding of existing wires,
35 the City Clerk shall provide notice, by certified mail with
36 return receipt requested, to the owners of structures or
37 improvements served by existing overhead facilities to which
38 service from the underground installation is available. Such
39 notice shall state that:
40

41 (1) Service from the underground facilities is
42 available; and
43

Ordinance No. ____
Page 40 of 79

1 (2) All electrical and communication service lines from
2 the existing overhead facilities within the area to a structure
3 or improvement shall be disconnected and removed within 90 days
4 after the date of mailing the notice; and
5

6 (3) Should an owner fail to convert such service lines
7 from overhead to underground within the required period, the
8 City shall order all electrical and communication system
9 utilities to disconnect and remove the service lines from the
10 noncomplying property.
11

12 (4) Should the owner object to the ordered
13 disconnection and removal of the service lines, the owner may
14 request a hearing within 30 days after the date of the mailing
15 of the notice in accordance with the provisions of the Hearing
16 Examiner Code. Failure to object within such time will
17 constitute a waiver of all rights thereafter to object to such
18 disconnections and removal of service to the noncomplying
19 property.
20

21 **Sec. 88. 12.25.150. Mandatory disconnection / removal**
22 **of overhead services - Owner objections - Public hearing - Final**
23 **action.** If the owner has filed an appeal pursuant to DMMC
24 12.25.170 with the City Clerk not later than the close of
25 business 30 days after the mailing of the notice, the City shall
26 stay such disconnection and removal until final City action in
27 the matter.
28

29 (1) If the owner of a structure or improvement served
30 from an existing overhead electrical and communication system
31 facility fails to convert to the available underground service
32 within 90 days after the notice to do so was mailed, the City
33 Manager at the City Manager's discretion shall order all
34 electrical and communications system utilities to disconnect and
35 remove all overhead service lines from the noncomplying
36 property; provided, that if the owner has filed a written
37 objection to such disconnection and removal with the City Clerk
38 not later than the close of business 30 days after the mailing
39 of the notice, the City shall stay such disconnection and
40 removal until final City action in the matter.
41

42 (2) Upon the timely filing by the owner of the subject
43 property of written objections to the disconnection and removal

Ordinance No. ____
Page 41 of 79

1 of the service lines, the Hearing Examiner shall be directed to
2 conduct a public hearing to determine whether the removal of all
3 or part of the overhead service lines is in the public benefit.
4 The Hearing Examiner shall schedule the public hearing within 45
5 days of receipt of the owner's written objection.
6

7 (3) Notice of the public hearing is given by
8 publication in the official newspaper of the City not less than
9 14 days prior to the scheduled hearing date and by mailing an
10 appropriate notice, by certified mail, not less than 14 days of
11 the hearing date to the owner of record and to the
12 occupant/tenant of real property which may be affected by the
13 proceedings. Thereafter, the Hearing Examiner shall conduct the
14 hearing in general conformity with the Hearing Examiner Code. At
15 the conclusion of the hearing, the Hearing Examiner shall enter
16 findings and conclusions and transmit the same to the City
17 Council.
18

19 (4) Upon receipt of the findings and conclusions of the
20 Hearing Examiner, the City Council shall consider the issue at a
21 public meeting, giving again notice as provided in DMMC
22 12.25.140 to the owner and/or occupant/tenant of the real
23 property affected by the proceedings. Testimony and evidence may
24 not go beyond the scope of that presented to the Hearing
25 Examiner. The decision of the Hearing Examiner shall be given
26 substantial weight upon consideration of the City Council. A
27 determination by the City Council to affirm the Hearing Examiner
28 is considered a final decision.
29

30 **Sec. 89. 12.25.155. Undergrounding of utilities local**
31 **improvement district.**
32

33 (1) In all zones there is available an undergrounding
34 of utilities local improvement district (UULID) that shall be
35 formed in accordance with the provisions of chapter 35.43 RCW as
36 presently constituted or as may be subsequently amended.
37

38 (2) In residential areas the conversion area must be
39 not less than one City block in length, or in the absence of
40 City blocks, not less than six contiguous building lots abutting
41 each side of the public thoroughfare with all real property on
42 both sides of each public thoroughfare to receive electric
43 service from the main distribution system.

Ordinance No. _____
Page 42 of 79

1
2 (3) In commercial areas and in such other areas which
3 have electrical load requirements that are comparable with
4 developed commercial areas the conversion area must be not less
5 than two contiguous City blocks in length with all real property
6 on both sides of each public street to receive electric service
7 from the main distribution system.
8

9 (4) The amount assessed each property owner is
10 amortized in not more than 15 equal annual payments. If the
11 UULID is financed by the City general fund, the interest rate
12 shall be set by the Finance Director at the estimated rate of
13 return for long term City investments.
14

15 **Sec. 90. 12.25.160. Undergrounding of utilities in**
16 **Pacific Ridge.** In the Pacific Ridge area as identified by the
17 City of Des Moines Comprehensive Plan:
18

19 (1) New and existing electrical and communication
20 distribution and service lines shall be placed underground when
21 rights-of-way are improved as specified by the street
22 development standards for Pacific Ridge.
23

24 (2) The undergrounding requirements of this section
25 shall not apply to 115kV transmission lines.
26

27 **Sec. 91. 12.25.170. Appeal.** Should the owner object
28 to the ordered disconnection and removal of the service lines,
29 the owner may appeal that decision to the Hearing Examiner
30 within 30 days after the date of the mailing of the notice in
31 accordance with the provisions of DMMC 12.20.150 and 12.20.160
32 and chapter 18.240 DMMC. The time period for filing an appeal
33 set forth in this section and in DMMC 12.25.150 shall supersede
34 that set forth in DMMC 18.20.160. Failure to object within such
35 time will constitute a waiver of all rights thereafter to object
36 to such disconnections and removal of service to the
37 noncomplying property.
38
39
40

Ordinance No. ____
Page 43 of 79

Chapter 12.30
Transportation Benefit District

Sections:

- 12.30.010 Title.
- 12.30.020 Application.
- 12.30.030 Purpose.
- 12.30.040 Authority.
- 12.30.050 Establishing Transportation Benefit District.
- 12.30.060 Governing board.
- 12.30.070 Transportation improvements funded.
- 12.30.080 Establishment of vehicle license fee revenue source.
- 12.30.090 Dissolution of district.

Sec. 92. 12.30.010. Title. This chapter shall be entitled "Transportation Benefit District."

Sec. 93. 12.30.020. Application. This chapter shall apply to all properties contained within a Transportation Benefit District formed pursuant to chapter 36.73 RCW.

Sec. 94. 12.30.030. Purpose. The purpose of this chapter is to encourage and provide an alternative means to improve streets and walkways within the City.

Sec. 95. 12.30.040. Authority. The chapter is created pursuant to provisions of chapter 36.73 RCW.

Sec. 96. 12.30.050. Establishing Transportation Benefit District. There is created a Transportation Benefit District with geographical boundaries comprised of the corporate limits of the City as they currently exist or as they may exist following future annexations.

Sec. 97. 12.30.060. Governing board.

(1) The governing board of the Transportation Benefit District shall be the Des Moines City Council acting in an ex officio and independent capacity, which shall have the authority to exercise the statutory powers set forth in chapter 36.73 RCW.

Ordinance No. ____
Page 44 of 79

1 (2) The treasurer of the Transportation Benefit
2 District shall be the City Finance Director.
3

4 (3) The board shall develop a material change policy to
5 address major plan changes that affect project delivery or the
6 ability to finance the plan, pursuant to the requirements set
7 forth in RCW 36.73.160(1).
8

9 (4) The board shall issue an annual report, pursuant
10 to the requirements of RCW 36.73.160(2). The City Clerk shall
11 file, maintain and make available for public inspection the
12 board's annual reports.
13

14 **Sec. 98. 12.30.070. Transportation improvements**
15 **funded.** The funds generated by the Transportation Benefit
16 District shall be used for transportation improvements that
17 preserve and maintain the transportation infrastructure of the
18 City, consistent with the requirements of chapter 36.73 RCW, and
19 shall be used primarily for improvements to preserve and
20 maintain the City's previous investments in the transportation
21 infrastructure, reduce the risk of transportation facility
22 failure, improve safety, continue the cost-effectiveness of the
23 City's infrastructure investments, and continue the optimal
24 performance of the transportation system.
25

26 **Sec. 99. 12.30.080. Establishment of vehicle license**
27 **fee revenue source.** The board shall have the authority to
28 establish an annual vehicle license fee in the amount of twenty
29 dollars (\$20.00), consistent with RCW 36.73.065, to be collected
30 by the Washington Department of Licensing on qualifying
31 vehicles, set forth in RCW 82.80.140 and chapters 36.73 and
32 46.16 RCW.
33

34 **Sec. 100. 12.30.090. Dissolution of district.** The
35 benefit district shall be dissolved when all indebtedness of the
36 district has been retired and when all of the District's
37 anticipated responsibilities have been satisfied.
38
39
40

Ordinance No. ____
Page 45 of 79

Chapter 12.35
Assessment Reimbursement Contracts

Sections:

12.35.010 Title.
12.35.020 Application.
12.35.030 Purpose.
12.35.040 Authority.
12.35.050 Assessment Reimbursement Contracts.
12.35.060 Right of Refusal, Waiver of Liability.
12.35.070 Guidelines establishment authority.
12.35.080 Application - Contents.
12.35.090 Application requirements, fees.
12.35.100 Notices.
12.35.110 Notice to property owners.
12.35.120 City Council action.
12.44.130 Contract execution and recording.

Sec. 101. 12.35.010. Title. This chapter shall be entitled "Assessment Reimbursement Contracts."

Sec. 102. 12.35.020. Application. This chapter shall be applicable an owner required to construct or improve street projects which the owners elect to install as a result of ordinances that require the projects as a prerequisite to further property development, that meets the requirements of chapter 35.72 RCW.

Sec. 103. 12.35.030. Purpose. This chapter is intended to implement and thereby make available to the public the provisions of chapter 35.72 RCW.

Sec. 104. 12.35.040. Authority. Assessment reimbursement areas and contracts may only be authorized by the City Council pursuant to chapter 35.72 RCW.

Sec. 105. 12.35.050. Assessment reimbursement contracts. An owner may apply to the City to establish a street assessment reimbursement contract ("ARC") for recovery by the owner or the owner's assigns, of a pro rata share of the costs of constructing such improvements, from other property owners that are determined to be within the assessment reimbursement area pursuant to RCW 35.72.040 and determined to have a

Ordinance No. ____
Page 46 of 79

reimbursement share based upon a benefit to the property owner pursuant to RCW 35.72.030. No latecomer agreement shall extend for a period longer than 15 years from the date of final acceptance by the City.

Sec. 106. 12.35.060. Right of refusal, Waiver of liability. The City Council reserves the right to refuse to enter into any ARC or to reject an application. All ARCs shall include language indicating that the applicant releases and waives any claims for liability of the City in the establishment and enforcement of ARCs. The City is not responsible for locating a beneficiary or survivor entitled to benefits by or through ARCs. Any collected funds unclaimed by developers after three years from the expiration of the contract are returned to parties making payment to the City. Any remaining undeliverable funds shall inure to the benefit of the appropriate utility and/or fund approved by the City Council.

Sec. 107. 12.35.070. Guidelines establishment authority. The Planning, Building and Public Works Director, working under the direction of the City Manager or the City Manager's designee, shall establish administrative rules, regulations, policies, and procedures necessary to implement the provisions of this chapter.

Sec. 108. 12.35.080. Application - Contents. Applications for the establishment of an assessment reimbursement area are accompanied by the application fee as set by this chapter and shall include the following items:

(1) Detailed construction plans and drawings of the entire project to be borne by the assessment reimbursement area prepared and stamped by a state licensed engineer.

(2) Itemization of all costs of the project including, but not limited to, design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lights, right-of-way landscaping, street trees, engineering, construction, property acquisition, and contract administration.

(3) A map and legal description identifying the proposed boundaries of the assessment reimbursement area and each separately owned parcel within such area. Such map shall

Ordinance No. ____
Page 47 of 79

1 identify the location of the project in relation to the parcels
2 of property in such area.

3
4 (4) A proposed assessment reimbursement roll stating
5 the proposed assessment for each separate parcel of property
6 within the proposed assessment reimbursement area as determined
7 by apportioning the total project cost on the basis of the
8 benefit of the project to each such parcel of property within
9 said area.

10
11 (5) A complete list of record owners of property within
12 the proposed assessment reimbursement area certified as complete
13 and accurate by the applicant and which states names and mailing
14 addresses for each such owner.

15
16 (6) Envelopes addressed to each of the record owners of
17 property within the assessment reimbursement area who have not
18 contributed their pro rata share of such costs. Proper postage
19 for certified mail shall be affixed or provided.

20
21 (7) Copies of executed deeds and/or easements in which
22 the applicant is the grantee for all property necessary for the
23 installation of such project.

24
25 **Sec. 109. 12.35.090. Application requirements, fees.**
26 All applications for ARCs are on forms approved by the City
27 Attorney and are accompanied by a nonrefundable application fee
28 in an amount to be determined by written executive order of the
29 City Manager or the City Manager's designee to reimburse the
30 City for expenses in processing the application. The application
31 fee shall include a separate fee for each parcel to be
32 encumbered by the agreement.

33
34 **Sec. 110. 12.35.100. Notices.** All notices required by
35 this chapter, including notices approved as to form by the City,
36 and pre-addressed envelopes with proper postage affixed are the
37 responsibility of the applicant for Latecomers Agreement. The
38 City is responsible for mailing the notices.

39
40 **Sec. 111. 12.35.110. Notice to property owners.** Prior
41 to the execution of a contract with the City establishing an
42 assessment reimbursement area, the Planning, Building and Public
43 Works Director or designee shall mail, via certified mail, a

Ordinance No. ____
Page 48 of 79

1 notice to all property owners of record within the proposed
2 assessment reimbursement area as determined by the City on the
3 basis of information and materials supplied by the applicant,
4 stating the preliminary boundaries of such area and assessments
5 along with substantially the following statement:
6

7 As a property owner within the assessment reimbursement area
8 whose preliminary boundaries are enclosed with this notice, you
9 or your heirs and assigns will be obligated to pay under certain
10 circumstances a pro rata share of construction and contract
11 administration costs of a certain street and/or utility project
12 that has been preliminarily determined to benefit your property.
13 The proposed amount of such pro rata share or assessment is also
14 enclosed with this notice. You, or your heirs and assigns, will
15 have to pay such share if any development permits are issued for
16 development on your property within 15 years of the date a
17 contract establishing such area is recorded with King County,
18 provided such development is included within the assessment
19 reimbursement area and would have required similar street
20 improvements for approval. You have a right to request a hearing
21 before the City Council within 20 calendar days of the date of
22 this notice. All such requests must be made in writing and filed
23 with the City Clerk. After such contract is recorded it is
24 binding on all owners of record within the assessment area who
25 are not a party to the contract.
26

27 **Sec. 112. 12.35.120. City Council action.** If an owner
28 of property within the proposed assessment reimbursement area
29 requests a hearing, notice of such is given to all affected
30 property owners in the manner provided in DMMC 12.35.080,
31 12.35.100, and 12.35.110. At such hearing the City Council shall
32 take testimony from affected property owners and make a final
33 determination of the area boundaries, the amount of assessments,
34 length of time for which reimbursement is required, and shall
35 authorize the execution of appropriate documents. The City
36 Council's ruling on these matters is determinative and final. If
37 no hearing is requested, the council may consider and take final
38 action on these matters at any public meeting 20 calendar days
39 after notice was mailed to the affected property owners.
40
41

Ordinance No. ____
Page 49 of 79

Sec. 113. 12.35.130. Contract execution and recording.

(1) Within 30 days of final City Council approval of an ARC, the applicant shall execute and present such contract for the signature of the appropriate City officials.

(2) The ARC must be recorded in the King County Department of Records within 30 days of the final execution of the agreement. It is the sole responsibility of the applicant to record said agreement and to provide the City with a copy of the recorded instrument. Failure to comply with the requirements of this subsection is grounds for unilateral rescission of the contract by the City.

(3) Once recorded, the ARC is binding on owners of record within the assessment area who are not party to the agreement.

**Chapter 12.40
Transportation Impact Fees**

Sections:

- 12.40.010 Title.
- 12.40.020 Application.
- 12.40.030 Purpose and intent.
- 12.40.040 Authority.
- 12.40.050 Findings and authority.
- 12.40.060 Adopted by reference.
- 12.40.070 Definitions.
- 12.40.080 Transportation impact fees established.
- 12.40.090 Establishment of service area.
- 12.40.100 Imposition of transportation impact fees on development activity.
- 12.40.110 Independent calculations.
- 12.40.120 Exemptions.
- 12.40.130 Credits for dedications and construction of improvements.
- 12.40.140 Disposition of transportation impact fee revenues.
- 12.40.150 Refunds.
- 12.40.160 Appeals.
- 12.40.170 Existing authority unimpaired.
- 12.40.180 Administrative guidelines.

Ordinance No. ____
Page 50 of 79

1 **Sec. 114. 12.40.010. Title.** This chapter shall be
2 entitled "Transportation Impact Fees."

3
4 **Sec. 115. 12.40.020. Application.** This chapter shall
5 apply to all transportation impact fees.
6

7 **Sec. 116. 12.40.030. Purpose and intent.** The purpose
8 and intent of this chapter is for the collection of
9 transportation impact fees for streets, and providing for
10 certain other matters in connection therewith.
11

12 **Sec. 117. 12.40.040. Authority.** This chapter is
13 created pursuant to RCW 82.02.050 -.090.
14

15 **Sec. 118. 12.40.050. Findings and authority.** The City
16 Council of the City of Des Moines hereby finds and determines
17 that development activities, including but not limited to new
18 residential, commercial, retail, office, and industrial
19 development in the City of Des Moines will create additional
20 transportation demand and need for public facilities in the
21 City, and the City Council finds that such new growth and
22 development should pay a proportionate share of the cost of new
23 transportation facilities needed to serve the new growth and
24 development. The City of Des Moines has conducted extensive
25 research and analysis documenting the procedures for measuring
26 the impact of new developments on public facilities, and has
27 prepared a "Rate Study for Transportation Impact Fees, City of
28 Des Moines" dated August 17, 2009 ("rate study"). The rate study
29 utilizes a methodology for calculating impact fees that fulfills
30 all of the requirements of RCW 82.02.060(1). A copy of the rate
31 study shall be kept on file with the City Clerk and is available
32 to the public for review. Therefore, pursuant to chapter 82.02
33 RCW, the Council adopts this chapter to assess transportation
34 impact fees for streets and roads. The provisions of this
35 chapter shall be liberally construed in order to carry out the
36 purposes of the Council in establishing the transportation
37 impact fee program.
38

39 **Sec. 119. 12.40.060. Adopted by reference.** The "Rate
40 Study for Transportation Impact Fees, 2009 Update, City of Des
41 Moines" dated August 17, 2009, is hereby adopted as set forth in
42 Exhibit A, which is attached to the ordinance codified in this
43 chapter and incorporated herein by reference.

Ordinance No. ____
Page 51 of 79

1
2 **Sec. 120. 12.40.070. Definitions** - Use of words and
3 phrases. As used in this chapter, unless the context or subject
4 matter clearly requires otherwise, the words or phrases defined
5 in this section shall have the indicated meanings. Terms
6 otherwise not defined herein shall be defined pursuant to RCW
7 82.02.090, or given their usual and customary meaning.

8
9 "Accessory living quarters" is as defined in DMMC
10 18.01.050.

11
12 "Building permit" means an official document or
13 certification which is issued by the Planning, Building and
14 Public Works Director and which authorizes the construction,
15 alteration, enlargement, conversion, reconstruction, remodeling,
16 rehabilitation, erection, demolition, moving, or repair of a
17 building or structure.

18
19 "Capital facilities plan" means the capital facilities
20 element of the City Comprehensive Plan.

21
22 "City Comprehensive Plan" means the City of Des Moines
23 Comprehensive Plan, adopted pursuant to chapter 36.70A RCW, and
24 such plan as subsequently amended or revised.

25
26 "Department" means the City's Planning, Building, and
27 Public Works Department.

28
29 "Development activity" means any construction or
30 expansion of a building, structure, or use, any change in use of
31 a building or structure, or any change in the use of land, that
32 generates at least one p.m. peak hour trip.

33
34 "Development approval" means any written authorization
35 from the City of Des Moines which authorizes the commencement of
36 a development activity.

37
38 "Dwelling" is as defined in DMMC 18.01.050.

39
40 "Encumbered" means to reserve, set aside, or otherwise
41 earmark the transportation impact fees in order to pay for
42 commitments, contractual obligations, or other liabilities
43 incurred for public facilities.

Ordinance No. ____
Page 52 of 79

1
2 "Feepayer" is a person, corporation, partnership, an
3 incorporated association, or any other similar entity, or
4 department or bureau of any governmental entity or municipal
5 corporation commencing a development activity which creates the
6 demand for additional system improvements and which requires the
7 issuance of a permit for a given development activity.
8 "Feepayer" includes an applicant for a transportation impact fee
9 credit.

10
11 "GMA" means the Washington State Growth Management Act,
12 codified as chapter 36.70A RCW, as now in existence, or as
13 hereinafter amended.

14
15 "Hearing Examiner" means the Hearing Examiner of the City
16 of Des Moines, pursuant to chapter 18.240 DMMC.

17
18 "Impact fee" means a payment of money imposed by the City
19 upon development approval pursuant to this chapter as a
20 condition of issuance of a permit for a given development
21 activity to pay for public facilities needed to serve new growth
22 and development, and to mitigate the impacts of the development
23 activity on the transportation facilities of the City. "Impact
24 fee" does not include a reasonable permit or application fee, an
25 administrative fee for collecting and handling impact fees, or
26 the cost of reviewing independent calculations.

27
28 "Independent calculation" means the street and road
29 impact calculation, and/or economic documentation prepared by a
30 feepayer, to support the assessment of a transportation impact
31 fee other than by the rate listed in DMMC 12.40.100, the rate
32 study, or the department's fee schedule; or the calculations
33 prepared by the Planning, Building and Public Works Director
34 where none of the land use categories or fee amounts in the rate
35 study or the department's fee schedule accurately describe or
36 capture the impacts of the development activity on public
37 facilities.

38
39 "ITE Land Use Code" means the classification code number
40 assigned to a type of land use by the Institute of
41 Transportation Engineers in the most recent edition of the *Trip*
42 *Generation Manual*, unless otherwise noted.

Ordinance No. ____
Page 53 of 79

1 "Owner" means the owner of record of real property. If
2 real property is being purchased under a real estate contract,
3 the purchaser shall be considered the owner of the real property
4 if the contract is recorded.

5
6 "Permit for change in land use" means an official
7 document which is issued by the Planning, Building and Public
8 Works Director which authorizes a change in use of an existing
9 building, structure, or land that does not require a building
10 permit.

11
12 "P.M. peak hour" means the 60-minute period generally
13 between 4:00 p.m. and 6:00 p.m. which experiences the highest
14 volume of traffic on a road or street or passing through a road
15 or street intersection.

16
17 "P.M. peak hour trips" means the total vehicular trips
18 entering and leaving a place of development activity on the
19 adjacent public road or street during the p.m. peak hour.

20
21 "Project improvements" means site improvements and
22 facilities that are planned and designed to provide service for
23 a particular development project and are necessary for the use
24 and convenience of the occupants or users of the project, and
25 are not system improvements. No improvement or facility included
26 in a capital facilities plan adopted by the council shall be
27 considered a project improvement.

28
29 "Public facilities," as used in this chapter, refers to
30 public streets, roads and rights-of-way owned or operated by the
31 City or other governmental entities, including trails, paths,
32 bikeways, other transportation facilities and all attendant
33 improvements.

34
35 "Planning, Building and Public Works Director" means the
36 Planning, Building, and Public Works Director, or the Planning,
37 Building and Public Works Director's designee.

38
39 "Rate study" means the rate study identified in DMMC
40 12.40.060.

41
42 "Service area" means the transportation impact fee
43 service area of the City identified in DMMC 12.40.090.

Ordinance No. ____
Page 54 of 79

1
2 "System improvements" means public facilities that are
3 included in the City of Des Moines' capital facilities plan, and
4 such plan as amended, and are designed to provide service to
5 service areas within the community at large.
6

7 "Transportation facilities" means and refers to streets
8 and roads, but includes all publicly owned streets, roads,
9 alleys and rights-of-way within the City and street services,
10 traffic control devices, curbs, gutters, sidewalks and related
11 facilities and improvements.
12

13 **Sec. 121. 12.40.080. Transportation impact fees**
14 **established.** There is established, subject to the provisions of
15 this chapter, a transportation impact fee program.
16

17 **Sec. 122. 12.40.090. Establishment of service area.**
18

19 (1) The City hereby establishes, as the service area
20 for transportation impact fees, the City of Des Moines,
21 including all property located within the corporate limits of
22 the City.
23

24 (2) The scope of the service area is hereby found to be
25 reasonable and established on the basis of sound planning and
26 engineering principles, and consistent with RCW 82.02.060.
27

28 **Sec. 123. 12.40.100. Imposition of transportation**
29 **impact fees on development activity.**
30

31 (1) The City hereby authorizes the assessment and
32 collection of transportation impact fees on development activity
33 within the City, based on the methodology described in the rate
34 study. The maximum allowable transportation impact fee rate
35 established by the rate study is \$6,088. Instead of setting the
36 base rate at this level, the base rate for the calendar year
37 2009 is established at \$5,000 per new p.m. peak hour trip. The
38 base transportation impact fee rate is subject to annual
39 adjustment in accordance with subsection (5) of this
40 section. Accordingly, using the methodology described in the
41 rate study, the department will annually update the fee schedule
42 identified in the rate study, and make the fee schedule
43 available for public use.

Ordinance No. ____
Page 55 of 79

1
2 (2) The collection of transportation impact fees will
3 be modified for those subareas of the Pacific Ridge Zone that
4 are also subject to SEPA mitigation fees pursuant to Exhibit B
5 of Ordinance No. 1298, as presently written or as subsequently
6 amended or revised.

7
8 (3) Transportation impact fee rates are based upon the
9 formula for calculating the proportionate share of the cost of
10 the system improvements, including the costs of previously
11 constructed system improvements, necessitated by new development
12 to be borne by transportation impact fees, which formulas are
13 described in the rate study.

14
15 (4) The City Council may review the base transportation
16 impact fee rate set forth in subsection (1) of this section at
17 any time the City Council deems appropriate, including, but not
18 limited to, the update of the capital facilities element of the
19 City's comprehensive plan, and the council may adjust the
20 transportation impact fee base rate as the council deems just
21 and appropriate, up to the maximum rate identified in the rate
22 study.

23
24 (5) The Planning, Building and Public Works Department
25 will annually adjust the transportation impact fee base rate
26 based on the construction cost index for the Seattle area as
27 reported in the Engineering News Record periodical, typically in
28 March. The first adjustment will occur in March 2010.

29
30 (6) The transportation impact fee shall be phased in as
31 follows. The base rate identified in subsection (1) of this
32 section shall be at 50 percent through December 31, 2011, as
33 adjusted in accordance with subsection (5) of this section. For
34 the calendar year 2012 the transportation impact fee shall be 55
35 percent of the then-current base rate; for the calendar year
36 2013 the transportation impact fee shall be 65 percent of the
37 then-current base rate; for the calendar year 2014 the
38 transportation impact fee shall be 75 percent of the then-
39 current base rate; for the calendar year 2015 the transportation
40 impact fee shall be 85 percent of the then-current base rate;
41 for the calendar year 2016 the transportation impact fee shall
42 be 95 percent of the then-current base rate; for the calendar

Ordinance No. ____
Page 56 of 79

1 year 2017 and thereafter the transportation impact fee shall be
2 100 percent.

3
4 (7) For a change in use of an existing building or
5 dwelling, including any alteration, expansion, replacement or
6 new accessory living quarters, the net transportation impact
7 fees shall be the applicable transportation impact fees
8 calculated for the land use category of the new use, reduced by
9 an amount equal to the current transportation impact fees
10 calculated for the prior use.

11
12 (8) No reduction based on prior use shall be made for a
13 vacant structure or a vacant property that once contained a
14 structure if the structure or property had been vacant for more
15 than 10 years.

16
17 (9) For mixed use developments, transportation impact
18 fees shall be imposed for the proportionate share of each
19 applicable land use.

20
21 (10) The transportation impact fees imposed pursuant to
22 this chapter shall be assessed by the City. A preliminary
23 assessment will be provided by the department during the review
24 and approval of a given development activity, typically a
25 building permit application or a permit for a change in land
26 use. A final assessment, based upon the transportation impact
27 fee rate in effect as of the date the actual permit is issued,
28 shall be made by the department, and the fee shall be due and
29 payable in full at the time of issuance of the permit. Failure
30 to pay the transportation impact fees for a given development
31 activity at the time that such transportation impact fees are
32 due and payable shall result in denial of the permit for which
33 the applicant has applied.

34
35 (11) Development activities that have been allowed
36 credits prior to the submittal of the complete building permit
37 application or an application for a permit for a change in land
38 use shall submit, along with the complete application, a copy of
39 the letter or certificate issued by the Planning, Building and
40 Public Works Director pursuant to DMMC 12.40.130 setting forth
41 the dollar amount and basis of the approved credit. The net
42 transportation impact fees, as determined after the reduction of

Ordinance No. ____
Page 57 of 79

1 appropriate credits, shall be collected from the applicant in
2 accordance with subsection (10) of this section.

3
4 (12) Where the transportation impact fees imposed are
5 determined by the square footage of the development, the
6 department may at its discretion or at the written request of
7 the feepayer review the constructed development prior to the
8 issuance of a certificate of occupancy or an occupancy permit to
9 confirm that the square footage of the constructed development
10 is consistent with the square footage used to determine the
11 final assessment and payment of the transportation impact fee.
12 If the final square footage of the development is in excess of
13 the square footage used to determine the final assessment and
14 payment of the transportation impact fee, any difference will be
15 due prior to the issuance of a certificate of occupancy or an
16 occupancy permit, using the transportation impact fee rate in
17 effect at that time. If the final square footage is less than
18 the square footage used to determine the final assessment and
19 payment of the transportation impact fee, the department shall
20 give a refund for the difference.

21
22 **Sec. 124. 12.40.110. Independent calculations.**
23

24 (1) If in the judgment of the Planning, Building and
25 Public Works Director none of the land use categories or fee
26 amounts set forth in the rate study or the department's fee
27 schedule accurately describes or captures the impacts of a new
28 development on roads, the department may conduct independent
29 calculations and the Planning, Building and Public Works
30 Director may impose alternative fees on a specific development
31 based on those calculations. The alternative fees and the
32 calculations shall be set forth in writing and shall be mailed
33 to the feepayer.
34

35 (2) A feepayer may opt not to have the impact fees
36 determined according to the department's fee schedule identified
37 in DMMC 12.40.100(1), in which case the feepayer shall prepare
38 and submit to the Planning, Building and Public Works Director
39 an independent calculation for the development activity for
40 which a permit is being sought. The documentation submitted
41 shall show the basis upon which the independent calculation was
42 made. An independent calculation shall use the same methodology
43 used to establish the transportation impact fee set forth in the

Ordinance No. ____
Page 58 of 79

1 rate study, shall be limited to adjustments in trip generation
2 rates and lengths used in the rate study, and shall not include
3 travel demand forecasts, trip distribution, transportation
4 service areas, costs of road projects, or cost allocation
5 procedures.

6
7 (3) Any feepayer submitting an independent calculation
8 will be required to pay the City a fee to cover the cost of
9 reviewing the independent calculation. The fee required by the
10 City for conducting the review of the independent calculation
11 shall be \$500.00, unless otherwise established by the City
12 Manager or the City Manager's designee, and shall be paid by the
13 feepayer prior to initiation of review.

14
15 (4) There is a rebuttable presumption that the
16 calculations set forth in the rate study and the fees set forth
17 in the department's fee schedule are valid. The Planning,
18 Building and Public Works Director shall consider the
19 documentation submitted by the feepayer, but is not required to
20 accept such documentation or analysis which the Planning,
21 Building and Public Works Director reasonably deems to be
22 inapplicable, inaccurate, or not reliable. The Planning,
23 Building and Public Works Director may require the feepayer to
24 submit additional or different documentation for consideration.
25 The Planning, Building and Public Works Director is authorized
26 to adjust the transportation impact fees on a case-by-case basis
27 based on the independent calculation, the specific
28 characteristics of the development, and/or principles of
29 fairness. The fees or alternative fees and the calculations
30 shall be set forth in writing and shall be mailed to the
31 feepayer.

32
33 (5) Determinations made by the Planning, Building and
34 Public Works Director pursuant to this section shall be subject
35 to the appeal procedures set forth in DMMC 12.40.160.

36
37 **Sec. 125. 12.40.120. Exemptions.**

38
39 (1) Except as provided for below, the following shall
40 be exempted from the payment of transportation impact fees:
41

Ordinance No. ____
Page 59 of 79

1 (a) Alteration or replacement of an existing
2 structure that does not expand the usable space, add any
3 residential units or generate any additional p.m. peak trips.
4

5 (b) Miscellaneous improvements which do not
6 generate increased p.m. peak trips, including, but not limited
7 to, fences, decks, walls, residential swimming pools, and signs.
8

9 (c) Demolition or moving of a structure when
10 additional p.m. peak hour trips are not generated.
11

12 (d) A change of use that does not generate one or
13 more p.m. peak hour trips.
14

15 (2) The Planning, Building and Public Works Director
16 shall be authorized to determine whether a particular
17 development activity falls within an exemption identified in
18 this section or under other applicable law. Determinations of
19 the Planning, Building and Public Works Director shall be in
20 writing and shall be subject to the appeals procedures set forth
21 in DMMC 12.40.160.
22

23 **Sec. 126. 12.40.130. Credits for dedications and**
24 **construction of improvements.**
25

26 (1) A feepayer can request that a credit or credits for
27 the value of system improvements, including dedications of land,
28 improvements and/or construction provided by the feepayer, be
29 applied toward the calculated transportation impact fee. The
30 application for credits shall be presented by the feepayer on
31 forms to be provided by the department and shall include the
32 content designated in such forms. Credits will be given only if
33 the land, improvements, and/or the facility constructed are:
34

35 (a) Included within the capital facilities plan
36 or would serve the goals and objectives of the capital
37 facilities plan; and
38

39 (b) Are at suitable sites and constructed at
40 acceptable quality as determined by the Planning, Building and
41 Public Works Director; and
42

Ordinance No. ____
Page 60 of 79

1 (c) Serve to offset impacts of the feepayer's
2 development activity; and
3

4 (d) Are for one or more of the transportation
5 projects listed in the rate study as the basis for calculating
6 the transportation impact fee.
7

8 (2) The transportation impact fee program shall provide
9 credits for mitigation fees imposed under the State
10 Environmental Policy Act (RCW 43.21C.060) and chapter 16.05 DMMC
11 for system improvements identified in the comprehensive
12 transportation plan as "intersection and roadway capacity
13 improvement projects for the traffic impact fee program."
14

15 (3) The Planning, Building and Public Works Director
16 shall determine if requests for credits meet the criteria in
17 subsection (1) or (2) of this section, or under other applicable
18 law. Determinations of the Planning, Building and Public Works
19 Director may be appealed pursuant to DMMC 12.40.160.
20

21 (4) Each request for a credit or credits shall include
22 a legal description of the dedicated land, a detailed
23 description of improvements or construction provided, and a
24 legal description or other adequate description of the
25 development to which the credit will be applied.
26

27 (5) For each request for a credit or credits, the
28 Planning, Building and Public Works Director shall determine the
29 value of the dedicated land, improvements, or construction on a
30 case-by-case basis.
31

32 (6) In the event that the feepayer disagrees with the
33 Planning, Building and Public Works Director's valuation of the
34 dedicated land, the feepayer may submit an appraisal for the
35 Planning, Building and Public Works Director's consideration,
36 prepared by a state certified MAI (member of the American
37 Institute of Appraisers) in accordance with the most recent
38 version of the Uniform Standards of Professional Appraisal
39 Practice. In the event that that feepayer disagrees with the
40 Planning, Building and Public Works Director's valuation of
41 improvements or construction provided, the feepayer may submit a
42 valuation for the Planning, Building and Public Works Director's
43 consideration, prepared by a licensed engineer. The appraiser

Ordinance No. ____
Page 61 of 79

1 and/or engineer must be licensed and in good standing pursuant
2 to chapter 18.40 RCW et seq., in the category for the property
3 and/or improvements to be appraised/valued, and shall not have a
4 fiduciary or personal interest in the property being appraised.
5

6 (7) Appraisals and/or engineering valuations submitted
7 by the feepayer shall be subject to review by the Planning,
8 Building and Public Works Director and, at the Planning,
9 Building and Public Works Director's discretion, an independent
10 review appraiser/engineer selected by the Planning, Building and
11 Public Works Director. The feepayer shall pay for the actual
12 costs for the appraisal/valuation and the independent review. An
13 estimate of the appraisal and review costs will be prepared by
14 the department, and the feepayer shall pay the estimated costs
15 prior to commencement of the appraisal and review. If the final
16 cost of the appraisal and review is in excess of the initial
17 estimate and payment, any difference will be due prior to the
18 issuance of a letter or certificate from the Planning, Building
19 and Public Works Director. If the final cost of the appraisal
20 and review is less than the initial estimate and payment, the
21 department shall give a refund for the difference.
22

23 (8) After receiving and reviewing the appraisal, the
24 Planning, Building and Public Works Director shall provide the
25 applicant with a letter or certificate setting forth the dollar
26 amount of any credit, the reason for the credit, the legal
27 description of the real property dedicated where applicable, and
28 the legal description or other adequate description of the
29 project or development to which the credit may be applied. The
30 feepayer must sign and date a duplicate copy of such letter or
31 certificate indicating his/her agreement to the terms of the
32 letter or certificate, and return such signed document to the
33 Planning, Building and Public Works Director before the impact
34 fee credit will be applied. The failure of the feepayer to sign,
35 date, and return such document within 60 calendar days shall
36 nullify the credit. If credit is denied, the feepayer shall be
37 notified in a letter that includes the reasons.
38

39 (9) If the total value of any credit for such
40 dedication, improvement or construction costs exceeds the amount
41 of the transportation impact fee obligation, the developer will
42 not be entitled to reimbursement of the difference.
43

Ordinance No. ____
Page 62 of 79

1 (10) No credit shall be given for project improvements.
2

3 (11) Any claim for credit must be made no later than 14
4 calendar days after the submission of an application for a
5 building permit or an application for a permit for a change in
6 use. The failure to timely file such a claim shall constitute a
7 final bar to later request any such credit.
8

9 (12) Determinations made by the Planning, Building and
10 Public Works Director pursuant to this section shall be subject
11 to the appeals procedures set forth in DMMC 12.40.160.
12

13 **Sec. 127. 12.40.140. Disposition of transportation**
14 **impact fee revenues.**
15

16 (1) The transportation impact fees collected pursuant
17 to the provisions of this chapter shall be deposited into a
18 transportation impact fee fund. Pending application as provided
19 in this chapter, the moneys deposited in the transportation
20 impact fee fund shall be invested in any investment authorized
21 for the investment of City funds. All interest and profits
22 derived from the investment of moneys in each account in the
23 transportation impact fee fund shall be retained in such
24 account.
25

26 (2) The transportation impact fees deposited in each
27 account in the transportation impact fee fund and the interest
28 and profit received from the investments therefrom shall be
29 expended only for system improvements for which such
30 transportation impact fees were collected, in conformity with
31 the City of Des Moines comprehensive plan and comprehensive
32 transportation plan, and expended or encumbered within six years
33 of receipt by the City, unless written findings by the City
34 Council identify an extraordinary and compelling reason for the
35 City to hold the fees for a longer time. The City shall account
36 for annual expenditures and shall comply with this section in
37 successive comprehensive plans, transportation plans and capital
38 facilities plans as appropriate.
39

40 (3) The transportation impact fees may also be used to
41 recoup system improvement costs previously incurred by the City
42 to the extent that new growth and development will be served by
43 the previously constructed improvements or incurred costs.

Ordinance No. ____
Page 63 of 79

1
2 (4) In the event that bonds or similar debt instruments
3 are or have been issued for the advanced provision of system
4 improvements for which transportation impact fees may be
5 expended, transportation impact fees may be used to pay debt
6 service on such bonds or similar debt instruments to the extent
7 that the facilities or improvements provided are consistent with
8 the requirements of this section and are used to serve the new
9 development.

10
11 (5) The City shall prepare an annual report on the
12 transportation impact fee fund which shows the source and amount
13 of all moneys collected, earned or received and the public
14 facilities that were financed in whole or in part by impact
15 fees.

16
17 **Sec. 128. 12.40.150. Refunds.**
18

19 (1) The City shall, in accordance with RCW 82.02.080,
20 refund to the current owners of property on which a
21 transportation impact fee has been paid any transportation
22 impact fees paid with respect to such property that has not been
23 expended or encumbered for public facilities of the type of
24 which such transportation impact fees were collected.

25
26 (2) The City shall also refund to the current owner of
27 property on which a transportation impact fee has been paid all
28 transportation impact fees paid with respect to such property if
29 the development activity for which the transportation impact fee
30 was imposed did not occur and no impact has resulted.

31
32 (3) If some, but not all, of the development activity
33 for which the transportation impact fee was imposed occurred,
34 the transportation impact will be deemed to have occurred, and
35 no refund will be payable; provided, however, that the property
36 on which the transportation impact fee was paid shall be
37 eligible to receive a credit toward any subsequent development
38 activity on the property up to the full amount of the payment.

39
40 (4) Owners seeking a refund of transportation impact
41 fees must submit a written request for a refund of
42 transportation impact fees to the Planning, Building and Public
43 Works Director or designee within one year of the date the right

Ordinance No. ____
Page 64 of 79

1 to claim the refund arises, which, for purposes of refund claims
2 authorized pursuant to subsection (2) of this section only,
3 shall be the date of voluntary or involuntary abandonment of the
4 permit, or the date that notice is given as provided in
5 subsection (1) of this section, whichever occurs later. Refunds
6 of transportation impact fees shall not include interest or any
7 profits earned on the transportation impact fees from the date
8 of their receipt to the date of refund. Any transportation
9 impact fees not expended within the time limitations, and for
10 which no application for a refund has been made within the one-
11 year claim period, shall be retained by the City and expended on
12 system improvements for which such transportation impact fees
13 were initially collected, without further limitation as to the
14 time of expenditure.

15
16 **Sec. 129. 12.40.160. Appeals.**
17

18 (1) The determination of the Planning, Building and
19 Public Works Director or designee regarding the applicability of
20 the transportation impact fee to a given development activity
21 within the service area shall be final; however, an owner may
22 pay a transportation impact fee imposed pursuant to this chapter
23 under protest in order to obtain a permit and, after such
24 payment, file an appeal regarding the amount of the
25 transportation impact fee or a determination made pursuant to
26 DMMC 12.40.110, 12.40.120 or 12.40.140 to the Hearing Examiner
27 pursuant to DMMC 18.20.150 and 18.20.160 and chapter 18.240
28 DMMC.
29

30 (2) Appeal regarding the amount of the transportation
31 impact fee imposed on any development activity may only be made
32 by the owner of the property where such development activity
33 shall occur.
34

35 **Sec. 130. 12.40.170. Existing authority unimpaired.**

36 Nothing in this chapter shall preclude the City from requiring
37 the applicant to mitigate adverse environmental impacts of a
38 specific development pursuant to the State Environmental Policy
39 Act, chapter 43.21C RCW, based on the environmental documents
40 accompanying the underlying development approval process, and/or
41 chapter 58.17 RCW governing plats and subdivisions; provided,
42 that the exercise of this authority is consistent with the
43 provisions of chapters 43.21C and 82.02 RCW.

Ordinance No. ____
Page 65 of 79

Sec. 131. 12.40.180. Administrative guidelines. The Planning, Building and Public Works Director shall be authorized to adopt internal guidelines for the administration of transportation impact fees, which may include the adoption of standard operating procedures and administrative policy for transportation impact fees.

Chapter 12.45 Building Transport Code

Sections:

12.45.010	Title.
12.45.020	Application.
12.45.030	Purpose.
12.45.040	Authority.
12.45.050	Notification of date - Inspection to be made on original location.
12.45.060	Fees for inspection.
12.45.070	Interior wall and ceiling coverings to be removed for inspection.
12.45.080	Filing plans required before approval of application is granted.
12.45.090	Agreement - Required.
12.45.100	Agreement - Time period - Posting security.
12.45.110	Notice of demolition - Appeal.

Sec. 132. 12.45.010. Title. This chapter is known as and may be referred to as the "Building Transport Code."

Sec. 133. 12.45.020. Application. A person who proposes to move an existing building from any site to another site within the City shall, prior to such move, apply for an on-site inspection by the Building Official.

Sec. 134. 12.45.030. Purpose. The purpose of this chapter is to regulate the improvement of buildings and minimize adverse impacts, and to provide for the costs associated therein.

Sec. 135. 12.45.040. Authority. This chapter is authorized by the general police provisions granted to the City

Ordinance No. ____
Page 66 of 79

1 pursuant to chapter 35.23 RCW and 35A.63 RCW and other
2 applicable laws.

3
4 **Sec. 136. 12.45.050. Notification of date - Inspection**
5 **to be made on original location.** Upon such application and upon
6 payment of the fee provided in DMMC 12.45.060, the Building
7 Official shall notify the applicant of the date and time of
8 his/her inspection. The inspection shall be made at the original
9 location of the building prior to its removal therefrom to any
10 site within the City.

11
12 **Sec. 137. 12.45.060. Fees for inspection.** For an
13 application provided for there shall be charged and collected an
14 inspection fee set by administrative order of the City Manager
15 or the City Manager's designee. There shall be one fee if the
16 building is situated within two miles of the City, and another
17 fee if the building is situated at a distance in excess of two
18 miles from the City. A separate permit shall be required for
19 each building. In addition to the inspection fee, the applicant
20 shall pay reasonable costs of transportation for the inspecting
21 official.

22
23 **Sec. 138. 12.45.070. Interior wall and ceiling**
24 **coverings to be removed for inspection.** The applicant shall
25 remove from the building or buildings all interior wall and
26 ceiling coverings, including plaster, plaster board, and all
27 similar material to the extent required by the inspecting
28 official. Removal of the interior wall and ceiling coverings,
29 including plaster, plaster board and all similar materials is
30 for the purpose of enabling the inspecting official to make an
31 adequate inspection of all studs, girts, plates, rafters,
32 joints, and other structural members, together with all
33 electrical wiring and rough plumbing. Defective parts or
34 materials and those not in conformance with the ordinances of
35 the City shall be removed from the building prior to its removal
36 to a site within the City.

37
38 **Sec. 139. 12.45.080. Filing plans required before**
39 **approval of application is granted.** No approval shall be given
40 to an application until the applicant has filed with the
41 Building Official two sets of plans for the foundation and/or
42 any proposed alterations or additions for the building.
43

Ordinance No. ____
Page 67 of 79

1 **Sec. 140. 12.45.090. Agreement - Required.** No
2 structure requiring a house moving permit shall be moved into
3 the City unless and until the owner of the structure enters into
4 an agreement with the City in accordance with this chapter.
5

6 **Sec. 141. 12.45.100. Agreement - Time period - Posting**
7 **security.** The agreement shall specify the maximum time period
8 (expressed in a date certain) for the rendering of the structure
9 suitable for human occupancy. The time shall not exceed six
10 months. The building department is authorized to grant one
11 extension of such time, not to exceed six months. Time shall be
12 calculated from the date the structure is physically placed on
13 the lot. The agreement shall require the owner to post adequate
14 security in the form of a bond, cash, or blocked bank account to
15 pay the estimated cost of demolition. The form of the security
16 shall be in the sole discretion of the City. The agreement shall
17 authorize the City to enter the property and demolish the
18 structure and expend the security for the purposes of demolition
19 and lot clearance.
20

21 **Sec. 142. 12.45.110. Notice of demolition - Appeal.**
22

23 (1) Prior to the demolition of a structure pursuant to
24 DMMC 12.45.100, the City shall notify the owner, at the address
25 specified in the agreement, by certified mail, of its intent to
26 do so. The notice shall be mailed 20 days prior to the
27 initiation of demolition. The owner may appeal such notice of
28 intent to demolish to the Hearing Examiner pursuant to DMMC
29 18.20.150 and 18.20.160 and chapter 18.240 DMMC.
30

31 (2) The criteria for extending the initiation of
32 demolition include consideration of the following: (a) whether
33 because of extenuating circumstances an extension of time should
34 be granted, and (b) whether the structure is suitable for human
35 occupancy. The burden of proof shall be on the owner of the
36 structure to establish either proposition. If an appeal is not
37 taken timely, demolition and lot clearance shall proceed
38 immediately.
39
40
41

Ordinance No. _____
 Page 68 of 79 _____

Chapter 12.50
Street Names And Building Addresses

Sections:

12.50.010 Title.
 12.50.020 Application.
 12.50.030 Purpose.
 12.50.040 Authority.
 12.50.050 Grid system adopted.
 12.50.060 Street designations.
 12.50.070 Council redesignation.
 12.50.080 Block designations.
 12.50.090 Street signs.
 12.50.100 Address designations.
 12.50.110 Address assignments.
 12.50.120 Notification of address assignments.
 12.50.130 Building official powers and duties.
 12.50.140 Compliance required.
 12.50.150 Appeal.

Sec. 143. 12.50.010. Title. This chapter shall be entitled "Street Names and Building Addresses."

Sec. 144. 12.50.020. Application. The chapter shall apply to all building and structures within the City.

Sec. 145. 12.50.030. Purpose. The purpose of this chapter is to grant the Building Official the authority to assign street names and numbers and to address the principal entrances of all buildings or other uses in conformance with the grid system adopted by this chapter.

Sec. 146. 12.50.040. Authority. This chapter is authorized by the general police provisions granted to the City pursuant to chapter 35.23 RCW and 35A.63 RCW and other applicable laws.

Sec. 147. 12.50.050. Grid system adopted. The grid system adopted by King County Resolution No. 16622, as amended by Ordinance Nos. 1630, 1721, 1874, 1970, 2081, 2221, and 2362, as presently constituted or as may be subsequently amended, and as amended, added to, or excepted in this chapter, together with

Ordinance No. ____
Page 69 of 79

1 all amendments and additions provided in this Title, is adopted
2 and is applicable within the City.

3
4 **Sec. 148. 12.50.060. Street designations.**

5
6 (1) The Building Official shall:

7
8 (a) Designate all public and private streets
9 using the guidelines of the grid system; and

10
11 (b) Not name a street unless the Building
12 Official determines that the number assigned to the street by
13 the grid system is not feasible.

14
15 (2) The Building Official may redesignate existing
16 streets if the Building Official determines the street name or
17 number is inconsistent with the grid system.

18
19 (3) Public and private streets shall carry a cardinal
20 point prefix or suffix. Public and private streets designated
21 as:

22
23 (a) Avenues are preceded by a numerical
24 designation, are assigned a cardinal point suffix, and are in a
25 generally north-south direction;

26
27 (b) Streets are preceded by a numerical
28 designation, are assigned a cardinal point prefix, and are in a
29 generally east-west direction; and

30
31 (c) Circles, courts, drives, highways, lanes,
32 places, and ways are assigned a cardinal point:

33
34 (i) Suffix if it is in a generally north-
35 south direction; and

36
37 (ii) Prefix if it is in a generally east-
38 west direction.

39
40 (4) A person may appeal a street designation to the
41 Hearing Examiner in accordance with the Hearing Examiner Code,
42 provided a written appeal is filed with the City Clerk within 10
43 days following the designation.

Ordinance No. ____
Page 70 of 79

Sec. 149. 12.50.070. Council redesignation.

(1) Notwithstanding DMMC 12.50.030 through 12.50.060, the City Council reserves the option of changing street names or changing numbered streets to named streets. Applications to the City Council for street renaming shall contain the signatures of the majority of persons having ownership in properties addressed on the street. The filing fee for a street name change application is established by administrative order of the City Manager or the City Manager's designee. The Building Official shall provide written notification to affected property owners at least 20 days before final City Council action.

(2) In its deliberations, the City Council shall consider technical information from the Building Official, location and development characteristics relative to the street, and the impact of the change on existing businesses and residences, as well as on emergency vehicle responsiveness. Only entire street lengths or distinct major portions of streets are eligible for renaming by the City Council. For the purposes of this chapter, "distinct major portion" means a separate portion of a street identifiable by either a directional shift of at least 45 degrees or an interrupted interval of at least one-quarter mile.

(3) A street name change is accomplished by the adoption of an ordinance directing the change.

Sec. 150. 12.50.080. Block designations. The grid system shall determine numerical block designations.

Sec. 151. 12.50.090. Street signs. The City traffic engineer shall provide for the placing of street identification signs at all intersections and at other locations determined necessary by the City traffic engineer. All signs shall have international style, size, and white lettering on a blue background.

Sec. 152. 12.50.100. Address designations.

(1) The Building Official shall assign building addresses using the following criteria:

Ordinance No. ____
Page 71 of 79

(a) Even-numbered addresses are used on the:

(i) Northerly side of streets having a generally east-west direction; and

(ii) Easterly side of streets having a generally north-south direction; and

(b) Odd-numbered addresses are used on the:

(i) Southerly side of streets having a generally east-west direction; and

(ii) Westerly side of streets having a generally north-south direction.

(2) Buildings not visible from a public street or set back from a public street to the extent that the building address is not readily visible, are addressed from the driveway access.

(3) Addresses shall contain only whole numbers. The Building Official shall redesignate an existing address if the Building Official determines the address is inconsistent with this subsection.

(4) Multiple-dwelling units shall receive one building address. The location of the main entrance determines that number. The multiple-dwelling unit owner shall provide individual units within the complex a number composed of the unit number and floor in a clockwise direction from the main entrance.

Sec. 153. 12.50.110. Address assignments.

(1) In existing subdivision or short subdivision plats, in binding site plans, planned unit developments, and in land not yet platted, the assignment of addresses for new buildings shall occur in conjunction with the issuance of a building permit.

Ordinance No. ____
Page 72 of 79

1 (2) In subdivision or short subdivision plats approved
2 after September 14, 1993, the assignment of addresses shall
3 conform with DMMC 17.40.090.

4
5 **Sec. 154. 12.50.120. Notification of address**
6 **assignments.** Upon assignment of a building address, the
7 Building Official shall notify the:

- 8
9 (1) United States Postal Service;
10
11 (2) South King Fire and Rescue;
12
13 (3) Des Moines Police Department; and
14
15 (4) Other agencies as determined by the Building
16 Official.

17
18 **Sec. 155. 12.50.130. Building Official powers and**
19 **duties.**

20
21 (1) The Building Official shall promulgate rules to
22 implement this chapter.

23
24 (2) The Building Official shall maintain the official
25 record of current addresses.

26
27 **Sec. 156. 12.50.140. Compliance required.**

28
29 (1) Should the Building Official find that a building
30 is not provided with an address, is not correctly addressed, or
31 is not using the assigned address, the Building Official shall
32 notify the owner or occupant of the correct address.

33
34 (2) The correct address number shall be placed and used
35 by the effective date shown on the notice from the Building
36 Official.

37
38 **Sec. 157. 12.50.150. Appeal.** Any decision of the
39 Building Official under this chapter may be appealed to the
40 Hearing Examiner pursuant to DMMC 18.20.150 and 18.20.160 and
41 chapter 18.240 DMMC.

Ordinance No. ____
Page 73 of 79

Chapter 12.60

Bicycle, Pedestrian, and Transit Facilities in the Right-of-Way

Sections:

- 12.60.010 Title.
- 12.60.020 Application.
- 12.60.030 Purpose.
- 12.60.040 Authority.
- 12.60.050 Definitions.
- 12.60.060 Complete street principles and goals.
- 12.60.070 Exemptions.

Sec. 158. 12.60.010. Title. This chapter shall be entitled "Bicycle, Pedestrian, and Transit Facilities in the Right-of-Way."

Sec. 159. 12.60.020. Application. This chapter shall apply to the development of complete streets.

Sec. 160. 12.60.030. Purpose. The purpose of this chapter is to provide complete street principles and goals for the development of a multi-modal transportation system for all users.

Sec. 161. 12.60.040. Authority. The Planning, Building and Public Works Director shall have the power to prepare and adopt procedures as needed to implement the principles and goals of this chapter.

Sec. 162. 12.60.050. Definitions.

"Complete street" means an improved roadway that provides accommodations and transportation improvements with all users in mind, including motorists, pedestrians, bicyclists, and public transit users.

Ordinance No. ____
Page 74 of 79

**Sec. 163. 12.60.060. Complete street principles
and goals.**

(1) Bicycle and pedestrian ways shall be designed and built in accordance with the City's comprehensive transportation plan, and street design and construction standards.

(2) Bicycle and pedestrian facilities shall be accommodated in the planning, design, and construction of transportation facilities and transportation plans when feasible.

(3) Transit facilities shall be accommodated in the planning, design, and construction of transportation facilities when feasible and coordinated with transit providers. Transit facilities should be incorporated into transportation plans, projects, standards and programs.

(4) Complete streets shall be designed and constructed in such a manner that they complement the context of the surrounding neighborhoods, providing a balance of adequate facilities for bicyclists, pedestrians, transit users and persons of all abilities.

(5) Street connectivity is encouraged to create a comprehensive, integrated, connected roadway network for all transportation modes.

Sec. 164. 12.60.070. Exemptions.

(1) Notwithstanding the provisions of DMMC 12.60.060, bicycle, pedestrian, and public transit facilities are not required to be established:

(a) Where their establishment would be contrary to public safety.

(b) When the cost would be excessively disproportionate to the need or probable use.

(c) Where there is no identified need.

Ordinance No. _____
 Page 75 of 79

(2) All exceptions shall be approved by the Planning,
 Building and Public Works Director.

Chapter 12.65 Neighborhood Traffic Calming Program

Sections:

12.65.010 Title
 12.65.020 Application
 12.65.030 Purpose
 12.65.040 Authority
 12.65.050 Coordination
 12.65.060 Program guidelines
 12.65.070 Minimum criteria
 12.65.080 Neighborhood corridor projects

Sec. 165. 12.65.010. Title. This chapter shall be
 entitled "Neighborhood Traffic Calming Program."

Sec. 166. 12.65.020. Application. This chapter
 shall apply to the development traffic calming measures in the
 right-of-way.

Sec. 167. 12.65.030. Purpose. The purpose of this
 chapter is to address neighborhood concerns with regard to
 traffic safety issues. These issues include, but are not limited
 to, reducing the problems of accidents, nonlocal traffic,
 spillover parking, and vehicles speeding on residential streets.
 The procedures established by this chapter enable citizens
 and/or community groups to participate in the problem
 identification, planning, design, implementation, and evaluation
 stages of projects meant to remedy traffic safety problems.

Sec. 168. 12.65.040. Authority. The Planning,
 Building and Public Works Director shall have the power to
 prepare and adopt procedures as needed to implement the
 provisions of this chapter.

Ordinance No. ____
Page 76 of 79

1 **Sec. 169. 12.65.050. Coordination.** The program is
2 coordinated by the Planning, Building and Public Works with
3 other Departments and agencies, including:

4 (1) The Police Department to ensure overall traffic
5 safety and the best use of resources for target enforcement of
6 traffic speeds in neighborhoods by the City Police Department.

7 (2) Fire and emergency services to ensure minimal
8 impact on emergency access routes and response times.

9 (3) School districts and King County Metro transit to
10 coordinate safe walking routes for students, to identify and
11 correct specific safety problems around schools, and to minimize
12 impacts on school and public bus operation.

13 (4) Other jurisdictions to ensure consistency in
14 traffic control devices and procedures on the streets that cross
15 through multiple jurisdictions.

16 **Sec. 170. 12.65.060. Program guidelines.** The
17 administrative rules published by the Planning, Building and
18 Public Works Department shall contain provisions to implement
19 the following guidelines:

20 (1) Locations for proposed installation of traffic
21 calming devices are prioritized to ensure that funds are spent
22 on the most serious locations first.

23 (2) Neighborhood residents are responsible for the
24 initiation and follow through of individual traffic calming
25 projects. Placing the burden for project initiation on the
26 public shall:

27 (a) Discourage frivolous requests;

28 (b) Minimize staff time spent in evaluating
29 problem locations; and

Ordinance No. —
Page 77 of 79

1 (c) Build a neighborhood consensus before City
2 funds are spent.

3 (3) Except for unusual situations, traffic speed
4 enforcement through the City Police Department or a speed watch
5 program should usually be the initial response to a petition
6 requesting neighborhood traffic calming.

7 (4) Use the least restrictive traffic calming
8 strategy/device that will solve the specific problem. Passive
9 techniques should be explored before deciding to install
10 physical devices. Passive techniques should include a range of
11 possible solutions including brush trimming, improving sight
12 distances, posting appropriate traffic control signs, speed
13 watch programs, traffic enforcement, traffic safety campaigns,
14 and any other techniques deemed appropriate by the Planning,
15 Building and Public Works Director.

16 (5) If physical devices are necessary, the least
17 intrusive or restrictive types of devices should be evaluated
18 first. Physical devices can include speed humps, traffic
19 circles, chicanes, traffic diverters, turn prohibitors, curb
20 extensions, and any other techniques deemed appropriate by the
21 Planning, Building and Public Works Director.

22 (6) Manage traffic in place rather than diverting it
23 to another location. In some cases, through traffic should be on
24 nearby arterials and physical devices would be appropriate to
25 try to divert such traffic back to the arterial system. However,
26 traffic should not be relocated from one neighborhood street to
27 another.

28 (7) Use the most cost-effective traffic calming
29 devices to solve identified problems so that City resources can
30 be used to address as many locations as possible.

31

Ordinance No. _____
Page 78 of 79

Sec. 171. 12.65.070. Minimum criteria.

(1) Neighborhood traffic calming projects should meet all of the following minimum criteria:

(a) Average daily traffic ("ADT") volumes should be greater than 500 ADT but less than 4,000 ADT.

(b) Traffic speed studies with a sample of at least 50 cars in each direction at a given location should show at least 20 percent of the vehicles exceeding the posted speed limit by at least five miles per hour.

(c) The street under consideration for a traffic calming project is not classified as an arterial.

Sec. 172. 12.65.080. Neighborhood corridor projects. Neighborhood corridor projects focus attention on larger-scale neighborhood projects to address nonlocal traffic and pedestrian safety. Projects of this type are considered when the neighborhood traffic safety problem is determined to be caused by a lack of adequate arterial facilities and sidewalks in the problem area.

The types of projects include: installing sidewalks, curbs, and gutters, and improving the capacity of the street by doing channelization and/or signalization improvements. Projects of this nature are prioritized under the six-year transportation plan.

Sec. 173. Repealer. Title 12 DMMC as presently constituted and codified is hereby repealed in its entirety along with all underlying Ordinances and replaced with this Ordinance to be effective on January 1, 2014.

Sec. 174. 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

Ordinance No. _____
 Page 79 of 79

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. 175. Effective date. This Ordinance shall take effect and be in full force on January 1, 2014.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2013 and signed in authentication thereof this _____ day of _____, 2013.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

Published: _____

Effective Date: January 1, 2014

KOEGEN EDWARDS LLP
ATTORNEYS AT LAW

MEMORANDUM

Attorney-Client Privileged Communication

TO: Pat Bosmans, City Attorney

FROM: Michael F. Connelly

DATE: August 28, 2013

RE: **Proposed Title 12 Amendments**

GENERAL AMENDMENTS

1. The first chapter of proposed Title 12 contains provisions applicable to all chapters contained within Title 12, specifically: Definitions, Rules of Construction, Liability, Violations and Penalties, Severability and Appeals. These provisions were found at various places throughout the existing title and chapters and have been consolidated in chapter 12.01 "General Provisions."

2. The first four sections of each chapter are entitled: "Title," "Application," "Purpose" and "Authority." Again these provisions were found in some chapters and not in others, and have been placed at the beginning of each chapter.

3. The name of the position responsible for the administration of Title 12 has been identified as the "Planning, Building and Public Works Director." All other grants of authority within the title are identified as the "City Manager or the City Manager's designee."

4. Changes have been made to the placement and order of words to ensure clarity and remove duplication. Substantive changes were generally not made. Definitions were not changed though duplicative definitions were removed. Most definitions were moved to chapter 12.01. Some definitions were kept in specific chapters when they appeared to facilitate understanding that chapter.

5. All appeal provisions were modified to be consistent. Appeal of most administrative decisions is to the Hearing Examiner.

SPECIFIC CHAPTER AMENDMENTS

1. Chapter 12.04 "Right-Of-Way Use Code" is now codified as chapter 12.05 "Use and Maintenance of Public Rights-of-Way." Portions of this chapter were removed and placed in chapter 12.01. The process for obtaining right of way permits was consolidated to avoid any duplication.



2. Chapter 12.08 “Sight Areas at Intersections” was removed and should be incorporated into the City’s adopted street standards.
3. Chapter 12.12 “Vacation of Public Rights-of-Way” is now codified as chapter 12.10. The only substantive change was to remove the right of appeal to the Hearing Examiner and have the City Council be the final decision maker of any street vacation. See existing section 12.12.040(3) and new sections 12.10.060 and 12.10.100.
4. Chapter 12.28 “Street Development Standards” is now codified as chapter 12.15.
5. Chapter 12.32 “Clean Condition of Public Rights-of-Way” was incorporated into chapter 12.05 (see proposed 12.05.250).
6. Chapter 12.35 “Transportation Benefit District” is now codified as chapter 12.30.
7. Chapter 12.40 “Street System Improvements” is now codified as chapter 12.20. Language relating the single-family development, which was contrary to language contained within the City’s adopted street standards, was removed. (See section 12.40.085).
8. Chapter 12.44 “Latecomers Agreements” is now codified as chapter 12.35. Language contained in this chapter was amended to be consistent with the terms set forth in the enabling statute (chapter 35.72 RCW). The chapter was re-titled “Assessment Reimbursement Contracts.”
9. Chapter 12.48 “Undergrounding of Utilities” is now codified as chapter 12.25 “Underground Utility Requirements.”
10. Chapter 12.52 “Neighborhood Traffic Control Program” was removed and should be incorporated into the City’s Comprehensive Plan and the City’s adopted street standards.
11. Chapter 12.56 “Transportation Impact Fee Service Area” is now codified as chapter 12.40 “Transportation Impact Fees.”
12. Chapter 12.60 “Bicycle, Pedestrian and Transit Facilities in the Right-Of-Way” was removed and should be incorporated into the City’s adopted street standards.
13. A new chapter 12.45 “Building Transport Code” was added containing the provisions of chapter 14.36 “Building Transportation Code.”
14. A new chapter 12.50 “Street Names and Building Addresses” was added containing the provisions of chapter 14.48 with the same title.
15. A new chapter 12.55 “Interpretation of Title 12 DMMC” was added, which is similar to the provisions contained in existing chapter 18.76 but is specific to this title.