

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

November 14, 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

KING COUNTY COUNCILMEMBER JULIA PATTERSON

CONSENT CALENDAR

- | | | |
|---------|---------|--|
| Page 1 | Item 1: | <p>APPROVAL OF VOUCHERS</p> <p><u>Motion</u> is to approve for payment vouchers and payroll transfers included in the attached list and further described as follows:</p> <p>Claim Checks: \$1,794,527.92</p> <p>Payroll Fund Transfers: \$420,885.87</p> <p>Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$2,215,413.79</p> |
| Page 3 | Item 2: | <p>ECOLOGY FY 2014 STORMWATER GRANT AGREEMENT</p> <p><u>Motion</u> is to approve the 2013-2015 Municipal Stormwater Capacity Grant Agreement between the State of Washington Department of Ecology and the City of Des Moines, and further to authorize the City Manager to sign said Agreement substantially in the form as submitted.</p> |
| Page 27 | Item 3: | <p>RESOLUTION FOR CITY OF DES MOINES PARTICIPATION IN THE ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST HEALTH CARE PROGRAM</p> <p><u>Motion</u> is to enter into an Agreement with the Association of Washington Employee Benefit Trust to provide health insurance for City of Des Moines employees and to authorize the City Manager to sign the Agreement substantially in the form as attached.</p> |

PUBLIC HEARING

- | | | |
|---------|---------|---|
| Page 45 | Item 1: | YEAR 2014 GENERAL PROPERTY TAX LEVIES
Staff Presentation: Finance Director Paula Henderson |
| Page 53 | Item 2: | ADOPTION OF YEAR 2014 BUDGET
Staff Presentation: Finance Director Paula Henderson |

CITY OF DES MOINES
Voucher Certification Approval
14-Nov-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 November 14, 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		137625	-	137818	194	1,741,160.28
Electronic Wire Transfers	2	BANK OF AMERICA VISA, WA DEPT OF LIC & FIREARMS				56,064.14
Subtotal for this Council Packet						1,797,224.42
Voided Claim Checks this check run:		2	137692/137778			(2,696.50)
Voided Claim Checks from previous check runs						0.00
Total Claims/Wire Transfers/Voids						198 1,794,527.92

Payroll Vouchers:		DISBURSED 11/05/13				Amounts
Payroll Checks		18357	-	18366	10	13,646.33
Direct Deposit		440001	-	440145	145	265,991.30
Payroll Taxes						58,973.62
Wage/Garnishments						744.07
Voids					0	0.00
Electronic Wire Transfers						81,530.55
ICMA 401 Forfeitures						0.00
Total Claims						420,885.87
Total certified Wire Transfers, Voids, A/P & Payroll vouchers for Nov 14, 2013						2,215,413.79

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Ecology FY 2014 Stormwater Grant Agreement

ATTACHMENTS:

1. Ecology Agreement

FOR AGENDA OF: November 14, 2013

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: November 6, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AT

Purpose and Recommendation

The purpose of this agenda item is to approve the State Department of Ecology Grant Agreement (Attachment 1). For Fiscal Year 2014, the Department of Ecology has offered the City of Des Moines a \$170,000 grant in two parts: \$50,000 to be used to support NPDES permit required activities and \$120,000 grant to be used toward the design of a City stormwater treatment retrofit project for improving water quality from an existing site. Staff recommends accepting this grant as it can be used for a variety of expenses related to meeting the requirements of the NPDES Phase II permit that the City's stormwater program is now operating under. The grant does not require a local funding match and costs are eligible for funding from July 1, 2013 through January 31, 2015. The follow motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the 2013-2015 Municipal Stormwater Capacity Grant Agreement between the State of Washington Department of Ecology and the City of Des Moines, and further to authorize the City Manager to sign said Agreement substantially in the form as submitted."

Background

The City has received a \$170,000 grant offer from Ecology as part of the state's Local Government Stormwater Grants Program, with \$50,000 to be used for NPDES permit implementation activities and \$120,000 to be used for project-specific planning and design activities for a stormwater project that would provide a water quality benefit and address stormwater pollution from existing development.

The City has been awarded three previous NPDES grants (\$75,000 for 2007-2009, \$50,000 for 2010, and \$197,425 for 2011-2013). Similar to the previous two Agreements, this 2013-2014 Agreement does not contain the percentage goals for MBE/WBE businesses but contains language that the City would solicit and recruit, to the extent possible, MBE/WBE businesses, making it consistent with the previous Agreements that the Council approved.

Over the years, these funds have been used to cover staff costs for developing the drainage inventory map, preparing planning documents and manuals, purchasing field equipment such as the GPS PDA's used for field mapping, and the Cityworks program for managing maintenance to the drainage system and tracking associated costs, as well as several software upgrades to the GIS system. During the grant term, staff will be reviewing the program's needs with the emphasis that these funds be used toward a one-time expense item(s) rather than to cover on-going related expenses of the program.

Discussion

City staff costs for implementing the NPDES permit are expected to be \$298,000 for 2014. This assumes staffing of 2.30 FTEs (0.6 FTE NPDES Coordinator, a 1.0 FTE technician, a 0.5 FTE SWM engineering aide, and a 0.20 FTE SWM Manager). The staffing is based on estimated hours projected for 2014 and in accordance with our NPDES permit that permit costs be tracked separately from other city operations. No one-time expense item has yet been specifically identified for the \$50,000 operational grant, but the grant would be used to cover a portion of the temporary technician salary if no other one-time expense has been determined within the grant term.

For the stormwater treatment project grant, the marina staff has proposed using the capital grant to design a water quality retrofit project at the south end of the marina parking lot adjacent to the boatyard. Existing parking would be reconfigured to optimize the parking and bioretention or swales would be used to collect and treat runoff from the parking area. The design would also be done in a fashion as to potentially provide tertiary treatment for runoff from the boatyard which is having difficulty in meeting its NPDES permit requirements.

Alternatives

No alternatives are provided. Should the City not accept this grant offer, the funds will be made available to other jurisdictions.

Financial Impact

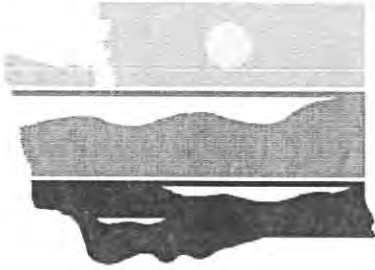
The \$50,000 operation grant can be used to offset costs for implementing the NPDES permit and is retroactive to July 1, 2013. Eligible costs for both the operation and capital grant can be incurred through January 31, 2015. No match is required.

Recommendation or Conclusion

Staff recommends approving the Ecology Agreement.

Concurrence

Finance, Legal, and Planning, Building, and Public Works concur.



DEPARTMENT OF
ECOLOGY
State of Washington

2013-15 MUNICIPAL STORMWATER CAPACITY GRANT

PROGRAM

FISCAL YEAR 2014

GRANT AGREEMENT

NUMBER G1400222

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF DES MOINES

TABLE OF CONTENTS

PART I. GENERAL INFORMATION	3
PART II. PERFORMANCE MEASURES	4
PART III. PROJECT DESCRIPTION	4
PART IV. PROJECT BUDGET	5
PART V. SCOPE OF WORK	6
PART VI. SPECIAL TERMS AND CONDITIONS	10
PART VII. ALL WRITINGS CONTAINED HEREIN	10
ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS.....	11
A. ARCHEOLOGICAL AND CULTURAL RESOURCES	11
B. EDUCATION AND OUTREACH	11
C. EQUIPMENT PURCHASE	12
D. FUNDING RECOGNITION	12
E. INCREASED OVERSIGHT	12
F. INDIRECT RATE	12
G. MINORITY AND WOMEN'S BUSINESS PARTICIPATION	12
H. PAYMENT REQUEST SUBMITTALS	13
I. POST PROJECT ASSESSMENT	14
J. PROCUREMENT	14
K. PROGRESS REPORTS	14
L. REQUIRED DOCUMENT SUBMITTALS	14
M. SPECIAL CONDITION FOR SNOHOMISH COUNTY AND KING COUNTY	15
N. WATER QUALITY MONITORING	15
ATTACHMENT II: GENERAL TERMS AND CONDITIONS	17
A. RECIPIENT PERFORMANCE	17
B. SUBGRANTEE/CONTRACTOR COMPLIANCE	17
C. THIRD PARTY BENEFICIARY	17
D. CONTRACTING FOR SERVICES (BIDDING)	17
E. ASSIGNMENTS	17
F. COMPLIANCE WITH ALL LAWS	17
G. KICKBACKS	17
H. AUDITS AND INSPECTIONS	17
I. PERFORMANCE REPORTING	18
J. COMPENSATION	18
K. TERMINATION	19
L. WAIVER	20
M. PROPERTY RIGHTS	20
N. SUSTAINABLE PRODUCTS	21
O. RECOVERY OF PAYMENTS TO RECIPIENT	21
P. PROJECT APPROVAL	21
Q. DISPUTES	21
R. CONFLICT OF INTEREST	21
S. INDEMNIFICATION	22
T. GOVERNING LAW	22
U. SEVERABILITY	22
V. PRECEDENCE	22
W. SUSPENSION	22

2013-15 MUNICIPAL STORMWATER CAPACITY GRANT PROGRAM

Grant Agreement

Between

The State of Washington Department of Ecology

And

City of Des Moines

THIS is a binding agreement entered into, by, and between the state of Washington Department of Ecology (DEPARTMENT), and the City of Des Moines (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT to carry out the requirements described herein.

PART I. GENERAL INFORMATION

Project Title:	2013-15 Municipal Stormwater Capacity Grant Program
State Fiscal Year:	FY2014
Grant Number:	G1400222
RECIPIENT Name:	City of Des Moines
Mailing Address:	21650 11th Ave S, Des Moines, WA 98198
RECIPIENT Federal ID Number:	91-6016496
Total Eligible Cost:	
(\$50,000 AND \$120,000):	\$170,000
DEPARTMENT Funding Sources:	
ELSA - Operating:	\$50,000
ELSA - Capital Budget Provision:	\$120,000
DEPARTMENT Share:	\$170,000
DEPARTMENT Maximum Percentage:	100%
Effective Date Of This Grant Is:	July 1, 2013 Any work performed prior to the effective date of this agreement is not eligible for reimbursement.
This Grant Agreement Expires On:	January 31, 2015

RECIPIENT Contact:	Loren Reinhold
Telephone Number:	206-870-6524
E-Mail Address:	lreinhold@desmoineswa.gov
RECIPIENT Billing Contact:	Loren Reinhold
Telephone Number:	206-870-6524
E-Mail Address:	lreinhold@desmoineswa.gov
DEPARTMENT Project/Financial Manager:	Layne Slone
Mailing Address	Water Quality Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600
Telephone Number:	360-407-6225
Fax Number:	360-407-7151
E-Mail Address:	Layne.Slone@ecy.wa.gov
Designated Local Government Partners (if applicable):	

PART II. PERFORMANCE MEASURES

A. Water Quality Goal

Improved stormwater oversight and water quality protection through the direct development and implementation of a comprehensive stormwater management program.

B. Project Outcomes

Implementation of Phase I and II municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

PART III. PROJECT DESCRIPTION

RECIPIENT will address implementation or management of municipal stormwater programs. Additionally, the RECIPIENT's project will include project specific planning and design for a retrofit project which includes low-impact development techniques.

PART IV. PROJECT BUDGET

Municipal Stormwater Capacity Grants Program, FY2014	
Elements/Objects	TOTAL ELIGIBLE COST (TEC)*
Task 1 – Project Administration/Management (limited to \$5,000 ELSA Operating Funds)	\$5,000
Task 2 – Implementation And Management Of Stormwater Program	\$45,000
Task 3 – Pre-Construction Planning And Design (limited to \$120,000 ELSA Capital Budget Provisions)	\$120,000
Total (limited to \$170,000 per RECIPIENT partner)	\$170,000
*The DEPARTMENT's Fiscal Office will track to the Total Eligible Project Cost.	
MATCHING REQUIREMENTS (There are no matching requirements)	
DEPARTMENT Share FY 2014 (100% of TEC)	\$170,000

PART V. SCOPE OF WORK

RECIPIENT will ensure that this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project related work.

Task 1 - Project Administration/Management

- A. RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required

permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

- B. RECIPIENT will manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. RECIPIENT will maintain effective communication with the DEPARTMENT, RECIPIENT's designees; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT will carry out this project in accordance with any completion dates outlined in this agreement.
- C. RECIPIENT will submit all invoice voucher submittals and supportive documentation to the DEPARTMENT's Project/Financial Manager.
- D. If work conducted results in a report, the RECIPIENT will submit the following to the DEPARTMENT's Project/Financial Manager and in the quantities identified:
 - Draft project completion report – one electronic copy
 - Final project completion report – one paper copy, one electronic copy

RECIPIENT will submit two copies of any document(s) which requires DEPARTMENT approval. Once approval is given, one copy will be returned to the RECIPIENT. If the RECIPIENT needs more than one approved copy, the number of submittals should be adjusted accordingly.

Task 2 – Implementation of Stormwater Planning and Management Needs

- A. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT must ensure funds are used to attain compliance where applicable.
- B. RECIPIENT may conduct work related to implementation of additional activities required by the municipal stormwater NPDES permits. The following is a list of elements RECIPIENT's project may include.
 - 1) Public education and outreach activities, including stewardship activities.
 - 2) Public involvement and participation activities.
 - 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping or geographic information systems of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.

- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review and/or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior to awarding funding for monitoring.
Monitoring, including:
 - a) Development of applicable QAPPs.
 - b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved compliance with permit requirements. Allowed costs for equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a general use pick-up truck). Qualified equipment purchases include but are not limited to:
 - a) Illicit discharge testing equipment and materials.
 - b) Vactor truck or sweeper truck or MS4 maintenance activities.
 - c) Electronic devices dedicated to mapping of MS4 facilities and attributes.
 - d) Software dedicated to tracking permit implementation activities.

Task 3 – Preconstruction Planning and Design

- A. Project Summary. RECIPIENT will submit to the DEPARTMENT's Project Manager for review and acceptance and no later than October 1, 2013, an initial one to two page

Project Summary. The Project Summary will include a description of the proposed project identifying: 1) the area where the proposed project is to be installed or constructed (including maps), 2) the stormwater best management practice(s) to be designed, 3) the name of the appropriate design manual planned for use in the final design (see item D), and 4) the water quality issue mitigated by the proposed project. The DEPARTMENT will provide comments to the RECIPIENT within 14 calendar days of receipt of the Project Summary. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the Project Summary for consistency with the appropriate design criteria and grant requirements. Detailed calculations and/or drawings are not required at this time.

- B. **Pre-Design Report.** RECIPIENT will submit two hard copies and one digital copy of the Pre-design report to the DEPARTMENT's Project Manager for review and acceptance. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the Project Summary for consistency with the appropriate design criteria and grant requirements. Detailed calculations and/or drawings are required in the Pre-design Report. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans.
- C. **90 Percent Design Plans.** RECIPIENT will submit two hard copies and one digital copy of the 90 percent design plans to the DEPARTMENT's Project Manager for review and acceptance. The DEPARTMENT will provide comments to the RECIPIENT within 45 days of receipt of the plans. The DEPARTMENT's Project Manager will work with the DEPARTMENT's engineer to review the plans and specifications for consistency with the appropriate design criteria and grant requirements.
- D. For above items A-C, the RECIPIENT must justify significant deviations from the following:
- 1) The appropriate guidance manual below depends on the region that your project is conducted:
 - **2005 or 2012 Stormwater Management Manual for Western Washington (SWMMWW)**, (the appropriate manual depends on the requirements of the jurisdiction) or
 - **2004 Stormwater Management Manual for Eastern Washington (SWMMEW)**, both can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/tech.html>, or
 - **Low Impact Development Technical Guidance Manual for Puget Sound** found at: http://www.psp.wa.gov/downloads/LID/20121221_LIDmanual_FINAL_secure.pdf, or
 - Equivalent design manuals, **Eastern Washington Low Impact Development Manual**.
 - 2) Equivalent manual as developed by the local jurisdiction and approved by the DEPARTMENT.
 - 3) Good engineering practices and generally recognized engineering standards.
- E. **SEPA.** If applicable, the RECIPIENT will submit to the DEPARTMENT's Project Manager, a copy of the State Environmental Review Act (SEPA) Lead Agency's signed and dated SEPA determination.

- F. DAHP EZ-1. If applicable, the RECIPIENT will submit to the DEPARTMENT's Project Manager a Department of Archaeology and Historic Preservation (DAHP) EZ-1 form to initiate review of project activities by DAHP and tribal governments.
- G. RECIPIENT will submit all pre-design figures and construction plans to the DEPARTMENT, reduced to 11" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bind as a separate document. All reduced drawings must be legible.
- H. Summary of Deliverables:
1. Submit a Project Summary including maps, no later than October 1, 2013, for review and acceptance of the proposed design project.
 2. Submit a Pre-design report to the DEPARTMENT, no later than January 31, 2014 for review and acceptance.
 3. Submit 90 percent design plans to the DEPARTMENT, no later than August 1, 2014 for review and acceptance.
 4. If applicable, submit a copy of the signed and dated SEPA determination to the DEPARTMENT.
 5. If applicable, submit a copy of the DAHP EZ-1 form, for DEPARTMENT coordination on compliance with Executive Order 05-05.

PART VI. SPECIAL TERMS AND CONDITIONS

None

PART VII. ALL WRITINGS CONTAINED HEREIN

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This agreement.
- Attachment I: General Project Management Requirements for the Municipal Stormwater Capacity Grants Program.
- Attachment II: General Terms and Conditions.
- The effective edition, at the signing of this agreement, of the DEPARTMENT's "Administrative Requirements for Recipients of Ecology Grants and Loans."
- The associated funding guidelines that correspond to the fiscal year in which the project is funded.
- The applicable federal and state statutes and regulations.

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the DEPARTMENT, and made a part of this agreement, except that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

The signatories to this Agreement represent that they have the authority to execute this Agreement.

IN WITNESS WHEREOF, the parties sign this grant agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF DES MOINES

KELLY SUSEWIND, P.E., P.G. DATE
WATER QUALITY PROGRAM MANAGER

ANTHONY A. PIASECKI DATE
CITY MANAGER

Approved As To Form Only
Assistant Attorney General

**ATTACHMENT I: General Project Management Requirements
For 2013-15 Municipal Stormwater Capacity Grants Program
Funding Agreement**

A. ARCHEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT must comply with all requirements listed in Executive Order 05-05 prior to implementing any project that involves soil disturbing activity.

RECIPIENT must conduct and submit a cultural resources survey or complete and submit an EZ-1 Form to the DEPARTMENT's project manager prior to any soil disturbing activities. The DEPARTMENT will contact the Department of Archaeology and Historic Preservation (DAHP) and affected tribes regarding the proposed project activities in order to meet Executive Order 05-05 requirements. Any prior communication between the RECIPIENT, the DAHP, and the tribes is not sufficient to meet requirements. Any mitigation measures as an outcome of this process will be requirements of this agreement.

Any soil disturbing activities that occur prior to the completion of the Executive Order 05-05 process will not be eligible for reimbursement. Activities associated with cultural resources review are grant eligible and reimbursable.

The Department of Archaeology and Historic Preservation has provided guidance that can be accessed online at:

<http://www.dahp.wa.gov/pages/Documents/EnvironmentalReview.htm> and
http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/eo0505Guidance_000.pdf.

B. EDUCATION AND OUTREACH

RECIPIENT must do a regional search for existing materials before producing any new educational flyers or pamphlets. The RECIPIENT must request the use of those materials before time and resources are invested to duplicate materials that are already available.

RECIPIENT must also check the Washington Waters website
http://www.ecy.wa.gov/washington_waters/index.html for useful educational materials. These materials are available for public use and can be downloaded directly from the website.

RECIPIENT must provide the DEPARTMENT up to two copies and an electronic copy on a CD-ROM of any tangible educational products developed under this grant, such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, and media announcements or gadgets, such as a refrigerator magnet with a message. If this is not practical, the RECIPIENT must provide a complete description including drawings, photographs, or printouts of the product.

RECIPIENT must also supply the DEPARTMENT with the names and contact information of local project leads.

If there are a significant number of people in the community that speak languages other than English, then the RECIPIENT must produce all public outreach materials, pamphlets, fliers, meeting notices, reports, and other educational materials in English and in the other prevalent language.

C. EQUIPMENT PURCHASE

RECIPIENT must get written, prior approval from the DEPARTMENT for any equipment purchase.

D. FUNDING RECOGNITION

RECIPIENT must inform the public about DEPARTMENT funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from the DEPARTMENT upon request.

E. INCREASED OVERSIGHT

If this project is selected for increased oversight, the RECIPIENT must submit all backup documentation with each payment request submittal. In addition, the DEPARTMENT's Project Manager must establish a schedule for additional site visits to provide technical assistance to the RECIPIENT and verify progress or payment information.

F. INDIRECT RATE

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees' direct salary and benefit costs incurred while conducting project-related work. The DEPARTMENT's Financial Manager may require a list of items included in the indirect rate at any time.

G. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

- a) Include qualified minority and women's businesses on solicitation lists.
- b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.

- c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

RECIPIENT must report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

- a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- b) The total dollar amount paid to qualified firms under this invoice.

H. PAYMENT REQUEST SUBMITTALS

Payment Request Submittals. The DEPARTMENT's Project/Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Payment Schedule. Payments will be made on a cost-reimbursable basis.

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Reporting Eligible Costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Copies of all applicable forms must be included with an original A19-1A, and must be submitted to the DEPARTMENT. Blank forms are found in Administrative Requirements for Recipients of Ecology Grants and Loans at <http://www.ecy.wa.gov/biblio/9118.html>.

Required Forms:	Where Eligible Costs Have Incurred:
Form A19-1A (original signature)	Form E (ECY 060-12)
Form B2 (ECY 060-7)	Form F (ECY 060-13)
Form C2 (ECY 060-9)	Form G (ECY 060-14)
Form D (ECY 060-11)	Form H (F-21)
	Form I (ECY 060-15)

I. POST PROJECT ASSESSMENT

RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

J. PROCUREMENT

RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services. Eligible and ineligible project costs are separate and identifiable for billing purposes. If professional services are contracted, the RECIPIENT will submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

K. PROGRESS REPORTS

RECIPIENT must submit quarterly progress reports to the DEPARTMENT's Financial Manager and Project Manager. Payment requests will not be processed without a progress report.

Report Content. At a minimum, all progress reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement. The RECIPIENT must also attach all landowner agreements signed during the respective quarter to each progress report.

Reporting Periods. Quarterly progress reports are due 15 days following the end of the quarter:

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

L. REQUIRED DOCUMENT SUBMITTALS

RECIPIENT must submit the following documents to the DEPARTMENT as requested by the DEPARTMENT's Project Manager or Financial Manager:

- Draft project completion report – 1 copy.
- Electronic copy of final project completion report – 1 copy.
- Final project completion report – 1 copy.
- Educational products developed under this agreement – up to 2 copies.

- Documents that require DEPARTMENT Approval – 2 copies (one for the DEPARTMENT and one for the RECIPIENT).
- Interlocal agreements – 1 copy for the DEPARTMENT's Project/Financial Manager.
- Professional services procurement agreements – 1 copy to the DEPARTMENT's Project/Financial Manager.

M. SPECIAL CONDITION FOR SNOHOMISH COUNTY AND KING COUNTY

For either Snohomish County or King County: When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein will be contingent upon appropriation of funds by the RECIPIENT's governing body; provided that nothing contained herein will preclude the DEPARTMENT from demanding repayment of funds paid to the RECIPIENT in accordance with Section O of the appended General Terms and Conditions.

N. WATER QUALITY MONITORING

Quality Assurance Project Plan (QAPP). Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP). The QAPP must follow Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003). The applicant may also reference the *Technical Guidance for Assessing the Quality of Aquatic Environments*, revised February 1994 (Ecology Publication No. 91-78) or more current revision, in developing the QAPP.

RECIPIENT must submit the QAPP to the DEPARTMENT's project manager for review, comment, and must be approved before starting the environmental monitoring activities.

RECIPIENT must use an environmental laboratory accredited by the DEPARTMENT to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on the Department of Ecology's Environmental Assessment Program's website, available at:

<http://www.ecy.wa.gov/programs/eap/labs/search.html>

RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the "ten-year rule." The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all data to the DEPARTMENT through the Environmental Information Management System (EIM). Data must be submitted by following instructions on the EIM website, currently available at:

<http://www.ecy.wa.gov/eim>

The data submittal portion of the EIM website provides information and help on formats and requirements for submitting tabular data. Specific questions about data submittal can be directed to the EIM Data Coordinator, currently available at:

eim_data_coordinator@ecy.wa.gov

If GIS data is collected, the DEPARTMENT's data standards are encouraged. An Ecology Focus Sheet entitled *GIS Data and Ecology Grants* (Publication No. 98-1812-SEA) outlines the standards. Common standards must be used for infrastructure details, such as geographic names, Geographic Information System (GIS) coverage, list of methods, and reference tables.

ATTACHMENT II: General Terms And Conditions

Pertaining To Grant And Loan Agreements Of The Department Of Ecology

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for RECIPIENTS of Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.
5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed

upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see <http://www.ecy.wa.gov/sustainability/>.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

W. SUSPENSION

The obligation of DEPARTMENT to make payments is contingent on the availability of funds. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this agreement, DEPARTMENT may elect to renegotiate the agreement subject to new funding limitations and conditions or terminate the agreement, in whole or part. DEPARTMENT may also elect to suspend performance of the agreement until such time as DEPARTMENT determines that the funding insufficiency is resolved in lieu of terminating the agreement. DEPARTMENT will provide written notice to RECIPIENT if funding is not available.

SS-010 Rev. 04/04

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Resolution for City of Des Moines
Participation in the Association of Washington
Cities Employee Benefit Trust Health Care
Program

ATTACHMENTS:

1. Resolution 13-248 – Interlocal Agreement
with AWC Benefit Trust for Healthcare
Benefits

FOR AGENDA OF: November 14, 2013

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: November 4, 2013

CLEARANCES:

☒ Legal PB

☒ Finance ph

☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☐ Planning, Building & Public Works N/A

☐ Police N/A

☐ Courts N/A

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AT

Purpose and Recommendation

The purpose of this resolution is to seek council approval for an interlocal agreement with the Association of Washington Cities Employee Benefit Trust to provide insured health and welfare benefit plans for employees

Suggested Motion

First Motion: I move to enter into an Agreement with the Association of Washington Employee Benefit Trust to provide health insurance for City of Des Moines employees and to authorize the City Manager to sign the Agreement substantially in the form as attached.

Background

During the 2014 budget process, Alliant, our current healthcare broker advised the cost of healthcare benefits for the City of Des Moines employees would increase by 31%. As a result, we began researching alternatives that might be more cost effective and discussing those alternatives with the various employee groups.

Discussion

The Des Moines Police Guild and the Commanders Association have contracts that run through the end of 2014. The Teamsters, General Employees and Exempt Employees have contracts or agreements that expire at the end of 2013. AWC Benefit Trust offers several different insurance plans with different premiums and different levels of benefits.

The Collective Bargaining Agreements and Memorandums of Understanding with our employee groups allow management to change healthcare providers if the new coverage is “comparable” to the existing coverage. The Healthfirst coverage offered by the AWC Benefit Trust is comparable to the Group Health Options plan, the Group Health \$10 co-pay is the same plan and the 2014 monthly premiums will be less than those proposed by Alliant.

Alternatives

Council could recommend we continue with the current plan through Clearpoint for all employees through 2014.

Council could recommend we continue with the current plan for those bargaining groups that have contracts through 2014 and change providers for those employees with contracts ending in 2013.

Council could direct administration to continue their search for an alternative solution.

Financial Impact

The cost of AWC Benefit Trust Healthfirst is 10% more for a family of four than the 2013 cost for a family of four. However, that increase is 21% less than the proposed 31% increase by Alliant. AWC Benefit Trust did not increase its rates from 2013 to 2014.

There is also the potential of negotiating with the employees to transition to one of the less rich medical plans at lower premiums.

Recommendation or Conclusion

Staff recommends approval of the interlocal agreement

CITY ATTORNEY'S FIRST DRAFT 11/5/2013

DRAFT RESOLUTION NO. 13-248

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, entering into an Interlocal Agreement (ILA) with the Association of Washington Cities Employee Benefit Trust Health Care Program.

WHEREAS, the AWC Benefit Trust is an entity to which contributing entities receive one or more insured health and welfare benefit plans for participating employees and their covered dependents, on whose behalf the contributions were paid, and

WHEREAS, the AWC Benefit Trust qualifies as a voluntary employee beneficiary association within the means of Section 501(c)(9) of the Internal Revenue Code ("VEBA"), providing for the payment of life, sick, accident or other benefits to Beneficiaries, and

WHEREAS, it appears economically feasible and practical for the City of Des Moines to participate in this ILA, and

WHEREAS, chapter 48.62 RCW provides that two or more local government entities may, by ILA under chapter 39.34 RCW, jointly self-insure health benefits plans and program, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods, and

WHEREAS, the Association of Washington Cities Employee Benefit Trust ILA attached hereto as Exhibit "A" creates a joint self-insured health and welfare benefit program to be administered by the Trustees for the purposes of providing self-insured health benefits to Beneficiaries, and

WHEREAS, WAC 200-110-030 requires every local government entity participating in a joint self-insurance health and welfare benefit program to adopt such program by Resolution, and

WHEREAS, chapter 48.62 RCW requires Health Care Program assets to be managed consistent with existing authority over use of municipal funds in RCW 35.39.030. The Trust will manage Health Care Program reserves in compliance with chapter 48.62 RCW; RCW 35.39.030, and the Health Care Program Investment Policy, and

Draft Resolution No. 13-248

Page 2 of 2

WHEREAS, all premium contributions for use in the Health Care Program are deposited into a designated account within the Trust, the Health Care Program Account (the "HCP Account"), and the HCP Account represents a pool of funds that is independent of all other Trust or AWC funds, and

WHEREAS, the Trust intends to manage the HCP Account assets in compliance with federal and state laws and the attached ILA, and

WHEREAS, The City of Des Moines believes it is in the best interest of the Health Care Program to allow the Trust to manage the HCP Account; now therefore,

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

The ILA with the Association of Washington Cities Employee Benefit Trust Health Care Program, attached as Exhibit "A", is hereby adopted.

ADOPTED BY the City Council of the City of Des Moines, Washington this 14th day of November, 2013 and signed in authentication thereof this 14th day of November, 2013.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST
HEALTH CARE PROGRAM
INTERLOCAL AGREEMENT**

This Agreement is made and entered into in the State of Washington by and among the Association of Washington Cities Employee Benefit Trust (the "Trust") and cities and towns, and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust ("Participating Cities and Towns," or "Participating Non-City Entities"), all of whom are signatories to this Agreement.

RECITALS

WHEREAS, the Trust is an entity to which contributions by Participating Cities and Towns and Non-City Entities (defined below) and Participating Employees (defined below) are paid and through which the Board of Trustees provides one or more insured health and welfare benefit plans or programs to Participating Employees, their covered dependents and other beneficiaries ("Beneficiaries"), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code ("VEBA"), providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and the Participating Cities and Towns have determined that it is in the best interest of Participating Cities and Towns to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which health and welfare benefit plan or program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement (defined below) to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under Chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, each local government entity that is a signatory hereto, as required by WAC 200-110-030, acts upon the authority of a resolution adopting this Agreement and the Health Care Program (defined below) created herein;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

The following are definitions of terms used in the Agreement. Unless indicated otherwise, other terms are defined where they are first used. Defined terms are capitalized when used in the defined context.

- 1.1 **Agreement** means this Interlocal Agreement entered into under the authority of Chapter 39.34 RCW and as required by RCW 48.62.031(2) between the Trust and Participating Employers.
- 1.2 **Association of Washington Cities** or **AWC** means the Association of Washington Cities, a not-for-profit membership association established pursuant to the laws of the state of Washington for the purpose of providing various services to and on behalf of its member cities.
- 1.3 **Association of Washington Cities Employee Benefit Trust** or the **Trust** means the trust and all property and money held by such entity, including all contract rights and records, established for the sole purpose of providing life, sick accident or other health and welfare benefits to Participating Employees, their covered dependents and other beneficiaries, and which is approved by the Internal Revenue Service as a VEBA.
- 1.4 **Employee Benefits Advisory Committee** or **EBAC** means the committee defined in Article V of the Trust Agreement that may be delegated responsibility by the Board of Trustees, including but not limited to: overseeing the operations of the Health Care Program, analyzing and developing annual premium levels and benefit coverage changes for recommendation to the Board of Trustees and performing other duties necessary to ensure that the needs of Participating Employers are met and the long-term financial health of the Health Care Program is maintained.
- 1.5 **Health Care Program** means the joint self-insurance program offering self-insured health benefit options through the HCP Account.
- 1.6 **HCP Account** means a designated account within the Trust and created by this Agreement, the Trust Agreement and Trust Health Care Program policies all under the authority of Chapter 48.62 RCW to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries and further described in Article 6.
- 1.7 **Non-City Entity** means any public agency, public corporation, intergovernmental agency or political subdivision, within the state of Washington that meets the requirements of Article IX, Section 1(c)(ii) and (iii) of the Trust Agreement for participation in the Health Care Program.
- 1.8 **Participating City** means any city or town within the state of Washington that meets the requirements of Article IX, Section 1(a) or Section 1(b) of the Trust Agreement.

- 1.9 **Participating Employee** means any individual employed by a Participating Employer and for whom the Participating Employer makes contributions to the Trust, and any individual who may have been so employed but is subsequently laid off, terminated, or retired.
- 1.10 **Participating Employer** means a Participating City or Non-City Entity that is also a party to this Agreement.
- 1.11 **Resolution** means the resolution adopted by each Participating City or Non-City Entity that authorizes the Health Care Program.
- 1.12 **State Risk Manager** or **Risk Manager** means the risk manager of the Risk Management Division within the Department of Enterprise Services.
- 1.13 **Stop Loss Insurance** or **Reinsurance** means a promise by an insurance company that it will cover losses of the Health Care Program over and above an agreed-upon individual or aggregated amount, which definition shall be modified by any changes to the definition of stop loss insurance in WAC 200-110-020.
- 1.14 **Third-Party Administrator** means the independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services to the Health Care Program: pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.
- 1.15 **Trust Agreement** means the Trust Agreement Governing the Trust amended and restated July 1, 2013, and any subsequent amendments thereto.
- 1.16 **Trustees** or **Board of Trustees** means the following individuals and their successors, who together, govern the Trust and the Health Care Program:
- 1.16.1 the AWC President and the AWC Vice President;
 - 1.16.2 the EBAC Chair and the EBAC Vice Chair; and
 - 1.16.3 an individual elected pursuant to the procedures in Article III, Section 5 of the Trust Agreement to serve as the trustee from one of the following regions:
 - (a) North East Region (known as the “North East Region Trustee”);
 - (b) North West Region (known as the “North West Region Trustee”);
 - (c) South East Region (known as the “South East Region Trustee”); and
 - (d) South West Region (known as the “South West Region Trustee”).

Individuals from Non-City Entities are not eligible to serve as Trustees.

ARTICLE 2

PURPOSE

This Agreement is entered into for the purpose of authorizing the Health Care Program created by the Trust to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries. The Health Care Program shall comply with the statutory provisions found in Chapters 48.62 and 39.34 RCW and the regulatory requirements contained in WAC 200-110 applicable to joint self-insurance programs.

ARTICLE 3

PARTIES

Each party to this Agreement certifies that it intends to participate in the Health Care Program. Participating Employers are signatories of this Agreement to become effective on a date to be mutually determined (the "Effective Date") and with such other Participating Cities and Non-City Entities as may later be added to and become signatories to this Agreement.

ARTICLE 4

DURATION OF AGREEMENT

- 4.1 This Agreement shall become effective on the Effective Date.
- 4.2 This Agreement shall have perpetual duration unless terminated as hereinafter provided.

ARTICLE 5

MEMBERSHIP COMPOSITION

The Health Care Program shall be open to Participating Cities and Non-City Entities. Participation in the Health Care Program is voluntary and not a requirement of AWC membership. The Board of Trustees shall provide for the reasonable admission of new Participating Cities and Non-City Entities.

ARTICLE 6

HCP ACCOUNT

- 6.1 All premium contributions by Participating Employers, Non-City Entities and Participating Employees for use in the Health Care Program are deposited into the HCP Account.
- 6.2 The HCP Account represents a pool of funds that is independent of all other Trust or AWC funds and independent of all other Participating Employer and Non-City Entity funds. The funds deposited into the HCP Account are held, managed and expended only for the Health Care Program and reasonable expenses, consistent with applicable state

and federal statutes and rules governing joint self-insurance programs and self-insurance programs generally.

- 6.3 The HCP Account is subject to audit by the State Auditor's Office.

ARTICLE 7

TRUSTEE POWERS RELATED TO HEALTH CARE PROGRAM

The Board of Trustees is provided with the powers and functions established under RCW 48.62.031 to accomplish the following:

- 7.1 Promote the economical and efficient means by which health benefits coverage is made available to Participating Employers and Non-City Entities and provided to Participating Employees, their covered dependents and other beneficiaries;
- 7.2 Protect the financial integrity of the Health Care Program through purchase of Stop Loss Insurance or Reinsurance in such form and amount as needed;
- 7.3 Contract for or otherwise provide risk management and loss control services;
- 7.4 Contract for or otherwise provide legal counsel for the defense of claims and other legal services;
- 7.5 Consult with the state insurance commissioner and the State Risk Manager;
- 7.6 Obligate the Participating Employers and Non-City Entities to pledge revenues or contribute money to secure the obligations or pay the expenses of the Health Care Program, including the establishment of a reserve or fund for coverage; and
- 7.7 Exercise all other powers and perform all other functions reasonably necessary to carry out the purposes of the Health Care Program, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 8

ORGANIZATION OF HEALTH CARE PROGRAM

- 8.1 The operations of the Health Care Program are managed by the Board of Trustees or its delegates. The Trustees or any delegates review and analyze Health Care Program-related matters and make operational decisions regarding premium contributions, reserves, plan options and benefits in compliance with Chapter 48.62 RCW.
- 8.2 The Board of Trustees has decision authority consistent with the Trust Agreement, Health Care Program policies, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 9

RESPONSIBILITIES OF THE TRUSTEES

- 9.1 The Board of Trustees shall discharge its responsibilities under this Agreement as follows:
 - 9.1.1 Provide for the efficient management and operation of the Health Care Program;
 - 9.1.2 Provide for health benefit coverage options for Participating Employees, their covered dependents and other beneficiaries;
 - 9.1.3 Determine the level of Stop Loss Insurance or Reinsurance coverage for claims expenses above the amounts deemed appropriate for self-insurance;
 - 9.1.4 Ensure that the Health Care Program meets required state and federal statutes and rules;
 - 9.1.5 Contract with vendors required to meet the responsibilities established by the Trust Agreement, Health Care Program policies, and applicable state and federal statutes and rules;
 - 9.1.6 Maintain the balance between meeting the Health Care Program needs of Participating Employers and the long-term financial integrity of the Health Care Program;
 - 9.1.7 Prepare an annual financial report on the operations of the Health Care Program; and
 - 9.1.8 Provide for other services deemed appropriate by the Board of Trustees to meet the purposes of this Agreement.
- 9.2 The Board of Trustees may delegate the responsibilities described in this Article 9 to the EBAC or other delegates at its complete discretion.

ARTICLE 10

RESPONSIBILITIES OF THE PARTICIPATING EMPLOYERS

In order to participate in the Health Care Program, Participating Employers shall:

- 10.1 Be a Participating City or Non-City Entity in good standing and comply with the requirements of admission or qualification as established by the Board of Trustees;
- 10.2 Adopt this Agreement by Resolution, agreeing to its terms and provisions;
- 10.3 Submit the Resolution and Agreement to the Trust;

- 10.4 Read the terms, conditions and representations set forth in the application agreement related to participation in the Health Care Program;
- 10.5 Designate an employee of the Participating Employer to be a contact person for all matters relating to the Participating Employer's participation in the Health Care Program;
- 10.6 Pay premiums for the Health Care Program to the Third-Party Administrator no later than the tenth day of the month in which the premium is due;
- 10.7 By formal action of the legislative body of the Participating Employer, approve policies and procedures necessary to secure protected health information ("PHI") in accordance with Chapter 70.02 RCW and the Health Insurance Portability and Accountability Act ("HIPAA") privacy and security rules, codified at 45 C.F.R. Parts 160-164;
- 10.8 Provide the Health Care Program with such information or assistance as is necessary for the Health Care Program to meet its responsibilities under this Agreement; and
- 10.9 Cooperate with and assist the Health Care Program and any insurer of Stop Loss Insurance or Reinsurance, in all matters relating to the administration and operation of the Health Care Program and all matters relating to this Agreement.
- 10.10 Comply with all bylaws, rules, regulations and policies adopted by the Board of Trustees relating to the Health Care Program.

ARTICLE 11

RESERVE FUND INVESTMENT

All reserve fund investments from the HCP Account shall be made in a manner that is consistent with RCW 48.62.111, Chapter 39.59 RCW, WAC 200-110-090 and the Health Care Program Investment Policy.

ARTICLE 12

FINANCIAL RECORDS

- 12.1 The Board of Trustees shall develop estimated revenue and expenditures to establish a budget for each fiscal year covering January 1 through December 31 annually. Actual Health Care Program revenues and expenditures shall be monitored monthly by the Board of Trustees and reported at its quarterly meetings.
- 12.2 The accounting records of the Health Care Program are maintained in accordance with methods prescribed by the State Auditor's office under the authority of Chapter 43.09 RCW. The Health Care Program also follows applicable accounting standards established by the Governmental Accounting Standards Board ("GASB"). Year-end financial reporting is done on an accrual basis and submitted to the Office of the State Auditor as required by Chapter 200-110 WAC. Once reviewed and approved by the

Office of the State Auditor the year-end financial report is transmitted to the Office of the State Risk Manager.

- 12.3 Financial records of the Health Care Program shall be subject to audit by the Office of the State Auditor. Year-end financial reports and audit results shall be made available to interested parties. The Health Care Program shall provide financial information as required by state statute and rule to the Office of the State Risk Manager.

ARTICLE 13

PARTICIPATING EMPLOYER TERMINATION AND WITHDRAWAL

- 13.1 A Participating Employer must remain in good standing with the Trust and adhere to the requirements of this Agreement. In the event that a Participating Employer fails to be a Participating City or Non-City Entity in good standing, participation in the Health Care Program shall automatically terminate without notice as shall all health and welfare benefits provided through the Health Care Program.
- 13.2 The Board of Trustees may take action to terminate membership or deny membership in the Health Care Program where it determines that such termination or denial is in the best interest of the Health Care Program
- 13.3 When a Participating Employer's eligibility in the Health Care Program is affected due to merger or annexation, the affected Participating Employer may petition the Board of Trustees to remain in the Health Care Program.
- 13.4 A Participating Employer may only withdraw its participation in the Health Care Program at the end of the calendar year and must provide written notice to the Trust at least thirty-one (31) days in advance of the end of the calendar year (December 31st).
- 13.5 In the event of withdrawal or non-renewal, the Health Care Program will cover any of the Participating Employer's remaining outstanding Health Care Program claims expenses incurred prior to the Participating Employer's withdrawal from or non-renewal in the Health Care Program.
- 13.6 No Participating Employer, because of withdrawal or any other reason, has any right or interest in the HCP Account because of its nature as a rate stabilization fund. In the event any Participating Employer withdraws from the Health Care Program, its Participating Employees, their covered dependents and other beneficiaries and any Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA) participants and contract personnel and dependents approved by the Board of Trustees, shall forfeit all right and interest to the HCP Account.

ARTICLE 14

TERMINATION OF HEALTH CARE PROGRAM

- 14.1 In the event the Health Care Program is terminated, the Board of Trustees shall distribute the remaining funds in the HCP Account to the Trust or any successor association authorized by Chapter 39.34 RCW for like purposes for use in any program with similar purposes.
- 14.2 Upon termination, this Agreement and the HCP Account shall continue for the purpose of paying remaining outstanding claims and expenses and fulfilling all other functions necessary to complete the business of the Health Care Program.

ARTICLE 15

MEETINGS, NOTICES AND COMMUNICATIONS

- 15.1 The Board of Trustees and the EBAC, if any responsibilities for Trust management have been delegated thereto, shall provide notice of their regular and special meetings and hold their meetings in accordance with Chapter 42.30, RCW Open Public Meetings Act.
- 15.2 Communications with Participating Employers may occur using mail, email or posting on the Health Care Program website. The website shall be partitioned to provide information for the general public and information specific to Participating Employers and their employees.
- 15.3 Communications may come directly from the Health Care Program, through the Third-Party Administrator or through another vendor on behalf of the Health Care Program.

ARTICLE 16

AMENDMENTS TO INTERLOCAL AGREEMENT

- 16.1 The Board of Trustees shall review and analyze any proposed amendment to this Agreement. An amendment may be proposed for review by any party to this Agreement.
- 16.2 The Board of Trustees upon its discretion may take action by resolution on any amendment at any regular meeting of the Board of Trustees.

ARTICLE 17

PROHIBITION ON ASSIGNMENT

- 17.1 No Participating Employer may assign any right or claim of interest it may have under this Agreement.

- 17.2 No creditor, assignee or third-party beneficiary of any employer shall have the right, claim or title to any party, share, interest, premium or asset of the Trust, HCP Account or the Health Care Program.

ARTICLE 18

HEALTH CLAIM DISPUTES AND APPEALS

In the event that a dispute arises over a health claim, the procedures, adjudication requirements and administrative remedies shall be found in the Health Care Program's plan document applicable to the Health Care Program covering the claimant.

ARTICLE 19

PLAN ADMINISTRATION DISPUTES AND APPEALS

- 19.1 In the event that a dispute arises between a Participating Employer and the Health Care Program, the Participating Employer shall document the circumstances causing the dispute and submit a written request for review of the disputed circumstances to the Board of Trustees. Upon review of such information, the Board of Trustees shall attempt to resolve the dispute.
- 19.2 If the Board of Trustees' resolution to the dispute is deemed unsatisfactory, then alternative dispute resolution through mediation or binding arbitration may be necessary.

ARTICLE 20

ENFORCEMENT OF TERMS OF AGREEMENT

- 20.1 The Board of Trustees may enforce the terms of this Agreement.
- 20.2 In the event legal action is initiated to enforce any term or provision of this Agreement against any present or previous Participating Employer, the prevailing party shall receive such reimbursement of costs as the court deems reasonable for attorneys' fees and costs related to the relevant legal action.

ARTICLE 21

DEFAULT

- 21.1 If any Participating Employer fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Board of Trustees has given the Participating Employer written notice describing such failure, the Participating Employer shall be considered in default.
- 21.2 Upon default, the Board of Trustees may immediately cancel the Participating Employer's participation in the Health Care Program without additional notice or exercise some other remedy otherwise provided by law.

- 21.3 The rights and remedies of the Board of Trustees are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

ARTICLE 22

NO WAIVERS

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default exists hereunder, shall not constitute a waiver or right to demand payment of all sums owing or a waiver of any other default then or thereafter existing.

ARTICLE 23

CONTRACT MANAGEMENT

The Health Care Program shall designate a person to whom the State Risk Manager shall forward legal process served upon the Risk Manager; **The AWC Chief Executive Officer** (designee or successor). **The Health Care Program Director** shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

ARTICLE 24

SEVERABILITY

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

ARTICLE 25

COUNTERPART COPIES

This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

ARTICLE 26**HEADINGS**

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

ARTICLE 27**AGREEMENT COMPLETE**

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

[Signature page follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

Association of Washington Cities
Employee Benefit Trust

Signature: _____

Name: **Michael A. McCarty**

Title: Chief Executive Officer

Date: August 30, 2013

Participating Employer

Signature: _____

Name (print): _____

Title: _____

Date: _____

Effective Date: January 1, 2014

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Public Hearing regarding Year 2014 General
Property Tax Levies

FOR AGENDA OF: November 14, 2013
DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 5, 2013

ATTACHMENTS:

1. Draft Ordinance No. 13-251
2. Preliminary Levy Limit Worksheet – 2014
Tax Roll

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

RCW 84.52.020 requires taxing districts to certify the amount to be raised through property taxation to the county legislative authority. The certification should include the regular levy amount, and if applicable, any lid-lifts approved by the voters, plus amounts for new construction, improvements to property and so forth. Draft Ordinance No. 13-251 satisfies the requirement of RCW 84.52.020.

First Motion: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 13-251 on first reading.”

Second Motion: “I move to enact Draft Ordinance No. 13-251, determining the amount of funds to be raised by ad valorem taxes for the year 2014 for general City expenditures.”

Background

General Property Tax Levies must be adopted by the City Council on or before November 30, 2013. (RCW 84.52.020 and RCW 84.52.070)

General Property Taxes

The property tax levy rate will be \$1.60 per \$1,000 of assessed value. The total citywide preliminary assessed valuation totals \$2,213,490,306. The County used the 2009 limit factor of \$4,591,656 as the levy basis for calculation since it is the highest allowable levy within the last three years. The following provides the expected 2014 property taxes.

Property Tax Levy Limit Calculation		
Preliminary 2014 Levy		
Item		Regular
Allowable Levy (2009 Limit Factor)	\$	4,591,656
Levy Limit Factor	1%	45,917
New Construction		11,047
Total RCW 84.55 Levy	\$	4,648,620
Relevy for Prior Year Refunds		15,870
Total RCW 84.55 Levy + Refunds	\$	4,664,490
Allowable Levy	\$	4,664,490
Less Reduction for Decline in AV		(1,122,906)
Revised Allowable Levy	\$	3,541,584
Allowable Levy Calculation:		
Assessed Valuation (AV)	\$2,213,490,306	
AV/\$1,000	\$	2,213,490
Levy Rate	\$	1.60000
Allowable Levy	\$	3,541,584

Recommendation

It is recommended that the City Council suspend Council Rule 26(a) and pass Draft Ordinance No. 13-251 determining the amount of funds to be raised by ad valorem taxes for the year 2014 for general City expenditures.

CITY ATTORNEY'S FIRST DRAFT 11/04/2013

DRAFT ORDINANCE NO. 13-251

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON determining and fixing the amount of taxes levied, and certifying the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City for the year 2014, for general City budget expenditures.

WHEREAS, by law, the King County Assessor is responsible for determining the assessed valuation of all taxable property situated within the boundaries of the City of Des Moines for the year 2013, and

WHEREAS, the City Council and the City Manager have considered the anticipated budget requirements of the City of Des Moines for the fiscal year 2014, and

WHEREAS, notice of public hearing was provided as required by law, and

WHEREAS, the City Council, after hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Des Moines requires a total levy in an amount not greater than \$3,541,584 in order to discharge the expected expenses and obligations of the City and in its best interest, and

WHEREAS, pursuant to chapter 84.52 RCW, the City Council is required to determine and fix by ordinance the amount of taxes levied, and to certify the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City; now therefore,

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

Sec. 1. Findings. The recitals set forth above are adopted in full as findings of the City Council in support of enactment of this Ordinance.

Sec. 2. The following amount is determined and fixed as the amount of funds to be raised by taxes on the assessed valuation of property within the City for the year 2014 for general City budget expenditures:

Ordinance No. _____
 Page 2 of 3

The sum of not greater than \$3,541,584, which does represent the maximum statutory total tax levy for the fiscal year 2014 in the City of Des Moines.

Sec. 3. The actual amounts levied pursuant to section 1 of this ordinance shall be calculated after the value of state-assessed property (increase in utility value) is provided by King County.

Sec. 4. Upon adoption, the City Clerk shall certify and forward a copy of this ordinance to the Metropolitan King County Council and County Assessor for King County, Washington.

Sec. 5. Severability - Construction.

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

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

Sec. 6. Effective date. This Ordinance shall take effect in full force five (5) days after its passage, approval and publication according to law.

PASSED BY a majority of 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

Ordinance No. _____
Page 3 of 3

ATTEST:

City Clerk

Published: _____

51
PRELIMINARY

LEVY LIMIT WORKSHEET – 2014 Tax Roll

TAXING DISTRICT: City of Des Moines

The following determination of your regular levy limit for 2014 property taxes is provided by the King County Assessor pursuant to RCW 84.55.100.

Annexed to Fire District 39

Estimated Fire rate: 1.50000

Annexed to Library District (Note 1)

Estimated Library rate: 0.50000

Using Limit Factor For District	Calculation of Limit Factor Levy	Using Implicit Price Deflator
4,591,656	Levy basis for calculation: (2009 Statutory) (Note 2)	4,591,656
1.0100	x Limit Factor	1.0314
4,637,573	= Levy	4,735,834
6,904,218	Local new construction	6,904,218
0	+ Increase in utility value (Note 3)	0
6,904,218	= Total new construction	6,904,218
1.60000	x Last year's regular levy rate	1.60000
11,047	= New construction levy	11,047
4,648,620	Total Limit Factor Levy	4,746,881
Annexation Levy		
0	Omitted assessment levy (Note 4)	0
4,648,620	Total Limit Factor Levy + new lid lifts	4,746,881
2,213,490,306	÷ Regular levy assessed value less annexations	2,213,490,306
1.60000	= Annexation rate (cannot exceed statutory maximum rate)	1.60000
0	x Annexation assessed value	0
0	= Annexation Levy	0
Lid lifts, Refunds and Total		
0	+ First year lid lifts	0
4,648,620	+ Limit Factor Levy	4,746,881
4,648,620	= Total RCW 84.55 levy	4,746,881
15,870	+ Relevy for prior year refunds (Note 5)	15,870
4,664,490	= Total RCW 84.55 levy + refunds	4,762,751
	Levy Correction: Year of Error _____ (+or-)	
3,541,584	ALLOWABLE LEVY (Note 6)	3,541,584
Increase Information (Note 7)		
1.60000	Levy rate based on allowable levy	1.60000
3,619,286	Last year's ACTUAL regular levy	3,619,286
-77,702	Dollar increase over last year other than N/C – Annex	-77,702
-2.15%	Percent increase over last year other than N/C – Annex	-2.15%
Calculation of statutory levy		
	Regular levy assessed value (Note 8)	2,213,490,306
	x Maximum statutory rate	1.60000
	= Maximum statutory levy	3,541,584
	+Omitted assessments levy	0
	=Maximum statutory levy	3,541,584
	Limit factor needed for statutory levy	0.0000

ALL YEARS SHOWN ON THIS FORM ARE THE YEARS IN WHICH THE TAX IS PAYABLE.

Please read carefully the notes on the reverse side.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing -
Adoption of Year 2014 Budget

FOR AGENDA OF: November 14, 2013

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

DATE SUBMITTED: November 8, 2013

1. Draft Ordinance No. 13-255 (excluding
APPENDIX A)

CLEARANCES:

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

PPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this public hearing is to open the hearing and take any public testimony that may be available. Due to on going discussions with the City Council, Draft Ordinance no. 13-255 Appendix A is not finalized.

Staff is recommending after any public testimony, the Mayor should close the public hearing testimony portion, and continue City Council discussion and review of the 2014 budget as time allows, and pass Draft Ordinance No. 13-255 in its current or amended form to a second reading for enactment at the December 5, 2013 City Council meeting.

Suggested Motion:

"I move to pass Draft Ordinance No. 13-255 to a second reading for enactment at the December 5, 2013 City Council meeting."

Background

The operating and capital improvement plan budgets have been discussed over the last several months.

Recommendation

It is recommended that the City Council continue discussion of the 2014 budget and pass Draft Ordinance No. 13-255 in its current or amended form to a second reading for enactment at the December 5, 2013 City Council meeting.

CITY ATTORNEY'S FIRST DRAFT 11/14/2013

DRAFT ORDINANCE NO. 13-255

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the final budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2014, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year 2013, as such revenues and expenditures form the basis for development of the budget for fiscal year 2014, approving revenues and expenditures for fiscal year 2014, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2013 budget might be inconsistent.

WHEREAS, the City Manager for the City of Des Moines has prepared and submitted a preliminary budget for the fiscal year ending December 31, 2014 to the City Council and has filed this budget with the Finance Director, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2014 reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2014 appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year 2013, and

WHEREAS, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year 2013 are necessary and in the public's interest, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for November 14, 2013, to take public comment with respect to the proposed 2014 budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the 14th day of November, 2013, and all persons wishing to be heard were heard; now therefore,

ATTACHMENT 1

Ordinance No. _____
Page 2 of 3

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

Sec. 1. The findings set forth in the preamble to this ordinance are hereby adopted and incorporated by reference.

Sec. 2. Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2011 budget might be inconsistent.

Sec. 3. The fund adjustments and transfers proposed by the City Manager for fiscal year 2013, which are incorporated in the preliminary budget for fiscal year 2014, are hereby authorized and approved by the City Council.

Sec. 4. Because the City's budget for fiscal year 2014 relies upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year 2013, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's budget for fiscal year 2013 or any subsequent budget amendments formally approved by the City Council.

Sec. 5. The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached budget for fiscal year 2014.

Sec. 6. The final budget for the City of Des Moines' fiscal year 2014 is hereby adopted and approved in summary form as set forth in the attached Appendix "A", which is by this reference incorporated herein.

Sec 7. Severability - Construction.

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

ATTACHMENT 1

Ordinance No. _____
 Page 3 of 3

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

Sec 8. Effective date. This ordinance shall take effect and be in full force (5) five days after its passage, approval and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 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: _____

ATTACHMENT 1

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Ordinance 13-216
Public Hearing to consider zoning and land use regulations for producers, processors, and retailers of recreational marijuana licensed by the State of Washington

ATTACHMENT:

1. Draft Ordinance No. 13-216
2. RCW 69.50 (relevant sections)
3. WAC 314-55
4. Initiative 502 Vote by Precinct
5. WSLCB Adopted Rules Highlights
6. Potential Areas for Recreational Marijuana Producers, Processors and Retailers
7. Restricted Uses Map
8. Ortho Photos

FOR AGENDA OF: November 14, 2013

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: November 5, 2013

CLEARANCES:

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

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** AT

Purpose and Recommendation

The purpose of this agenda item is to conduct a public hearing for the City Council to consider Draft Ordinance No. 13-216 (Attachment 1) which provides zoning and land use regulations for producers, processors, and retailers of recreational marijuana licensed by the State of Washington pursuant to chapter 69.50 RCW (Attachment 2) and WAC 314-55 (Attachment 3). The City Council may enact Draft Ordinance No. 13-216 by passing the following motions:

MOTIONS:

FIRST MOTION: "I move to suspend Rule 26(a) in order to enact Draft Ordinance 13-216 on first reading.

SECOND MOTION: "I move to enact Draft Ordinance 13-216 adding a new chapter to Title 18 DMMC entitled "State-Licensed Marijuana Producers, Processors, and Retailers," and codifying a new chapter in Title 18 DMMC."

Background

On November 6, 2012, Initiative measure 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensors

by the State of Washington. Attachment 4 shows the vote count by precinct in Des Moines' for Initiative measure 502. Initiative measure 502 calls for the establishment of a regulatory system licensing producers, processors, and retailers of recreational marijuana for adults twenty-one (21) years of age and older; legalizes the possession and private recreational use of marijuana; and requires the Washington State Liquor Control Board (WSLCB) to adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process, and sell marijuana.

The WSLCB adopted its rules pertaining to the licensing of marijuana producers, processors, and retailers on October 16, 2013, which has an effective date of November 16, 2013. The WSLCB will begin accepting applications for license on November 18, 2013 and begin issuing licenses to qualified applicants on December 1, 2013. A summary of the WSLCB Recreational Marijuana Rules is provided as Attachment 5.

The City of Des Moines currently does not have specific zoning regulations pertaining to state-licensed producers, processors, and retailers of recreational marijuana. Draft Ordinance 13-216 identifies the zones where such uses could be permitted pursuant to WAC 314-55. Security, signage/advertising, waste disposal, accessibility, hours of operation, noise, odor, and violations/penalties and related concerns are regulated by WAC 314-55.

The State Environmental Policy Act (SEPA) Responsible Official issued a Determination of Non-Significance on October 16, 2013. The public comment period concluded on October 31, 2013 and no comments were received. The appeal period ends on November 12, 2013.

Discussion

Over the past several months, staff has met with the Public Safety and Transportation (PS&T) Committee to discuss the WSLCB rule making process and obtain guidance and direction regarding where State licensed recreational marijuana producers, processors and retailers could locate within the City of Des Moines in accordance with the WSLCB adopted rules. Attachment 6 shows the locations within the City of Des Moines that potentially meet the siting criteria. To help further understand how the siting criteria was applied, staff developed a series of maps (Attachment 7) that applies the rules identified by the WSLCB where recreational marijuana producers, processors and retailers are not allowed.

Based on information provided, the PS&T Committee directed staff to prepare a draft ordinance that would permit State licensed marijuana producers and processors to locate within the Business Park (B-P) zone located north of South 216th Street, and within the Highway Commercial (H-C) and Community Commercial (C-C) zones generally located along Pacific Highway South, south of Kent-Des Moines Road. State licensed marijuana retailers would be permitted in the Highway Commercial (H-C) and Community Commercial (C-C) zones generally located along Pacific Highway South, south of Kent-Des Moines Road. The PS&T Committee purposely excluded the areas within Pacific Ridge citing the need to improve economic investment and reduce crime in this area.

Attachment 8 provides a series of ortho photos showing specific sites where recreational marijuana producers, processors and retailers could locate based on the areas identified in Attachment 6. Per the WSLCB rules, only those parcels entirely within an area where the use is permitted would be eligible.

Alternatives

The City Council may:

1. Enact the Draft Ordinance No. 13-216 as written.
2. Enact Draft Ordinance No. 13-216 with amendments.
3. Decline to adopt the Draft Ordinance No. 13-216.

Financial Impact

Adoption of Draft Ordinance No. 13-216 would enable new businesses associated with recreational marijuana production, processing and retail sale to locate within the City of Des Moines. These businesses would be licensed by the State and City and would be a new source of tax revenues for Des Moines.

In addition, the type of professional services needed to comply with the recordkeeping obligations associated with these businesses include bookkeeping and accounting, legal assistance, agricultural assistance and technology assistance for implementing the traceability system. Demand for these services may attract new businesses or require services of existing businesses in Des Moines which would benefit the local economy.

Recommendation

Staff recommends the suggested motion.

Concurrence

The Legal, and Planning, Building, and Public Works Departments concur.

CITY ATTORNEY'S FIRST DRAFT 11/6/2013

DRAFT ORDINANCE NO. 13-216

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to state-licensed marijuana producers, processors and retailers as regulated pursuant to chapter 69.50 RCW, adding a new chapter to Title 18 DMMC entitled "State-Licensed Marijuana Producers, Processors, and Retailers," and codifying a new chapter in Title 18 DMMC.

WHEREAS, on November 6, 2012, Initiative Measure 502, relating to marijuana, was passed by the voters of the State of Washington, and

WHEREAS, Initiative Measure 502 calls for the establishment of a regulatory system licensing producers, processors, and retailers of recreational marijuana for adults twenty-one (21) years of age and older, legalizes the possession and private recreational use of marijuana, and requires the Washington State Liquor Control Board (WSLCB) to adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process, and sell marijuana, and

WHEREAS, the WSLC adopted rules pertaining to the licensing of marijuana producers, processors, and retailers, effective November 16, 2013, and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police powers and is specifically authorized by RCW 35A.63.100, and

WHEREAS, the SEPA responsible official issued a determination of non-significance (DNS) on October 16, 2013, with the public appeal period ending November 12, 2013, and the accompanying comment and appeal periods have lapsed, and

WHEREAS, in accordance with the law, the duly noticed public hearing before the City Council was held on November 14, 2013, and all persons wishing to be heard were heard, and

WHEREAS, proper and timely notice was given to the Washington State Department of Commerce of these amendments to Title 18 DMMC as required by chapter 36.70A RCW, and

Draft Ordinance No. 13-216.7
11/6/2013, 2013

Ordinance No. ____
 Page 2 of 5

WHEREAS, the City Council finds that the regulatory licensing requirements established by this Draft Ordinance are necessary for the immediate preservation of the public health and safety; now therefore,

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

Sec. 1. Creation of new chapter. A new chapter is added to Title 18 DMMC.

Sec. 2. Title. This chapter shall be entitled "State-Licensed Marijuana Producers, Processors, and Retailers."

Sec. 3. Application. This chapter applies to state-licensed marijuana producers, processors, and retailers.

Sec. 4. Purpose. The purpose of this chapter is to provide regulations and zoning standards for producers, processors, and retailers of recreational marijuana licensed by the State of Washington, pursuant to chapter 69.50 RCW and rules adopted by the WSLCB.

Sec. 5. Authority. This Title is adopted pursuant to chapter 69.50 RCW and other applicable Washington laws.

Sec. 6. Definitions. The definitions provided in RCW 69.50.101 and WAC 314-55-010 are adopted by reference.

Sec. 7. Recreational marijuana regulations for producers and processors. State-licensed marijuana producers and marijuana processors may locate in the City of Des Moines pursuant to the following restrictions:

(1) Marijuana producers and marijuana processors must comply with all requirements of chapter 69.50 RCW, chapter 314-55 WAC, and other applicable Washington laws.

(2) Persons may conduct business within the City of Des Moines as a state-licensed marijuana producer and/or

Ordinance No. ____
Page 3 of 5

marijuana processor if located within the Business Park (B-P) Zone located north of South 216th Street and south of South 208th Street, and within the Highway Commercial (H-C) and Community Commercial (C-C) Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

(3) Marijuana producers and processors shall not locate on a site or in a building in which non-conforming production or processing uses have been established in any location or zone other than those referenced in subsection 1(b) above.

(4) Marijuana producers and processors shall not operate as an accessory to a primary use or as a home occupation.

Sec. 8. Recreational marijuana regulations for retailers

State-licensed marijuana retailers may locate in the City of Des Moines pursuant to the following restrictions:

(1) Marijuana retailers must comply with all requirements of chapter 69.50 RCW, chapter 314-55 WAC, and other applicable Washington laws.

(2) Persons may conduct business within the City of Des Moines as a state-licensed marijuana retailer if located within the Highway Commercial (H-C) and Community Commercial (C-C) Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

(3) Marijuana retailers shall not locate in a building in which non-conforming retail uses have been established in any location or Zone other than those referenced in subsection 2(b) above.

(4) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.

Sec. 9. Location of a state licensed marijuana producer, processor or retailer. The location of a state-licensed marijuana producer, processor, and retailer shall be as

Ordinance No. ____
 Page 4 of 5

established in WAC 314-55-050 and as required under this chapter. The owner or operator of the state-licensed marijuana producer, processor, and retailer shall have the responsibility to demonstrate that the state-licensed marijuana producer, processor, and retailer meets the location requirements of WAC 314-55-050.

Sec. 10. Codification. Sections 1 through 7 of this Ordinance shall be codified as a new chapter in Title 18 DMMC entitled "State-Licensed Marijuana Producers, Processors, and Retailers."

Sec. 11. Severability - Construction.

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

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

Sec. 12. Effective date. This Ordinance shall take effect and be in full force five (5) days after its passage and approval in accordance with law.

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:

 Assistant City Attorney

ATTEST:

Draft Ordinance No. 13-216.7
 11/6/2013

Ordinance No. _____
Page 5 of 5

City Clerk

Published: _____

Effective Date: _____

RCW 69.50.342**State liquor control board may adopt rules.**

For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the state liquor control board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor control board is empowered to adopt rules regarding the following:

(1) The equipment and management of retail outlets and premises where marijuana is produced or processed, and inspection of the retail outlets and premises;

(2) The books and records to be created and maintained by licensees, the reports to be made thereon to the state liquor control board, and inspection of the books and records;

(3) Methods of producing, processing, and packaging marijuana, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(4) Security requirements for retail outlets and premises where marijuana is produced or processed, and safety protocols for licensees and their employees;

(5) Screening, hiring, training, and supervising employees of licensees;

(6) Retail outlet locations and hours of operation;

(7) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, and marijuana-infused products;

(8) Forms to be used for purposes of chapter 3, Laws of 2013 or the rules adopted to implement and enforce it, the terms and conditions to be contained in licenses issued under chapter 3, Laws of 2013, and the qualifications for receiving a license issued under chapter 3, Laws of 2013, including a criminal history record information check. The state liquor control board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(9) Application, reinstatement, and renewal fees for licenses issued under chapter 3, Laws of 2013, and fees for anything done or permitted to be done under the rules adopted to implement and enforce chapter 3, Laws of 2013;

(10) The manner of giving and serving notices required by chapter 3, Laws of 2013 or rules adopted to implement or enforce it;

(11) Times and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, useable marijuana, and marijuana-infused products within the state;

(12) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, useable marijuana, and marijuana-infused products produced, processed,

sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by chapter 3, Laws of 2013 or the rules adopted to implement and enforce it: PROVIDED, That nothing in chapter 3, Laws of 2013 shall be construed as authorizing the state liquor control board to seize, confiscate, destroy, or donate to law enforcement marijuana, useable marijuana, or marijuana-infused products produced, processed, sold, offered for sale, or possessed in compliance with the Washington state medical use of cannabis act, chapter 69.51A RCW.

[2013 c 3 § 9 (Initiative Measure No. 502, approved November 6, 2012).]

Notes:

Intent -- 2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

RCW 69.50.325**Marijuana producer's license.**

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, and marijuana-infused products in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. The possession, delivery, distribution, and sale of useable marijuana and marijuana-infused products in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell useable marijuana and marijuana-infused products.

[2013 c 3 § 4 (Initiative Measure No. 502, approved November 6, 2012).]

Notes:

Intent -- 2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

RCW 69.50.357**Retail outlets — Rules.**

(1) Retail outlets shall sell no products or services other than useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of useable marijuana or marijuana-infused products.

(2) Licensed marijuana retailers shall not employ persons under twenty-one years of age or allow persons under twenty-one years of age to enter or remain on the premises of a retail outlet.

(3) Licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than a single sign no larger than one thousand six hundred square inches identifying the retail outlet by the licensee's business or trade name.

(4) Licensed marijuana retailers shall not display useable marijuana or marijuana-infused products in a manner that is visible to the general public from a public right-of-way.

(5) No licensed marijuana retailer or employee of a retail outlet shall open or consume, or allow to be opened or consumed, any useable marijuana or marijuana-infused product on the outlet premises.

(6) The state liquor control board shall fine a licensee one thousand dollars for each violation of any subsection of this section. Fines collected under this section must be deposited into the dedicated marijuana fund created under RCW 69.50.530.

[2013 c 3 § 14 (Initiative Measure No. 502, approved November 6, 2012).]

Notes:

Intent -- 2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

RCW 69.50.101**Definitions (as amended by 2012 c 8).**

*** CHANGE IN 2013 *** (SEE 5524-S.SL) ***

*** CHANGE IN 2013 *** (SEE 5416-S.SL) ***

*** CHANGE IN 2013 *** (SEE 2056.SL) ***

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson. (c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208 (a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance: (1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW

18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

[2012 c 8 § 1; 2010 c 177 § 1; 2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

RCW 69.50.101

Definitions (as amended by 2013 c 3).

*** CHANGE IN 2013 *** (SEE

5524-S.SL) ******** CHANGE IN 2013 *** (SEE 5416-S.SL) ********** CHANGE IN 2013 *** (SEE 2056.SL) *****

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

- (i) a controlled substance;
- (ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101((4)) (x)(5), 69.50.204(a) (12) and (34), and 69.50.206 (b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208 (a) the term includes any positional or geometric isomer.

(p) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(q) "Lot number" shall identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, useable marijuana, or marijuana-infused product.

(r) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~((q))~~ (s) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~((r))~~ (t) "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(u) "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(v) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

(w) "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

(x) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in

subparagraphs (1) through (7).

~~((e))~~ (y) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

~~((f))~~ (z) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

~~((u))~~ (aa) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~((v))~~ (bb) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~((w))~~ (cc) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

~~((x))~~ (dd) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

~~((y))~~ (ee) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~((z))~~ (ff) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

(gg) "Secretary" means the secretary of health or the secretary's designee.

~~((aa))~~ (hh) "State," unless the context otherwise requires, means a state of the United States, the

District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

~~((bb))~~ (ii) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(ii) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

~~((cc))~~ (kk) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

(ll) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

[2013 c 3 § 2 (Initiative Measure No. 502, approved November 6, 2012); 2010 c 177 § 1; 2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Notes:

Reviser's note: This section did not amend the most current version of the RCW. It was amended by 2013 c 3 § 2 (Initiative Measure No. 502) without cognizance of its amendment by 2012 c 8 § 1.

Intent -- 2013 c 3 (Initiative Measure No. 502): "The people intend to stop treating adult marijuana use as a crime and try a new approach that:

- (1) Allows law enforcement resources to be focused on violent and property crimes;
- (2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
- (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana." [2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012).]

Severability -- 2003 c 142: See note following RCW 18.53.010.

Effective date -- 1996 c 178: See note following RCW 18.35.110.

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding -- 1990 c 219: See note following RCW 69.41.030.

Effective date -- Severability -- 1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability -- 1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

Chapter 314-55 WAC
MARIJUANA LICENSES, APPLICATION PROCESS, REQUIREMENTS, AND REPORTING

NEW SECTION

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

NEW SECTION

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(7) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(8) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(9) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(13) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(14) "Perimeter" means a property line that encloses an area.

(15) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(16) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(17) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(18) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(19) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(20) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(21) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(22) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

NEW SECTION

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

NEW SECTION

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The

application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

NEW SECTION

WAC 314-55-035 What persons or entities have to qualify for a marijuana license? A marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	• All general partners and their spouses. • All limited partners and spouses.
Limited liability company	• All members and their spouses. • All managers and their spouses.
Privately held corporation	• All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the

lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) **Financiers** - The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business** - The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

NEW SECTION

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

NEW SECTION

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-55-515)	Period of Consideration
Three or more public safety violations;	Violations issued within three years of the date the application is received by the board's licensing and regulation division.
Four or more regulatory violations; or	
One to four, or more license violations.	Violations issued within the last three years the true party(ies) of interest were licensed.

NEW SECTION

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following

is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;
- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

NEW SECTION

WAC 314-55-070 Process if the board denies a marijuana license application. If the board denies a marijuana license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

NEW SECTION

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the

amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - Less than two thousand square feet;
- (b) Tier 2 - Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or
- (b) Indoor grows - Six months of their annual harvest.

NEW SECTION

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?

(1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are re-

ceived and processed, and at subsequent times when the board deems necessary.

(6) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(7) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

NEW SECTION

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

NEW SECTION

WAC 314-55-081 Who can apply for a marijuana retailer license?

(1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds

the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The number of marijuana retail licenses determined by the board can be found on the liquor control board web site at www.liq.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

NEW SECTION

WAC 314-55-082 Insurance requirements. Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The board shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana pro-

cessor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and marijuana-infused products must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana-infused product is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed or a lot or batch of marijuana or marijuana-infused product may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before useable marijuana, or marijuana-infused products are transported from a processor to a retailer.

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana-infused products;

(k) All point of sale records;

- (l) Marijuana excise tax records;
- (m) All samples sent to an independent testing lab and the quality assurance test results;
- (n) All free samples provided to another licensee for purposes of negotiating a sale;
- (o) All samples used for testing for quality by the producer or processor;
- (p) Samples containing usable marijuana provided to retailers;
- (q) Samples provided to the board or their designee for quality assurance compliance checks; and
- (r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all non-flowering marijuana plants physically on the licensed premises. The producer must immediately record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of useable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the useable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

NEW SECTION

WAC 314-55-084 Production of marijuana. Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.

(2) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

(3) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

(4) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

NEW SECTION

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor or retailer shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete transport manifest containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee or an employee of the licensee may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

NEW SECTION

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) Notices regarding persons under twenty-one years of age must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

NEW SECTION

WAC 314-55-087 What are the recordkeeping requirements for marijuana licensees? (1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the liquor control board:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records, to include training;

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing marijuana;

(h) Production and processing records, including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused marijuana products made, including at a minimum, the lots of usable marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing usable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana-infused product, or other item containing marijuana.

(2) If the marijuana licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

NEW SECTION

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each whole-sale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

NEW SECTION

WAC 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late? (1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the board to suspend or revoke a marijuana license.

NEW SECTION

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product amounts to ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana-infused extract for inhalation cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, seven grams of marijuana-infused extract for inhalation, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

NEW SECTION

WAC 314-55-097 Marijuana waste disposal-Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 315-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 315-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, retail facility, or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent

nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

- (i) Food waste;
- (ii) Yard waste;
- (iii) Vegetable based grease or oils; or
- (iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

- (i) Paper waste;
- (ii) Cardboard waste;
- (iii) Plastic waste;
- (iv) Soil; or
- (v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

- (i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.
- (ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

NEW SECTION

WAC 314-55-099 Standardized scales. (1) Marijuana producer and processor licensees must have at least one scale on the licensed premises for the traceability and inventory of products.

(2) The scales and other measuring devices are subject to chapter 19.94 RCW, and must meet the requirements of the most current version of chapters 16-662 and 16-664 WAC.

(3) Licensees must register scales on a business license application with business license services through the department of revenue as required under chapter 19.94 RCW.

NEW SECTION

WAC 314-55-102 Quality assurance testing. (1) A person with financial interest in an accredited third-party testing lab may not have

direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests.

(2) As a condition of accreditation, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(3) As a condition of accreditation, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(4) As a condition of accreditation, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab.

(5) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The general body of required quality assurance tests for marijuana flowers, infused products, and extracts may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(7) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be sold as usable marijuana (see note below)	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (nonsolvent) like kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources	None	None
Extract (nonsolvent) like kief, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources	1. Potency analysis 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (solvent based), made with a CO ₂ extractor, or with a food grade ethanol or glycerin	1. Foreign matter inspection 2. Microbiological screening	Up to 7 grams

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Extract (solvent based) made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade glycerin or propylene glycol	1. Potency analysis	Up to 1 gram
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis	1 unit

(8) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (7) of this section for the purposes of completing required quality assurance tests. Labs meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab.

(9) Labs meeting the board's accreditation requirements are not limited in the amount of useable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(10) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (7) of this section for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(11) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(12) Any useable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" useable marijuana or marijuana-infused product will be allowed to be sold.

(13) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO₂ or solvent based extract. After processing, the CO₂ or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(14) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

NEW SECTION

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.

(3) Processors may use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch and follow all applicable local fire, safety and building codes in processing and the storage of the solvents. The CO₂ must be of at least ninety-nine percent purity.

(4) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(5) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(6) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(7) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

NEW SECTION

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana product the customer is considering purchasing.

(4) usable marijuana and marijuana products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

(7) Marijuana-infused products meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamper-proof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be either returned to the licensed processor who provide the usable marijuana and sample jar or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:

- (a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";
- (b) "There may be health risks associated with consumption of this product";
- (c) "Should not be used by women that are pregnant or breast feeding";
- (d) "For use only by adults twenty-one and older. Keep out of reach of children";
- (e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
- (f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:

- (a) "There may be health risks associated with consumption of this product";
- (b) "This product is infused with marijuana or active compounds of marijuana";
- (c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot number;

(c) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile);

(d) Net weight in ounces and grams or volume as appropriate;

(e) Warnings that state: "This product has intoxicating effects and may be habit forming";

(f) Statement that "This product may be unlawful outside of Washington state";

(g) Date of harvest.

(h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

UBI: 1234567890010001	Lot#: 1423
Date of Harvest: 4-14	
<i>The Best Resins</i>	
Blueberry haze	
16.7 % THC 1.5% CBD	
Warning – This product has Intoxicating effect and may be habit forming	
<u>THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE</u>	
Net weight: 7 grams	

(15) **Labels affixed to the container or package containing marijuana-infused products sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot numbers of all base marijuana used to create the extract;

(c) Batch number;

(d) Date manufactured;

- (e) Best by date;
 - (f) Recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;
 - (g) Net weight in ounces and grams, or volume as appropriate;
 - (h) List of all ingredients and any allergens;
 - (i) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."
 - (j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;
 - (k) Warnings that state: "This product has intoxicating effects and may be habit forming";
 - (l) Statement that "This product may be unlawful outside of Washington state";
 - (m) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.
- (16) **Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:**

(Front of label)

UBI: 1234567890010001	Batch#: 5463
<i>The Best Resins</i> <i>Space cake</i>	
CAUTION: when eaten the effects of this product can be delayed by as much as two hours.	
Net weight: 6oz (128grams)	
<u>THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE</u>	

(Back of label)

Manufactured at: 111 Old Hwy Rd., Mytown, WA on 1/14/14 Best by 2/1/14
INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Strawberries, CONTAINS ALLERGENS: Milk, Wheat,
Serving size: 10 MG of THC This product contains 10 servings and a total of 100 MG of THC
Warning- This product has intoxicating effects and may be habit forming

NEW SECTION

WAC 314-55-120 Ownership changes. (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in the qualifying persons in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application.	Application fee and annual fee for current license privilege.
Change in the qualifying persons for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder.	\$75
Change in the qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager.	\$75

(2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

NEW SECTION

WAC 314-55-125 Change of location. (1) Changing your marijuana license to a new location requires an application, per the process outlined in WAC 314-55-020.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.

NEW SECTION

WAC 314-55-130 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of revenue, business license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

NEW SECTION

WAC 314-55-135 Discontinue marijuana sales. You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

NEW SECTION

WAC 314-55-140 Death or incapacity of a marijuana licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

NEW SECTION

WAC 314-55-145 Are marijuana license fees refundable? When a license is suspended or canceled, or the licensed business is discontinued, the unused portion of the marijuana license fee will not be refunded.

NEW SECTION

WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales? A marijuana retailer licensee may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

NEW SECTION

WAC 314-55-150 What are the forms of acceptable identification? (1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of purchasing marijuana:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the Dis-

trict of Columbia, or "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) The identification document is not acceptable to verify age if expired.

NEW SECTION

WAC 314-55-155 Advertising. (1) **Advertising by retail licensees.** The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising and labels of useable marijuana and marijuana-infused products sold in the state of Washington may not contain any statement, or illustration that:

(a) Is false or misleading;

(b) Promotes over consumption;

(c) Represents the use of marijuana has curative or therapeutic effects;

(d) Depicts a child or other person under legal age to consume marijuana, or includes:

(i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter;

or

(c) On or in a publicly owned or operated property.

(4) Giveaways, coupons, and distribution of branded merchandise are banned.

(5) All advertising must contain the following warnings:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

NEW SECTION

WAC 314-55-160 Objections to marijuana license applications. (1) How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a marijuana license? Per RCW 69.50.331, the board will notify cities, counties, tribal governments, and port authorities of the following types of marijuana applications. In addition to these entities, any person or group may comment in writing to the board regarding an application.

Type of application	Entities the board will/may notify
Applications for an annual marijuana license at a new location.	- Cities and counties in which the premises is located will be notified. - Tribal governments and port authorities in which the premises is located may be notified.
Applications to change the class of an existing annual marijuana license.	
Changes of ownership at existing licensed premises.	- Cities and counties in which the premises is located will be notified. - Tribal governments and port authorities in which the premises is located may be notified.

(2) What will happen if a person or entity objects to a marijuana license application? When deciding whether to issue or deny a marijuana license application, the board will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the board shall not issue a new marijuana license if any of the following are within one thousand feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public

parks, public transit centers, libraries, game arcade where admission is not restricted to persons twenty-one years of age or older.

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a marijuana license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within twenty days of the date the intent to deny notification was mailed.

NEW SECTION

WAC 314-55-165 Objections to marijuana license renewals. (1) How can local cities, counties, tribal governments, or port authorities object to the renewal of a marijuana license?

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a marijuana license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the board for an extension for good cause shown.

(d) This letter must be received by the board at least thirty days before the marijuana license expires. The objection must state specific reasons and facts that show issuance of the marijuana license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The board will give substantial weight to a city, county, tribal govern-

ment, or port authority objection to a marijuana license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the board will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) Board decides to renew the marijuana license:	(b) Board decides to pursue nonrenewal of the marijuana license:
(i) The board will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision. (ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.	(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision. (ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed. (iii) If the licensee requests a hearing, the governmental jurisdiction will be notified. (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.

NEW SECTION

WAC 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation? (1) When an enforcement officer believes that a licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(2) The AVN notice will include:

- (a) A complete narrative description of the violation(s) the officer is charging;
- (b) The date(s) of the violation(s);
- (c) A copy of the law(s) and/or regulation(s) allegedly violated;
- (d) An outline of the licensee's options as outlined in WAC 314-55-510; and
- (e) The recommended penalty.

(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.

(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty.

NEW SECTION

WAC 314-55-506 What is the process once the board summarily suspends a marijuana license? (1) The board may summarily suspend any license after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

NEW SECTION

WAC 314-55-507 How may a licensee challenge the summary suspension of his or her marijuana license? (1) Upon summary suspension of a license by the board pursuant to WAC 314-55-506, an affected licensee may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-55-508 Review of orders on stay. (1) The licensee, or agency, may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

NEW SECTION

WAC 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation? (1) A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee does not respond to the administrative violation notice within twenty days?

(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(3) What are the procedures when a licensee requests a settlement conference?

(a) If the licensee requests a settlement conference, the hearing examiner or designee will contact the licensee to discuss the violation.

(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or designee will prepare a compromise settlement agreement. The hearing examiner or designee will forward the compromise settlement agreement, authorized by both parties, to the board, or designee, for approval.

(i) If the board, or designee, approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board, or designee, does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or designee, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or designee will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations. Examples include: • Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee; • Having an employee training plan that includes annual training on marijuana laws.	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation. Examples include: • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.

NEW SECTION

WAC 314-55-520 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Violations involving minors:	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age WAC 314-55-079	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Allowing a minor to frequent a restricted area. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	
Employee under legal age. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-020(8) WAC 314-55-083(4) WAC 314-55-087 (1)(f)	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or nonorganic chemical or other compound WAC 314-55-105(8)	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized solvents or gases in processing WAC 314-55-104	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. Marijuana sold to an unauthorized source. Sales in excess of transaction limitations. WAC 314-55-095(3)	Cancellation of license Cancellation of license Cancellation of license			

NEW SECTION

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m.	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (3), (4), and (5)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain standardized scale requirements (processor/retailer). WAC 314-55-099	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Retail outlet selling unauthorized products. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

Precinct		No	Yes	
DES 30-0954	No	266		
	Yes		342	
DES 30-1227	No	225		
	Yes		314	
DES 33-0016	No	113		
	Yes		121	
DES 33-0272	No	151		
	Yes		209	
DES 33-0297	No	75		
	Yes		102	
DES 33-0360	No	185		
	Yes		295	
DES 33-0361	No	114		
	Yes		173	
DES 33-0362	No	161		
	Yes		231	
DES 33-0363	No	111		
	Yes		154	
DES 33-0364	No	141		
	Yes		186	
DES 33-0366	No	179		
	Yes		306	
DES 33-0367	No	136		
	Yes		182	
DES 33-0437	No	107		
	Yes		126	
DES 33-0532	No	89		
	Yes		120	
DES 33-0668	No	97		
	Yes		90	
DES 33-0682	No	158		
	Yes		192	
DES 33-0864	No	103		
	Yes		171	
DES 33-0911	No	147		
	Yes		176	
DES 33-1071	No	128		
	Yes		164	
DES 33-1078	No	103		
	Yes		165	
DES 33-1128	No	85		
	Yes		137	
DES 33-1146	No	211		
	Yes		248	
DES 33-2394	No	156		

Precinct		No	Yes	
	Yes		184	
DES 33-2395	No	84		
	Yes		132	
DES 33-2416	No	153		
	Yes		203	
DES 33-2455	No	177		
	Yes		210	
DES 33-2623	No	105		
	Yes		177	
DES 33-2625	No	163		
	Yes		181	
DES 33-2626	No	146		
	Yes		151	
DES 33-2627	No	121		
	Yes		159	
DES 33-2637	No	135		
	Yes		208	
DES 33-2671	No	323		
	Yes		342	
DES 33-2672	No	140		
	Yes		249	
DES 33-2673	No	127		
	Yes		134	
DES 33-2674	No	152		
	Yes		259	
DES 33-2820	No	124		
	Yes		157	
DES 33-3131	No	88		
	Yes		109	
TOTALS		5279	7059	12338
PERCENTAGE		43%	57%	
REGISTERED VOTERS	15982	VOTERS WHO VOTED	12647	



Washington State Liquor Control Board

Adopted Rules Highlights

October 31, 2013

LCB Rulemaking Objective

- Creating a tightly controlled and regulated marijuana market;
- Including strict controls to prevent diversion, illegal sales, and sales to minors; and
- Providing reasonable access to products to mitigate the illicit market.

LCB Role and Responsibility

- Ensuring public safety is the top priority;
- Creating a three-tier regulatory system for marijuana;
- Creating licenses for producers, processors, and retailers;
- Enforcing laws and rules pertaining to licensees; and
- Collecting and distributing taxes.

Timeline

December 6, 2012	Effective date of new law
September 4, 2013	File Supplemental CR 102 with revised proposed rules
October 9, 2013	Public hearing(s) on proposed rules (time and location TBD)
October 16, 2013	Board adopts or rejects proposed rules
November 18, 2013	BLS begins accepting applications for all three licenses
November 20, 2013	WSLCB begins processing applications (30-day window)
December 1, 2013	Deadline for rules to be complete (as mandated by law)
December 19, 2013	30-day window closes for producer, processor and retailer license applications

Proposed Rules Highlights

License Requirements

- **30-day Window**
 - The LCB will open registration for all license types for a 30-calendar-day window (November 20, 2013)
 - LCB may extend the time or reopen application window at its discretion
- **State Residency Requirement**
 - I-502 requires a three month state residency requirement (all license structure types)
- **Background Checks**
 - Personal criminal history completed by applicant. Risk of license forfeiture if incomplete or incorrect.
 - Fingerprinting of all potential licensees
 - Background checks of license applicants and financiers
- **Point System**
 - The LCB will apply a disqualifying point system similar to liquor
 - All applicants must disclose all arrests and/or convictions
 - Non-disclosure of arrests regardless of conviction will result in point accumulation

October 31, 2013

- **License Limits**

- Licensed entity or principals limited to three producer licenses
- Licensed entity or principals limited to three processor licenses
- Licensed entity or principals limited to three retail licenses. Multiple-location licensees not allowed to hold more than 33 percent of the allowed licenses in any county or city.

- **Production Limits**

- The maximum amount of space for marijuana production is limited to two million square feet.
- Applicants must designate on their operating plan the size category of the production premises and the actual square footage in their premises that will be designated as plant canopy. There are three categories:
 - Tier 1: Less than 2,000 square feet;
 - Tier 2: 2,000 square feet to 10,000 square feet;
 - Tier 3: 10,000 square feet to 30,000 square feet.
- The LCB may reduce a licensee's or applicants' square footage designated to plant canopy for the following reasons:
 - If the total amount of square feet for production of all licensees exceeds the two million square feet maximum, the LCB will reduce the allowed square footage by the same percentage.
 - If 50 percent production space used for plant canopy in the licensee's operating plan is not met in the first year of operation, the board may reduce the tier of licensure.
 - If the total amount of square feet of marijuana production exceeds two million square feet, the LCB may reduce all licensees' production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

- **Maximum Allowable Amount on Licensed Location**

- Producer license
 - Outdoor or greenhouse: 125 percent of its year's harvest
 - Indoor: six months of its annual harvest
- Processor license
 - Six months of their average useable marijuana (plant material); and
 - Six months average of their total production (finished product).
- Retailer license
 - Four months of their average inventory

- **Licensed Location: 1'000 foot Measurement**

- Important Note Regarding the 1,000 foot Measurement: The LCB will file an emergency rule on November 6, 2013, that will revise the current language regarding the 1,000' buffer. The language in the emergency rule will state: "The distance shall be measured as the shortest straight line distance from the property line of the licensed premises to the property line of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 and older."

- **Costs and Fees**

- \$250 application fee
- \$1,000 annual renewal fee
- Additional fees for background check and filing for local business license

- **Taxes**

- License applicants must submit a signed attestation that they are current on taxes owed to the Washington State Department of Revenue

October 31, 2013

- **Insurance**

- Licensees are required to carry commercial liability insurance.

Public Safety

- **Producer Structures**

- Rules allow producer operations in secure: indoor and outdoor grows as well as greenhouses

- **Traceability**

- LCB will employ a robust and comprehensive traceability system (software) that will trace product from seed/clone to sale.
 - LCB enforcement can match records to actual product on hand

- **Background Checks**

- Personal criminal history form
 - Fingerprinting of all potential licensees
 - Background checks of licensees and financiers

- **Point System**

- LCB will apply a disqualifying point system similar to liquor (exceptions for possession)

- **Violation Guidelines / Standard Administrative Procedures Act Guidelines**

- \$1,000 criminal penalty for sales to a minor
 - Sets strict tiered system of violation record over a three year period
 - Group 1 public safety:
 - First violation: 10 day suspension or \$2,500
 - Second violation: 30 day suspension
 - Third violation: license cancellation

- **Local Authority Objections**

- Substantial weight will be given to a local authority during the renewal process based upon chronic illegal activity associated with the licensee's operation of the premises.

- **Child Resistant Packaging**

- Specific requirements for marijuana and marijuana-infused products in solid and liquid forms

- **Security and Safeguards**

- Alarm and surveillance video camera requirements (including minimum pixels and lockbox encasement)
 - Strict transportation and record keeping requirements (no third party transport of product)
 - Hours of operation limited to 8:00 a.m. to 12:00 a.m.

- **Advertising Restrictions**

- Law restricts advertising within 1,000 feet of schools, public parks, transit centers, arcades, and other areas where children are present.
 - May not contain statements or illustrations that are false or misleading, promotes overconsumption, represents that it has curative or therapeutic effects, depicts a child or may be appealing to children

October 31, 2013

- All advertising must contain two statements: a: "This product has intoxicating effects and may be habit forming." And, b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."

- **Limits on Retail Stores**

- Total number of retail outlets limited to 334 statewide
- LCB to provide advance notice to local authority
- Per I-502, LCB to determine number of retail outlets per county
 - BOTEK Analysis Corporation provided initial county consumption levels
 - Retail stores allocation proportionate to population and consumption

Consumer Safety

- **Behind the Counter Storage**

- No open containers or handling of product
- Sniff jars with sealed, screened-top lids allowed

- **Strict Packaging and Label Requirements**

- Limited servings and concentration per package
- Lot number
- Warning label
- Net weight
- Concentration of THC
- Usage warnings (specific warning for ingestible foods/liquids about effect delays)
- Upon request
 - Third party lab that tested lot and results
 - All pesticides, herbicides, fungicides found in product

- **Defined Serving Size**

- Defined serving sizes on marijuana-infused product label
 - 10 mg of THC per serving
 - 100 mg of THC per product
 - A single unit of marijuana-infused extract for inhalation cannot exceed one gram

- **Transaction Limits on Concentrates (extracts)**

- A single transaction is limited to seven grams of marijuana-infused extract for inhalation

- **Lab Tested and Approved (monograph)**

- All lots will be tested by independent accredited labs
- Established and uniform testing standards
- Quality assurance testing

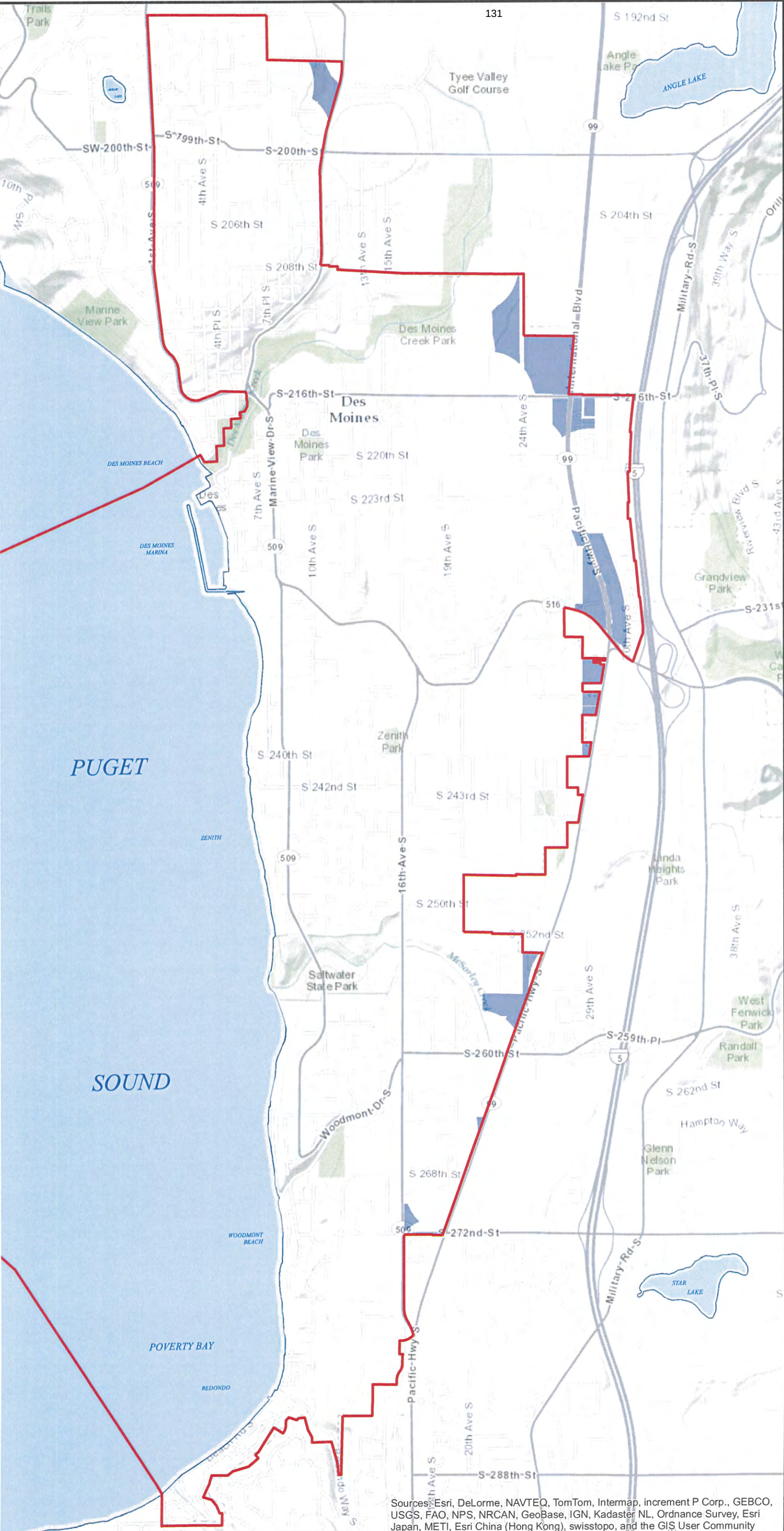
- **Store Signage and Product Warnings**

- No minors allowed in stores
- Required product and usage signs within stores

For more information regarding Initiative 502, please visit the Liquor Control Board website at www.liq.wa.gov.

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October 31, 2013

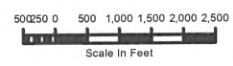


City of Des Moines

Initiative 522 Locations

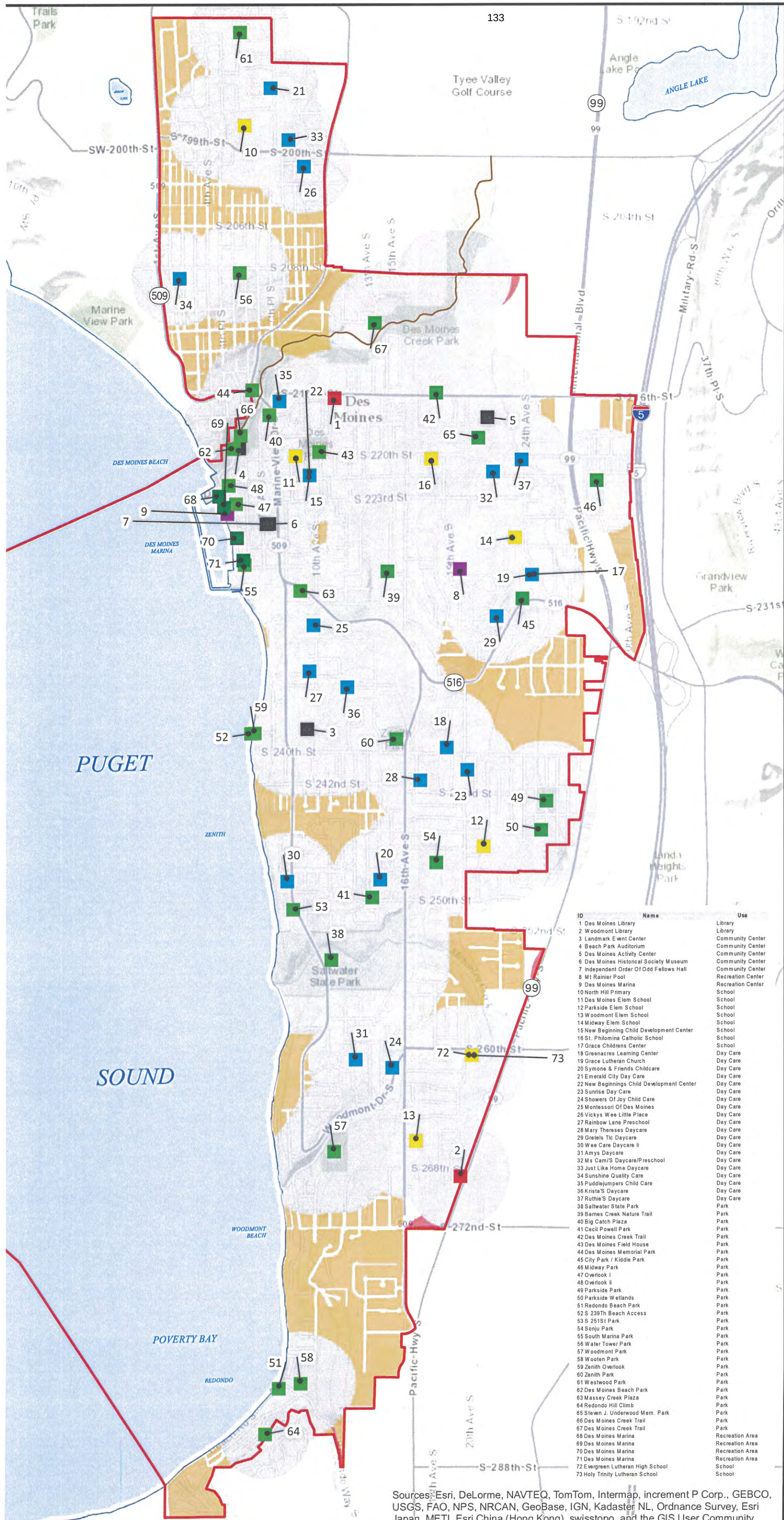
Potential Marijuana Areas

- Legend**
- Des Moines City Limits
 - Potential Marijuana Area



Legal Department
21630 11th Ave S, S
Des Moines, WA 9819
PHONE: (206) 870-3301 * FAX: (206)
WEB: <http://www.desmoineswa>

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community



City of Des Moines

Initiative 522 Locations

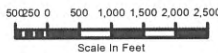
Potential Marijuana Areas

Legend

Restricted Uses

- Community Center
- Day Care
- Library
- Park
- Recreation Area
- Recreation Center
- School
- Des Moines City Limits
- I-522 Buffer
- Residential Zoning
- Outside Juris I-522 Buffer

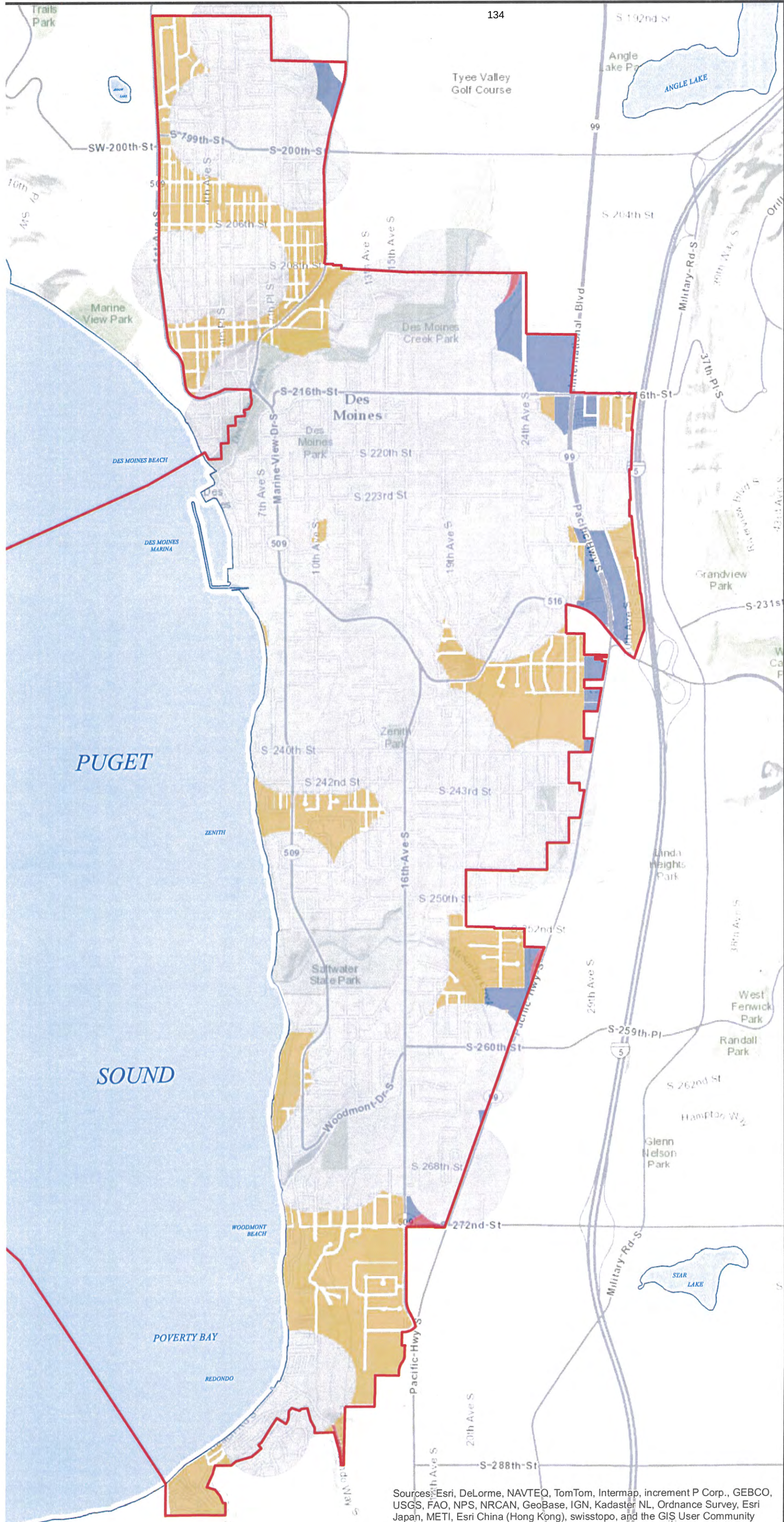
ID	Name	Use
1	Des Moines Library	Library
2	Woodmont Library	Library
3	Landmark Event Center	Community Center
4	Beach Park Auditorium	Community Center
5	Des Moines Activity Center	Community Center
6	Des Moines Historical Society Museum	Community Center
7	Independent Order Of Odd Fellows Hall	Community Center
8	MT Rainier Pool	Recreation Center
9	Des Moines Marina	Recreation Center
10	North Hill Primary	School
11	Des Moines Elem School	School
12	Parkside Elem School	School
13	Woodmont Elem School	School
14	Midway Elem School	School
15	New Beginning Child Development Center	School
16	St. Philomina Catholic School	School
17	Grace Childrens Center	School
18	Greenacres Learning Center	Day Care
19	Grace Lutheran Church	Day Care
20	Symone & Friends Childcare	Day Care
21	Emerald City Day Care	Day Care
22	New Beginnings Child Development Center	Day Care
23	Sunrise Day Care	Day Care
24	Showers Of Joy Child Care	Day Care
25	Montessori Of Des Moines	Day Care
26	Vickys Wee Little Place	Day Care
27	Rainbow Lane Preschool	Day Care
28	Mary Thereses Daycare	Day Care
29	Gretels Tlc Daycare	Day Care
30	Wee Care Daycare II	Day Care
31	Amys Daycare	Day Care
32	Ms Cami'S Daycare/Preschool	Day Care
33	Just Like Home Daycare	Day Care
34	Sunshine Quality Care	Day Care
35	Puddlejumpers Child Care	Day Care
36	Krista'S Daycare	Day Care
37	Ruthie'S Daycare	Day Care
38	Saltwater State Park	Park
39	Barnes Creek Nature Trail	Park
40	Big Catch Plaza	Park
41	Cecil Powell Park	Park
42	Des Moines Creek Trail	Park
43	Des Moines Field House	Park
44	Des Moines Memorial Park	Park
45	City Park / Kiddie Park	Park
46	Midway Park	Park
47	Overlook I	Park
48	Overlook II	Park
49	Parkside Park	Park
50	Parkside Wetlands	Park
51	Redondo Beach Park	Park
52	S 239th Beach Access	Park
53	S 251st Park	Park
54	Sonju Park	Park
55	South Marina Park	Park
56	Water Tower Park	Park
57	Woodmont Park	Park
58	Wooten Park	Park
59	Zenith Overlook	Park
60	Westwood Park	Park
61	Westwood Park	Park
62	Des Moines Beach Park	Park
63	Massey Creek Plaza	Park
64	Redondo Hill Climb	Park
65	Steven J. Underwood Mem. Park	Park
66	Des Moines Creek Trail	Park
67	Des Moines Creek Trail	Park
68	Des Moines Marina	Recreation Area
69	Des Moines Marina	Recreation Area
70	Des Moines Marina	Recreation Area
71	Des Moines Marina	Recreation Area
72	Evergreen Lutheran High School	School
73	Holy Trinity Lutheran School	School



Legal Department

21630 11th Ave S, Suite 100
Des Moines, WA 98198
PHONE: (206) 870-3301 * FAX: (206) 870-3302
WEB: <http://www.desmoineswa.gov>

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community



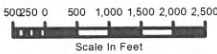
City of Des Moines

Initiative 522 Locations

Potential Marijuana Areas

Legend

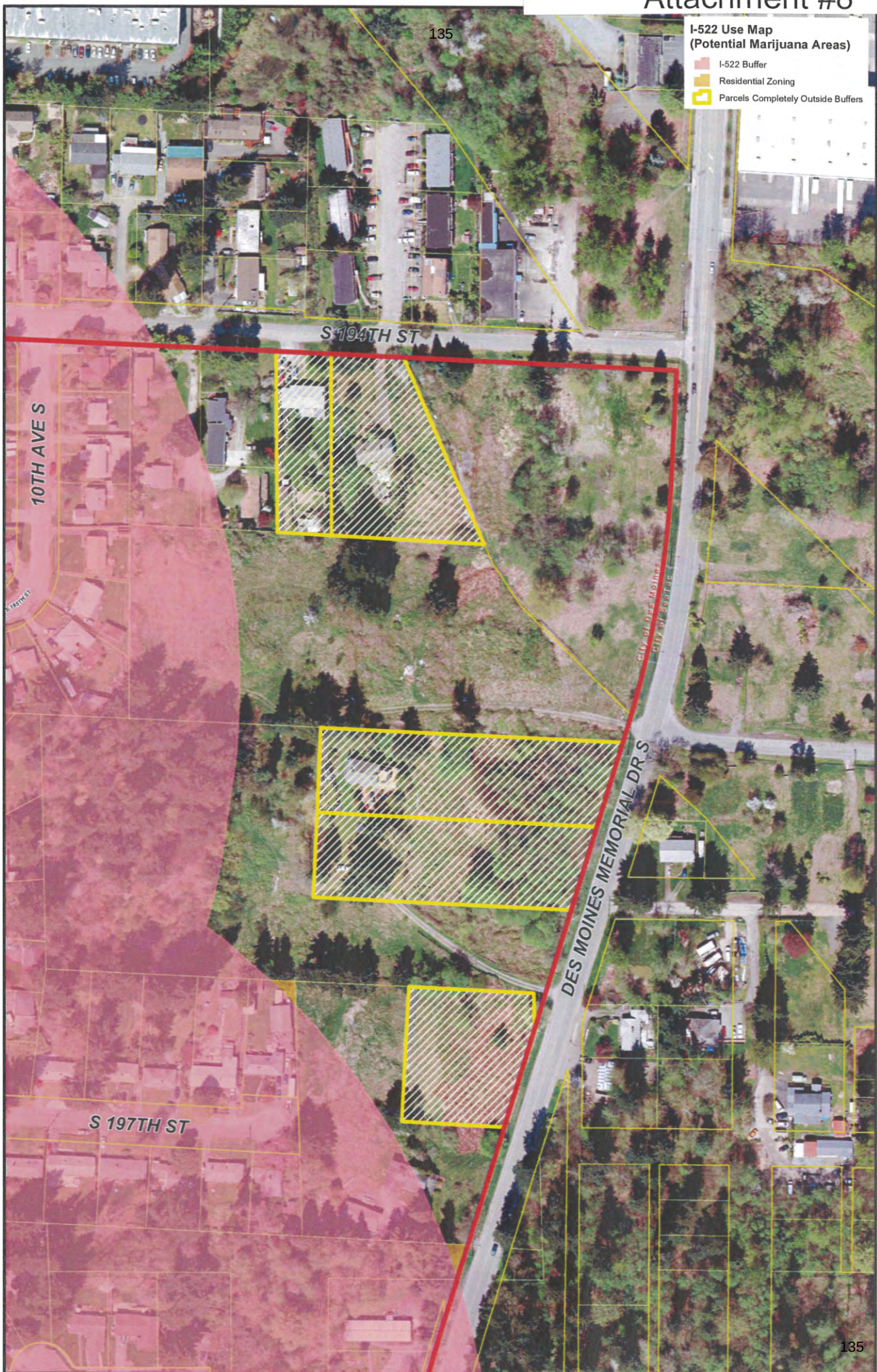
- Des Moines City Limits
- I-522 Buffer
- Residential Zoning
- Outside Juris I-522 Buffer
- Potential Marijuana Area



Legal Department

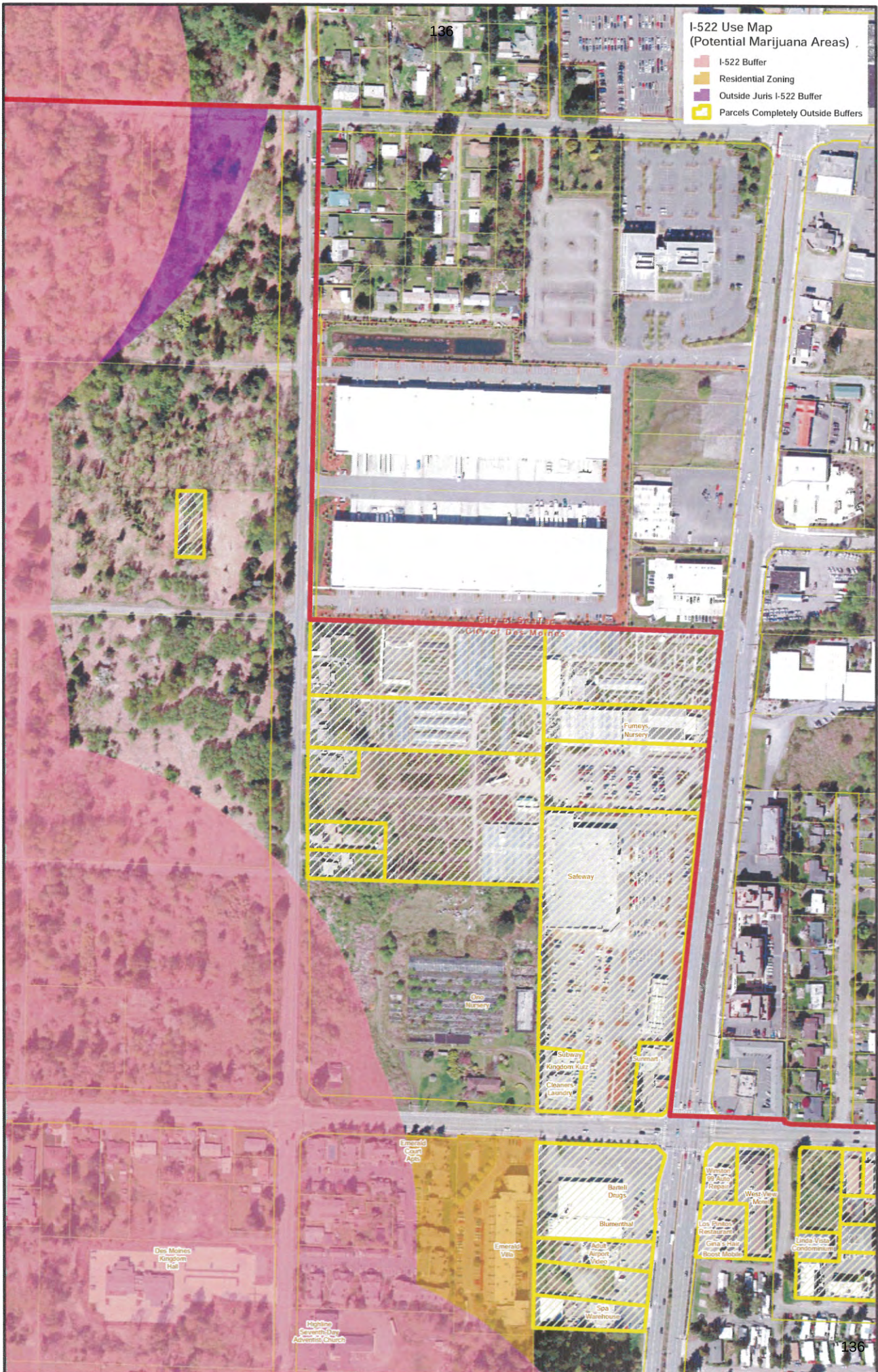
21630 11th Ave S, Suite D
Des Moines, WA 98198-6398
PHONE: (206) 870-3301 * FAX: (206) 870-7626
WEB: <http://www.desmoineswa.gov>

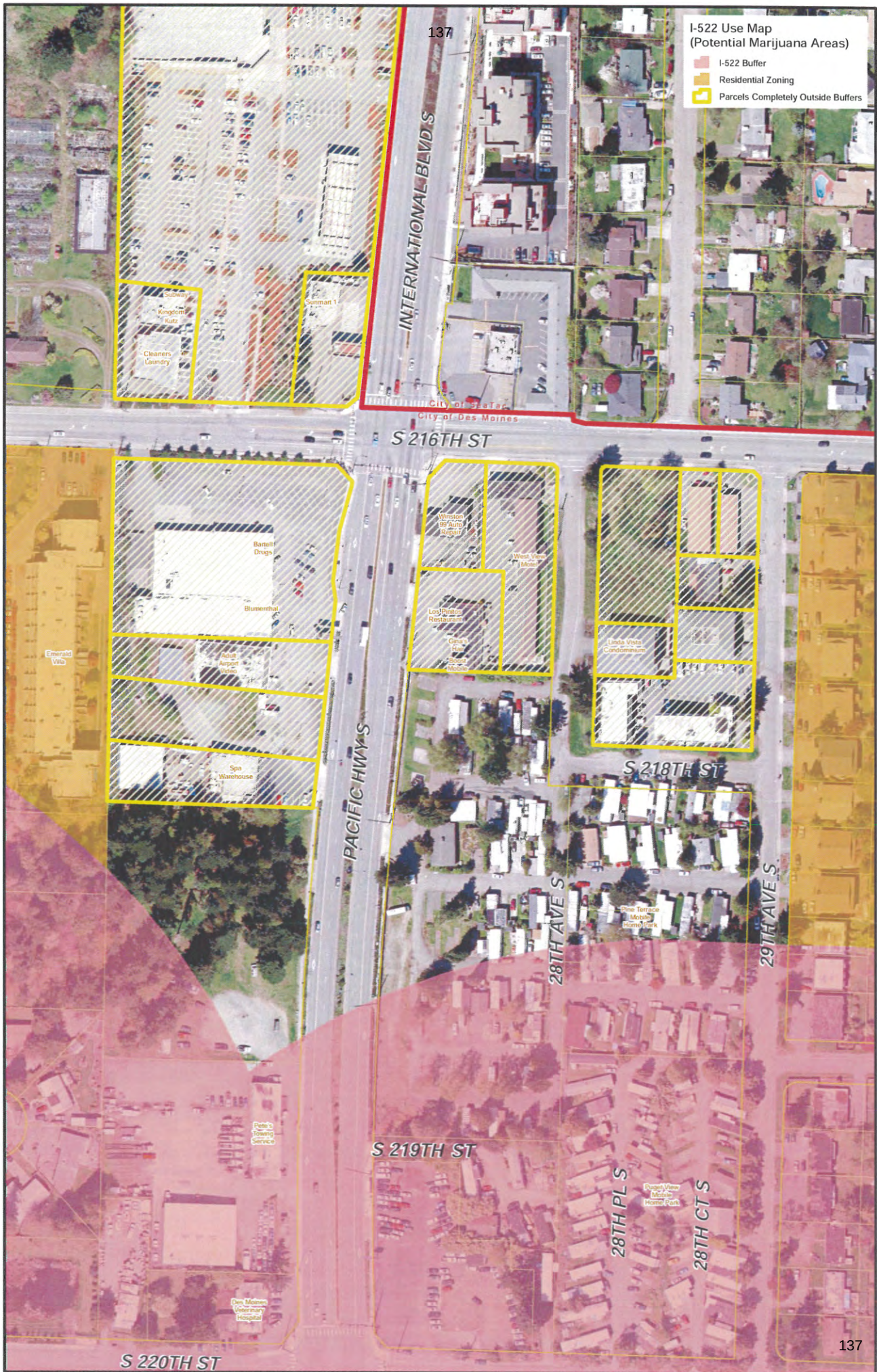
Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, and the GIS User Community

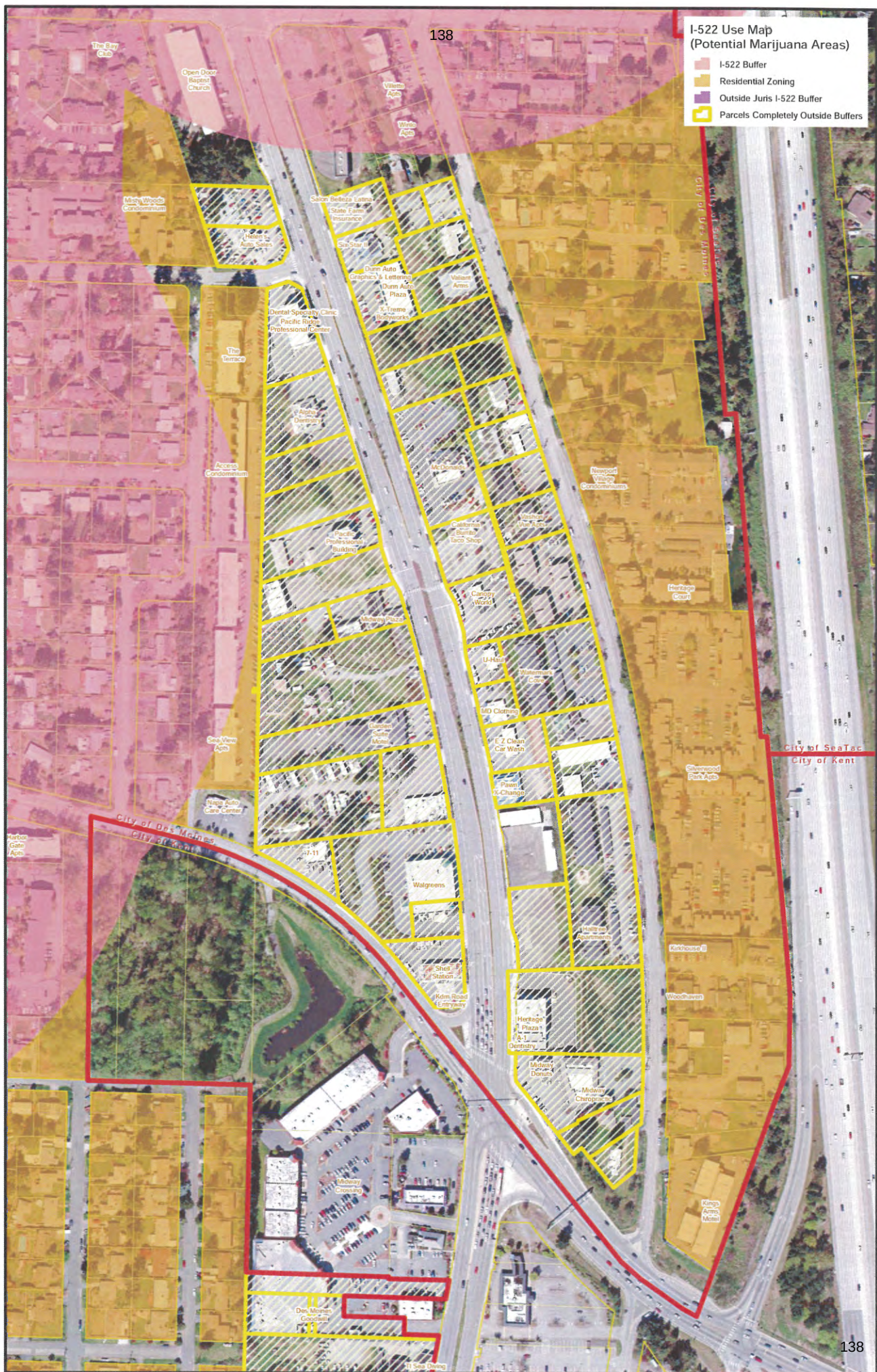


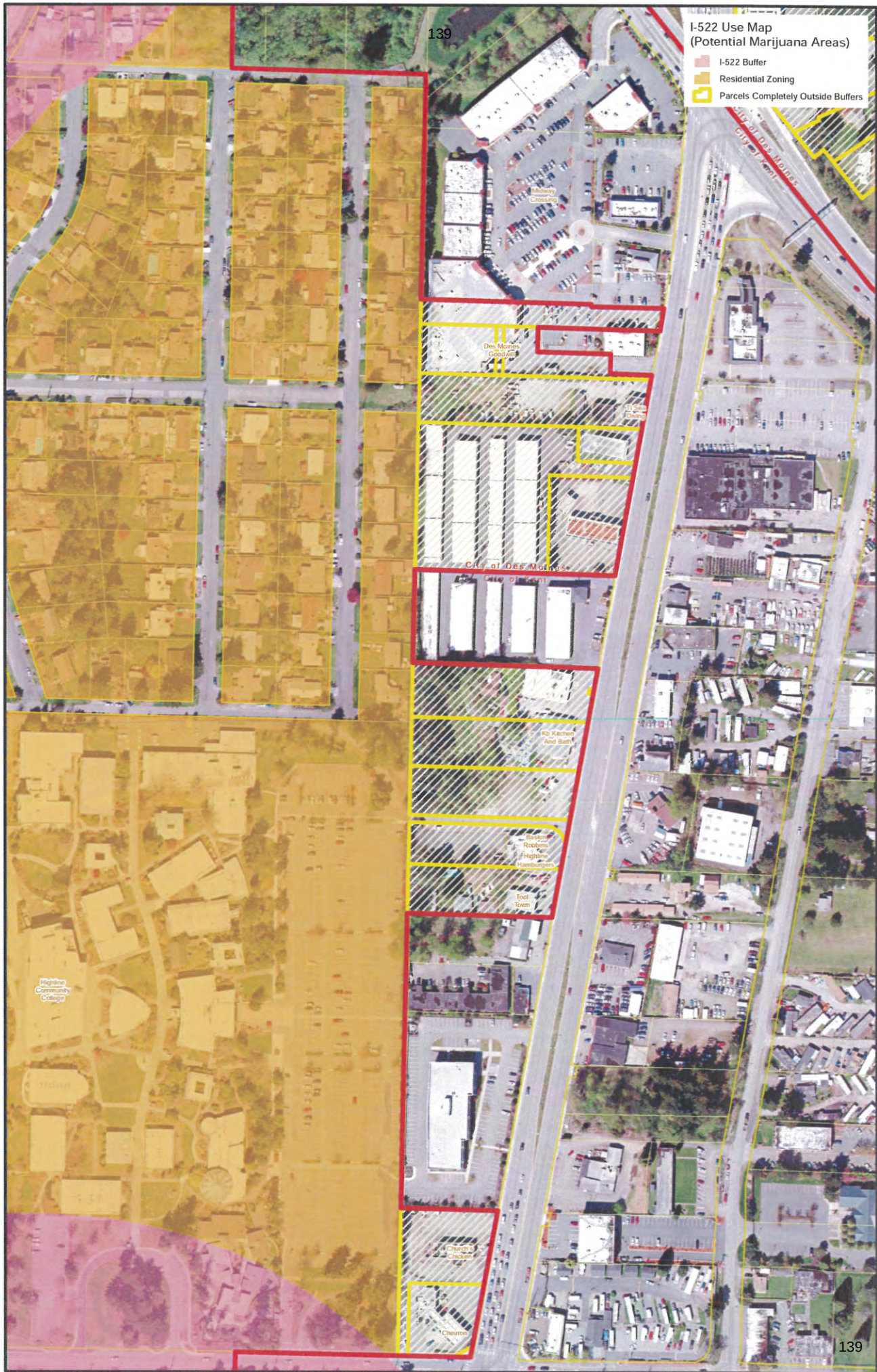
I-522 Use Map (Potential Marijuana Areas)

- I-522 Buffer
- Residential Zoning
- Outside Juris I-522 Buffer
- Parcels Completely Outside Buffers



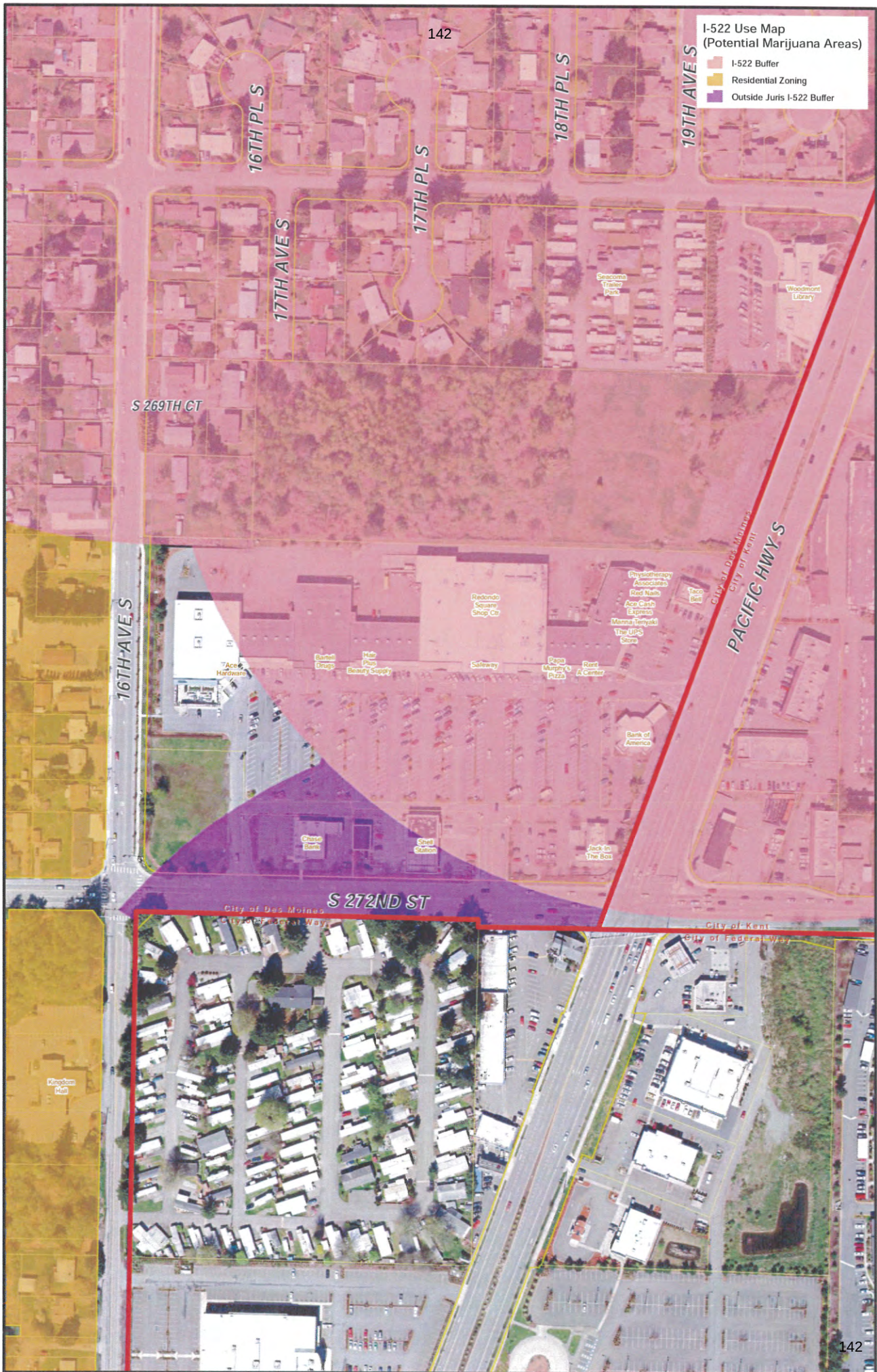












A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendments to Title 18 DMMC.

FOR AGENDA OF: November 14, 2013

ATTACHMENTS:

1. Draft Ordinance No. 13-170
2. Koegen Edwards November 7, 2013
Memorandum Re: Proposed Amendments
Section I and III of Title 18

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: November 7, 2013

CLEARANCES:

☒ Legal PB

☐ Finance NA

☐ Marina NA

☐ Parks, Recreation & Senior Services NA

☒ Planning, Building & Public Works DJB

☐ Police NA

☐ Courts NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to revise Title 18 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. We ask that the Council open the public hearing and allow public comment and then continue the public hearing to November 21.

Suggested Motion

FIRST MOTION: "I move to consider Draft Ordinance No. 13-170.

SECOND MOTION AFTER THOSE WISHING TO BE HEARD HAVE TESTIFIED IS A MOTION to continue the Public Hearing on Draft Ordinance No. 13-170 to November 21, 2013."

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 of these amendments

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 17 will be accurate once all effected titles are enacted.

A public hearing is required for enacting an ordinance which amends Title 18 DMMC commonly referred to as the Zoning Code. Resolution 12-41 setting the public hearing was passed on October 10, 2013.

Discussion

Over the last eight months the staff of the Legal Department, the Planning, Building and Public Works Department, and 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.

Title 18 DMMC is the largest Title in the DMMC and has required considerably more work to update. Given the complexity and length of Title 18, staff is proposing to divide the Title into five separate sections. Staff is proposing to bring these five sections to the Council over three meetings. At tonight's meeting, Sections 1 and 3 are provided. Please see the attached *Proposed Amendments to Section I and III of Title 18* for more detail. On November 21st, Sections 4 and 5 will be provided, and on December 5th, the final section, section 2, will be added. At that time, the reorganization of Title 18 will be complete. Once all five sections have been presented we will ask Council to adopt the Draft Ordinance including all five sections. All five sections will make up the entirety of Title 18, and will have an effective date of January 1, 2014.

The City Clerk has placed working copies on the City of Des Moines website which demonstrate the amendments that have been made using red-lines and strikethroughs. These documents will be updated as each section is completed.

Alternatives

None.

Recommendation or Conclusion

Staff recommends the proposed motion.

CITY ATTORNEY'S FIRST DRAFT 11/08/2013

DRAFT ORDINANCE NO. 13-170

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning; replacing Title 18 DMMC; and repealing the previously codified provisions of Title 18 DMMC and underlying Ordinances.

WHEREAS, Title 18 DMMC, entitled "Zoning," contains many Ordinances that implement the purposes of the Comprehensive Plan, classify uses and regulate such uses, and promote the public health, safety, and general welfare, and

WHEREAS, numerous amendments to Title 18 DMMC since enactment 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 Subdivision Code; now therefore,

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

Title 18 DMMC and all underlying Ordinances are hereby repealed and replaced with the following:

TITLE 18
ZONINGChapter 18.01
General Provisions

Sections:

18.01.010	Title.
18.01.020	Application.
18.01.030	Purpose.
18.01.040	Authority.
18.01.050	Definitions.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 2 of 124

1 18.01.060 Liability
2 18.01.070 Enforcement
3 18.01.080 Unauthorized use of structures or land prohibited
4 18.01.090 Enforcement - Violation - Penalty.
5 18.01.0100 Enforcement by civil penalty - Appeal.
6 18.01.110 Enforcement by criminal penalties.
7 18.01.120 Enforcement by superior court civil action.
8 18.01.130 Severability.
9 18.01.140 Appeal.

10
11 **Sec. 1. 18.01.010. Title.** This Title shall be
12 known as the "Zoning Code." This chapter shall be entitled
13 "General Provisions."
14

15 **Sec. 2. 18.01.020. Application.** This chapter
16 shall be applicable to all chapters contained within Title 18.
17 The provisions adopted by this Title shall be applicable to all
18 zones in the City of Des Moines and all zoning actions, as
19 specified in this Title.
20

21 **Sec. 3. 18.01.030. Purpose.** The purpose of this
22 Title is to implement the purposes of the comprehensive plan and
23 to classify uses and to regulate the location of such uses in
24 such manner as to group as nearly as possible those uses which
25 are mutually compatible, and to protect each such group of uses
26 from the intrusion of incompatible uses which would damage the
27 security and stability of land and improvements and which would
28 also prevent the greatest practical convenience and service to
29 the citizens of Des Moines. It is also recognized that intrusion
30 of uses in one zone upon uses in another lighter zone may also
31 result from effects reaching across boundary lines separating
32 contiguous zones due to noise, smoke, equipment, open air
33 activity, or other features. To further accomplish the goal of
34 compatibility, varying degrees of regulations are established
35 for certain uses in the commercial and business park zones when
36 such uses are contiguous to lighter zones. A further purpose of
37 this Title is to make it possible for Des Moines to efficiently
38 and economically design, install, and operate physical public
39 service facilities in terms of type, size, and capacity,

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 3 of 124

1 including streets, sewers, drains, schools and other public
2 buildings, to adequately and permanently meet the ultimate
3 requirements as determined by a defined intensity and type of
4 land use; to require an orderly arrangement of essential related
5 facilities with particular reference to the movement of people
6 and goods, including the traffic pattern and well-located and
7 well-designed off-street parking areas and, through the medium
8 of the zoning map which is a part of this Title, to establish
9 the geographical location and boundaries of the zones to which
10 the different zones will apply.

11
12 A further purpose of this Title is to establish required minimum
13 lot area, yards and open spaces as a means of providing a
14 suitable environment for living, business and industry, and to
15 maintain reasonable population densities and reasonable
16 intensities of land use, all for the general purpose of
17 conserving public health, safety, morals, convenience, and
18 general welfare.

19
20 **Sec. 4. 18.01.040. Authority.** The Title is created
21 pursuant to the authority set forth in RCW 35A.63 and RCW
22 36.70A, RCW 36.70B, and RCW 36.70C and other applicable laws.

23
24 **Sec. 5. 18.01.050. Definitions.** As used in this
25 Title, unless the context or subject matter clearly requires
26 otherwise, the words or phrases defined in this section shall
27 have the indicated meanings.

28
29 "Accessory" means a use, a building or structure, part of
30 a building or other structure, which is subordinate to and the
31 use of which is incidental to that of the main building,
32 structure, or use on the same lot, including a private garage.
33 If an accessory building is attached to the main building by a
34 common wall or roof, such accessory building shall be considered
35 a part of the main building.

36
37 "Accessory living quarters (ALQ)" means complete
38 independent living facilities including provisions for living,

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 4 of 124

1 sleeping, cooking, and sanitation within a detached structure or
2 within part of the primary dwelling unit.

3
4 "Adult entertainment facilities" means adult cabarets,
5 adult retail uses, adult massage parlors, adult sauna parlors,
6 adult bathhouses, and adult motion picture theaters, which are
7 further more specifically defined below.

8
9 "Adult cabaret" means a commercial establishment which
10 presents go-go dancers, strippers, male or female impersonators,
11 or similar entertainers, and which excludes any person by virtue
12 of minimum age from all or any portion of the premises.

13
14 "Adult retail use" means a retail establishment which,
15 for money or any other form of consideration, either:

16
17 (1) Has as one of its principal purposes to sell,
18 exchange, rent, loan, trade, transfer, and/or provide for
19 viewing or use, off the premises, any adult oriented
20 merchandise; or

21
22 (2) Provides, as its substantial stock in trade, for
23 the sale, exchange, rental, loan, trade, transfer, and/or
24 provide for viewing or use, off the premises, any adult oriented
25 merchandise.

26
27 "Adult massage parlor" means a commercial establishment
28 in which massage or other touching of the human body is provided
29 for a fee and which excludes any person by virtue of minimum age
30 from all or any portion of the premises in which such service is
31 provided.

32
33 "Adult sauna parlor" means a commercial sauna parlor
34 which excludes any person by virtue of minimum age from all or
35 any portion of the premises.

36
37 "Adult bathhouse" means a commercial bathhouse which
38 excludes any person by virtue of minimum age from all or any
39 portion of the premises.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 5 of 124

1
2 "Adult motion picture theater" means an enclosed building
3 used for presenting motion picture films or video tapes or any
4 other visual media distinguished or characterized by an emphasis
5 on, matter depicting, describing, or relating to specified
6 sexual activities or specified anatomical areas, as defined in
7 this zoning code, for observation by patrons therein.

8
9 "Adult oriented merchandise" means any goods, products,
10 commodities, or other wares, including, but not limited to,
11 videos, CDs, DVDs, magazines, books, pamphlets, posters, cards,
12 periodicals or nonclothing novelties, which depict, describe or
13 simulate specified anatomical areas or specified sexual
14 activities.

15
16 "Adult family home" means a regular family abode of a
17 person or persons who are providing personal care, room, and
18 board to more than one but not more than four adults who are not
19 related by blood or marriage to the person or persons providing
20 the services; except that a maximum of six adults may be
21 permitted if the Department of Social and Health Services
22 determines that the home is of adequate size and that the home
23 and the provider are capable of meeting standards and
24 qualifications as provided for in chapter 70.128 RCW as
25 presently constituted or as may be subsequently amended or
26 recodified. For the purpose of this section, an "adult" is a
27 person who has attained the age of 18 years.

28
29 "Antenna system" means the mast and all attached antennas
30 of only a commonly used and commercially available type,
31 excluding parabolic antennas such as microwave dishes, which are
32 used to transmit or receive any portion of the radio spectrum.

33
34 "Apartment" means a room, or a suite of two or more rooms
35 in a multiple dwelling or in any other building not a single-
36 family dwelling or a duplex dwelling occupied or suitable for
37 occupancy as a dwelling unit for one family.

38
Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 6 of 124

1 "Apartment house" means a building or a portion of a
2 building, designed for occupancy by three or more families
3 living separately from each other and containing three or more
4 dwelling units.

5
6 "Aquifer" means a consolidated or unconsolidated ground
7 water-bearing geologic formation or formations that contain
8 enough saturated permeable material to yield significant
9 quantities of water to wells.

10
11 "Artificial grade" means a manmade grade created by means
12 of earthen terraces, berms, fills, or the like, specifically for
13 the purpose of gaining a height advantage or disguising the true
14 height of a structure.

15
16 "Automobile, boat, and trailer sales area" means an open
17 area, other than a street, used for the display, sale, or rental
18 of new or used automobiles, boats, or trailers, and where no
19 repair work is done except minor incidental repair of
20 automobiles, boats, or trailers to be displayed, sold, or rented
21 on the premises.

22
23 "Automobile house trailer" means a vehicle without motor
24 power designed to be drawn by a motor vehicle and to be used for
25 human habitation, including a trailer coach, camper, mobile
26 home, or any self-propelled vehicle having a body designed for
27 or converted to the same use as a house trailer.

28
29 "Automobile service station" means an occupancy which
30 provides for:

31
32 (1) The servicing of motor vehicles and operations
33 incidental thereto limited to the retail sale of petroleum
34 products and automotive accessories; automobile washing by hand;
35 waxing and polishing of automobiles; tire changing and repairing
36 (excluding recapping); battery service, charging, and
37 replacement, excluding repair and rebuilding; radiator cleaning
38 and flushing, excluding steam cleaning and repair; and
39 installation of accessories.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 7 of 124

1
2 (2) The following operations if conducted within a
3 building: lubrication of motor vehicles; brake servicing limited
4 to servicing and replacement of brake cylinders, lines, and
5 brake shoes; wheel balancing; the testing, adjustment, and
6 replacement or servicing of carburetors, coils, condensers,
7 distributor caps, fan belts, filters, generators, points,
8 rotors, sparkplugs, voltage regulators, water and fuel pumps,
9 water hoses, and wiring.

10
11 "Board" means the City Council.
12

13 "Buffer" means either: an area adjacent to hillsides
14 which provides the margin of safety through protection of slope
15 stability, attenuation of surface water flows and landslide,
16 seismic, and erosion hazards reasonably necessary to minimize
17 risk to the public from loss of life, well-being, or property
18 damage resulting from natural disasters; or an area adjacent to
19 a stream or wetland which is an integral part of the stream or
20 wetland ecosystem, providing shade; input of organic debris and
21 coarse sediments; room for variation in stream or wetland
22 boundaries; habitat for wildlife; impeding the volume and rate
23 of runoff; reducing the amount of sediment, nutrients, and toxic
24 materials entering the stream or wetland; and protection from
25 harmful intrusion to protect the public from losses suffered
26 when the functions and values of stream and wetland resources
27 are degraded.
28

29 "Building height" means the vertical distance from the
30 grade to the highest point of the coping of a flat roof, or to
31 the deck line of a mansard roof, or to the height of the highest
32 gable of a pitch or hip roof.
33

34 "Cemetery" means land used or intended to be used for the
35 burial of the human dead and dedicated for cemetery purposes,
36 including columbariums, crematories, mausoleums, and mortuaries
37 when operated in conjunction with and within the boundary of
38 such cemetery.
39

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 8 of 124

1 "Church" means an establishment, the principal purpose of
2 which is religious worship and for which the principal building
3 or other structure contains the sanctuary or principal place of
4 worship, and including accessory uses in the main building or in
5 separate buildings or structures, including Sunday school rooms
6 and religious education classrooms, assembly rooms, kitchen,
7 library room or reading room, recreation hall, a one-family
8 dwelling unit and residences on site for nuns and clergy, but
9 excluding facilities for training of religious orders.

10
11 "Closed record appeal" shall have the meaning given such
12 term in DMMC 18.20.230.

13
14 "Commercial parking lot" means a building site, exclusive
15 of public rights-of-way, or building dedicated to the parking of
16 more than 10 passenger vehicles, serving patrons, occupants,
17 and/or employees of a permitted use(s) not located on the site
18 of the parking facility.

19
20 "Commercial recreational area" means an area operated for
21 profit and devoted to facilities and equipment for recreational
22 purposes, including swimming pools, tennis courts, playgrounds,
23 and other similar uses whether the use of such area is limited
24 to private membership or whether open to the public upon the
25 payment of a fee.

26
27 "Compensation" means the replacement, enhancement, or
28 creation of an undevelopable environmentally critical area
29 equivalent in functions, values, and size to those being altered
30 or lost from development.

31
32 "Conditional use" means a use permitted in one or more
33 zones as defined by this Title but which use because of
34 characteristics peculiar to it, or because of size,
35 technological processes, or type of equipment, or because of the
36 exact location with reference to surroundings, streets, and
37 existing improvements or demands upon public facilities,
38 requires a special degree of control to make such uses
39 consistent with and compatible to other existing or permissible

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 9 of 124

1 uses in the same zone or zones, and to assure that such use
2 shall not be inimical to the public interest.

3
4 "Conditional use permit" means the documented evidence of
5 authority granted by the board of adjustment to locate a
6 conditional use at a particular location.

7 "Conforming building" means:
8

9 (1) In the residential zones, a building which is
10 considered to be a residential building by the building code,
11 and other buildings designed to accommodate uses permitted in
12 these zones and which buildings also conform to the requirements
13 of this Title in the matter of use, height, yards, and area
14 coverage, and which do not contain more than the number of
15 dwelling units prescribed for the zone in which such buildings
16 are located.

17
18 (2) In the commercial zones, a building which is
19 considered under the building code as a building designed to
20 accommodate uses permitted in the commercial zones.

21
22 "Conforming use" means an activity the nature and type of
23 which is permitted in the zone in which the property on which it
24 is established is located.

25
26 "Corner lot" means a lot situated at the intersection of
27 two or more streets, the street frontages of which lot form an
28 angle not greater than 128 degrees, and not less than 45
29 degrees.

30
31 "Court" means any portion of the interior of a lot or
32 building site which is fully or partially surrounded by
33 buildings or other structures and which is not a required yard
34 or open space.

35
36 "Dangerous waste" means those wastes designated in WAC
37 173-303-070 through 173-303-103 as dangerous wastes. "Dangerous
38 waste" also is any discarded, useless, unwanted, or abandoned
39 substances, including but not limited to certain pesticides, or

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 10 of 124

1 any residues or containers of such substances which are disposed
2 of in such a quantity or concentration as to pose a substantial
3 hazard or potential hazard to human health wildlife, or the
4 environment because such wastes or constituents or combinations
5 of such wastes have short-lived, toxic properties that may cause
6 death, injury, or illness or have mutagenic, teratogenic, or
7 carcinogenic properties or are corrosive, explosive, flammable,
8 or may generate pressure through decomposition or other means.
9 Moderate risk waste is not a dangerous waste.

10
11 "Date of decision" means the date the final decision or
12 determination is rendered or issued, unless specified otherwise
13 by law.

14
15 "Development activity" means any work, condition, or
16 activity which requires a permit or approval under Titles 11,
17 12, 14, 16, 17 or 18 DMMC or under chapter 2.22 DMMC.

18
19 "Dwelling" means a building designed exclusively for
20 residential purposes, including one-family, duplex, townhouse,
21 and multiple dwellings, which is constructed in accordance with
22 the City Buildings and Construction Code (Title 14 DMMC) as
23 presently constituted or as may be subsequently amended, but not
24 including hotels or motel units having no kitchens.

25
26 "Dwelling unit" means one or more rooms designed for or
27 occupied by one family for living or sleeping purposes and
28 containing kitchen facilities for use solely by one family. All
29 rooms comprising a dwelling unit shall have access through an
30 interior door to other parts of the dwelling unit. A bachelor
31 apartment constitutes a dwelling unit within the meaning of this
32 Title.

33
34 "Duplex" means a building designed exclusively for
35 occupancy by two families living independently of each other,
36 and containing two dwelling units. Duplexes may contain units
37 that are not at ground level.

38
Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 11 of 124

1 "Elementary school" means any institution of learning
2 giving general academic instruction in the several branches of
3 learning and study required by the education code² of the state
4 to be taught in the public and parochial schools.

5
6 "Enhancement" means the manipulation of the physical,
7 chemical, or biological characteristics of a wetland site to
8 heighten, intensify, or improve specific function(s) or to
9 change the growth stage or composition of the vegetation
10 present. Enhancement is undertaken for specified purposes such
11 as water quality improvement, floodwater retention, or wildlife
12 habitat. Enhancement results in a change in some wetland
13 functions and can lead to a decline in other wetland functions,
14 but does not result in a gain in wetland acres. Activities
15 typically consist of planting vegetation, controlling nonnative
16 or invasive species, modifying site elevations or the proportion
17 of open water to influence hydroperiods, or some combination of
18 these activities.

19
20 "Essential public facilities" means public facilities
21 that are typically difficult to site, such as airports, state
22 education facilities, and state or regional transportation
23 facilities as defined in RCW 47.06.140, state and local
24 correctional facilities, solid waste handling facilities, and
25 in-patient facilities including substance abuse facilities,
26 mental health facilities, group homes, and secure community
27 transition facilities as defined in RCW 71.09.020.

28
29 "Extremely hazardous waste" means those wastes identified
30 in WAC 173-303-070 through 173-303-103 as extremely hazardous
31 wastes. Extremely hazardous waste is also disposal of hazardous
32 waste at any facility in such quantities that would pose a
33 significant danger to man or the environment or any waste that
34 persists in a hazardous form for several years or more at a
35 disposal site and which in its persistent form presents a
36 significant environmental hazard and may be concentrated by
37 living organisms through a food chain or may affect the genetic
38 makeup of man or wildlife or is highly toxic to man or wildlife.

39
Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 12 of 124

1 "Family day care provider" means a licensed day care
2 provider who regularly provides day care for not more than 12
3 children in the provider's home in the family living quarters.
4

5 "First permitted" means the most restricted zone in which
6 a particular use is indicated as a permissible use.
7

8 "Floor area" means a total floor area within the walls of
9 all buildings on a lot or building site, except for the spaces
10 therein devoted to vents, shafts and light courts and except for
11 the area devoted exclusively to loading and unloading facilities
12 and to parking of motor vehicles.
13

14 "Front yard" means an area extending across the full
15 width of the lot and lying between the lot front line and a line
16 drawn parallel thereto, and at a distance therefrom equal to the
17 required front yard depth as prescribed in each zone. Front
18 yards shall be measured by a line at right angles to the lot
19 front line, or by the radial line or radial line extended in the
20 case of a curved lot front line.
21

22 "Group dwelling" means more than two separate buildings,
23 each containing one or more dwelling units.
24

25 "Hazardous substance" means any solid, liquid, gas, or
26 sludge, including any material, substance, product, commodity,
27 or waste, regardless of quantity, that exhibits any
28 characteristics or criteria of hazardous waste as described in
29 WAC 173-303-090, 173-303-101, 173-303-102, or 173-303-103.
30

31 "Hazardous waste" means any dangerous waste or extremely
32 hazardous waste. Moderate risk waste is not a hazardous waste.
33

34 "High intensity land use" means land uses which are
35 associated with high levels of human disturbance or substantial
36 habitat impacts including, but not limited to, medium- and high-
37 density residential (more than one home per five acres),
38 multifamily residential, and commercial and industrial land

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
Page 13 of 124

1 uses. The majority of land uses in Des Moines are considered
2 "high intensity land use."
3

4 "High school" means any institution of learning giving
5 general academic instruction in the several branches of learning
6 and study required by the education code² of the state to be
7 taught in the public and parochial schools.
8

9 "Highest sidewalk grade" means the highest elevation of
10 the sidewalk parallel to the building frontage.
11

12 "Historic Properties Survey: City of Des Moines" means
13 the *Historic Properties Survey: City of Des Moines* as prepared
14 on October 14, 1994 for the City of Des Moines. A copy of this
15 survey is maintained on file in the office of the City Clerk and
16 in the office of the Planning, Building, and Public Works
17 Director and is available for public inspection.
18

19 "Hospital" means an institution specializing in giving
20 clinical, temporary, and emergency services of a medical or
21 surgical nature to human patients and licensed by state law to
22 provide facilities and services in surgery, obstetrics, and
23 general medical practice, as distinguished from treatment of
24 mental and nervous disorders and alcoholics, but not excluding
25 surgical and post-surgical treatment of mental cases.
26

27 "Hotel" means a building in which there are six or more
28 guest rooms where lodging with or without meals is provided for
29 compensation, and where no provision is made for cooking in any
30 individual room or suite, and in which building may be included
31 one apartment for use of the resident manager, but shall not
32 include jails, hospitals, asylums, sanitariums, orphanages,
33 prisons, detention homes, and similar buildings where human
34 beings are housed or detained under legal restraint.
35

36 "Internal lot" means a lot within a planned unit
37 development or townhouse development for the purpose of separate
38 ownership of dwellings or for undivided ownership of common
39 areas and facilities. An internal lot will also be a corner lot,

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 14 of 124

1 interior lot, key lot, reverse corner lot, through lot, or
2 transitional lot.

3
4 "Interior lot" means a lot other than a corner lot or a
5 reverse corner lot.

6
7 "Key lot" means the first lot to the rear of a reverse
8 corner lot and whether or not separated by an alley.

9
10 "Land use intensity." The following definitions of "land
11 use intensity" serve as the basis for establishing wetland
12 buffers and development standards as codified in chapter 18.86
13 DMMC.

14
15 "Lighter uses" means uses involving performance standards
16 having less detrimental effect upon surrounding properties and
17 uses in the same or other zones than do uses first permitted in
18 the next succeeding zone in terms of nuisance, hazard,
19 generation of traffic and volume of traffic, both passenger and
20 freight, and which uses make less demand upon public services
21 such as electricity, gas, sewers, and streets. Where residential
22 uses are involved, the term "lighter uses" means less permitted
23 population density, possibly greater required yards, open
24 spaces, and floor area within dwellings than is permitted or
25 required in the next succeeding residential zone.

26
27 "Lodging house" means a dwelling unit within which not
28 more than five guest rooms are devoted to accommodating not more
29 than 10 persons other than members of the family, but wherein
30 meals for guests shall be neither provided nor permitted. A
31 lodging house containing guest rooms numbering six or more shall
32 be considered a hotel.

33
34 "Lot area" means the total horizontal area within the
35 boundary lines of a lot; provided, that the following areas are
36 not included within the lot area and are not used to compute lot
37 area or the area available for the satisfaction of any required
38 yard:

39
Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 15 of 124

1 (1) The area of a vehicular surface access easement or
2 private street; and
3

4 (2) The area seaward of the ordinary high water mark
5 from Puget Sound; and
6

7 (3) The area of any lake or pond, natural or
8 artificial.
9

10 "Lot depth" means the horizontal length of a straight
11 line drawn from the midpoint of the lot front line and at right
12 angles to such line to its intersection with a line parallel to
13 the lot front line and passing through the midpoint of the lot
14 rear line. In the case of a lot having a curved front line, the
15 lot front line, for purposes of this section shall be deemed to
16 be a line tangent to the curve and parallel to a straight line
17 connecting the points of intersection of the lot side lines of
18 the lot with the lot front line.
19

20 "Lot width" means the horizontal distance between the lot
21 side lines measured at right angles to the line comprising the
22 depth of the lot at a point midway between the lot front line
23 and the lot rear line.
24

25 "Low intensity land use" means land uses which are
26 associated with low levels of human disturbance or low habitat
27 impacts, including, but not limited to, passive recreation and
28 open space land uses.
29

30 "Main building" means the principal building or other
31 structure on a lot or building site designed or used to
32 accommodate the primary use to which the premises are devoted.
33 Where a permissible use involves more than one building or
34 structure designed or used for the primary purpose, as in the
35 case of group houses, each such permissible building or other
36 structure on a lot or building site as defined by this Title
37 shall be construed as comprising a main building or structure.
38

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 16 of 124

1 "Median sidewalk grade" means the average elevation of a
2 sidewalk, abutting a commercial street, as designed by the City,
3 along the public street line; except that for the west side of
4 Marine View Drive South, median sidewalk grade shall be defined
5 as the average elevation of the alley extending mid-block
6 between 7th Avenue South and Marine View Drive South. For
7 properties lying between Marine View Drive South and 8th Avenue
8 South, sidewalk grade shall be established at Marine View Drive
9 grade elevations.

10
11 "Mental hospital" means an institution licensed by state
12 agencies under the provisions of law to offer facilities, care
13 and treatment for cases of mental and nervous disorders, and
14 alcoholics. Establishments limiting services to juveniles below
15 the age of five years, and establishments housing and caring for
16 cases of cerebral palsy are not considered mental hospitals.

17
18 "Middle schools" means any institution of learning giving
19 general academic instruction in the several branches of learning
20 and study required by the education code² of the state to be
21 taught in the public and parochial schools.

22
23 "Mitigation" means the use of any combination or all of
24 the following actions:

25
26 (1) Avoiding impacts to environmentally critical areas
27 by not taking a certain action or parts of an action;

28
29 (2) Minimizing impacts by limiting the degree or
30 magnitude of the action and its implementation, by using
31 appropriate technology, or by taking affirmative steps to avoid
32 or reduce impacts;

33
34 (3) Rectifying the impact by repairing, rehabilitating,
35 or restoring the affected environmentally critical area;

36
37 (4) Reducing or eliminating the impact over time by
38 preservation and maintenance operations during the life of the
39 development proposal;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 17 of 124

1
2 (5) Compensating for the impact by replacing or
3 enhancing environmentally critical areas, or providing
4 substitute resources; and
5

6 (6) Monitoring the impact and taking appropriate
7 corrective measures.
8

9 "Mixed use" means one or more dwelling units and one or
10 more enclosed commercial, business, or retail uses in a building
11 in a commercial zone.
12

13 "Mobile home park" means any area or tract of land used
14 or designed to accommodate two or more automobile house
15 trailers.
16

17 "Moderate intensity land use" means land uses which are
18 associated with moderate levels of human disturbance or
19 substantial habitat impacts including, but not limited to,
20 active recreation.
21

22 "Moderate risk waste" means those wastes defined in WAC
23 173-303-040(55).
24

25 "Motel" means a group of attached or detached buildings
26 containing individual sleeping units where a majority of such
27 units open individually and directly to the outside, and where a
28 garage is attached to or a parking space is conveniently located
29 to each unit, all for the temporary use by automobile tourists
30 or transients, and the word shall include tourist courts, motor
31 courts, automobile courts, automobile camps, and motor lodges. A
32 unit in a motel having kitchen facilities shall constitute a
33 dwelling unit and shall be subject to all of the provisions and
34 requirements of this Title governing dwelling units for the zone
35 in which the establishment is located, but never less than the
36 requirements of the heaviest multiple-dwelling zone.
37

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 18 of 124

1 "Multiple dwelling" means a building designed exclusively
2 for occupancy by three or more families living independently of
3 each other, and containing three or more dwelling units.
4

5 "Nonconforming building" means a building, or portion
6 thereof, which was lawfully erected or altered and maintained
7 but which, because of the application of this Title to it, no
8 longer conforms to the regulations of the zone in which it is
9 located as defined by this Title.
10

11 "Nonconforming use" means a use which was lawfully
12 established and maintained but which, because of the application
13 of this Title to it, no longer conforms to the use regulations
14 of the zone in which it is located as defined by this Title.
15

16 "Nursing home" means facilities for patients who are
17 recovering from an illness, or receiving care for chronic
18 conditions, mental or physical disabilities, terminal illness,
19 alcohol or drug inpatient treatment. Care may include inpatient
20 administration of medicine, preparation of special diets,
21 bedside nursing care, and treatment by a physician or
22 psychiatrist.
23

24 "One-family dwelling" means a detached building designed
25 exclusively for occupancy by one family and containing one
26 dwelling unit.
27

28 "Party of record" means any person, group, association,
29 or corporation that files an appeal, a person granted party
30 status through intervention, the City department making the
31 decision or determination, and the person who files an
32 application for a land use action that is subject to appeal.
33

34 "Pigs, potbellied and miniature" means a type of swine
35 commonly known as the North American, Vietnamese, Chinese, or
36 Asian potbellied pig (*Sus scrofa bittatus*) that is no more than
37 22 inches in height at the shoulder and no more than 150 pounds
38 in weight.
39

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 19 of 124

1 "Principal use" means the primary or predominant use to
2 which the property is or may be devoted, and to which all other
3 uses on the premises are accessory.
4

5 "Private boathouse" means an accessory building, or
6 portion of building, which provides shelter and enclosure for a
7 boat or boats owned and operated only by the occupants of the
8 premises.
9

10 "Private parking area" means an open area, other than a
11 street, alley, or other public property, limited to the parking
12 of automobiles of occupants or employees of a dwelling, hotel,
13 motel, apartment hotel, apartment house, boarding house, or
14 lodging house to which these facilities are appurtenant.
15

16 "Private solid waste container" means a solid waste
17 container that is either privately owned or privately used and
18 maintained for the purpose of waste reduction or providing
19 health and sanitation support for a private facility or
20 organization.
21

22 "Professional offices" means offices maintained and used
23 as a place of business conducted by persons engaged in the
24 healing arts for human beings, such as doctors and dentists (but
25 wherein no overnight care for patients is given), and by
26 engineers, attorneys, realtors, architects, accountants, and
27 other persons providing services utilizing training in and
28 knowledge of the mental discipline as distinguished from
29 training in occupations requiring mere skill or manual dexterity
30 or the handling of commodities.
31

32 "Public hearing" means a hearing, conducted by either the
33 Hearing Examiner or the City Council, that creates a record
34 through testimony and the submission of evidence and information
35 under procedures prescribed by law. An open record public
36 hearing held prior to a decision on a proposed land use action
37 is to be known as an "open record pre-decision hearing." An open
38 record hearing may be held on an appeal, to be known as an "open

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 20 of 124

1 record appeal hearing" if no open record pre-decision hearing
2 has been held on the land use action.

3
4 "Public parking area" means an open area other than a
5 street, alley, or private parking area as defined in this Title,
6 whether privately or publicly owned, which area is used for the
7 parking of more than four automobiles.

8
9 "Public solid waste container" means a solid waste
10 container placed for the purpose of providing a receptacle for
11 public use to prevent littering, promote health and sanitation
12 of the general public, and/or promote waste reduction on
13 publicly owned and operated facilities, properties, or rights-
14 of-way, when such facilities or properties are generally open to
15 the public and used for public purposes. Without limitation,
16 such public facilities shall include schools, parks, marinas,
17 public buildings, and the like, but shall not include public
18 facilities that are not generally open to the public.

19
20 "Public utility" means a private business organization
21 such as a public service corporation performing some public
22 service and subject to special governmental regulations, or a
23 governmental agency performing similar public services, the
24 services by either of which are paid for directly by the
25 recipients thereof. Such services shall include, but are not
26 limited to, water supply, electric power, gas, and
27 transportation for persons and freight.

28
29 "Public utility distribution" means the method or mode by
30 which a private business organization or governmental agency
31 performing some public service, such as, but not limited to,
32 water supply, electric power, gas, sewer, or transportation,
33 delivers or spreads those services over an area and to
34 individual customers.

35
36 "Public utility facilities" means a building or complex
37 that facilitates an action or process associated with a public
38 utility which can be a private business or governmental agency

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 21 of 124

1 performing some public service, such as, but not limited to,
2 water supply, electric power, gas, sewer, or transportation.

3
4 "Public trailer camp" means any area or tract of land
5 used or designed to accommodate two or more automobile house
6 trailers.

7
8 "Rear line of the required front yard" means a line
9 parallel to the lot front line and at a distance therefrom equal
10 to the depth of the required front yard, and extending across
11 the full width of the lot.

12
13 "Reclassification of property" means a change in zone
14 boundaries upon the zoning map, which map is part of this Title
15 when adopted in the manner prescribed by law.

16
17 "Restoration" means the return of an environmentally
18 critical area to a state in which its functions, values, and
19 size approach or exceed its unaltered state as closely as
20 possible.

21
22 "Retirement housing" means a building or complex of
23 buildings, exclusively designed for and occupied by households
24 having at least one person 62 years of age or older, which
25 provides common facilities such as but not limited to dining and
26 recreation. Some or all of the dwellings may contain kitchens.

27
28 "Required open space" means a portion of the area of a
29 lot or building site, other than required yards, which area is
30 required by this Title, as set forth in the different zones
31 contained in this Title, to be maintained between buildings,
32 between wings of a building, and between buildings and any
33 portion of a property boundary line not contiguous to a required
34 front or side yard. Such open spaces, as in the case of required
35 yards, are required to be free and clear of buildings and
36 structures and to remain open and unobstructed from the ground
37 to the sky.

38

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 22 of 124

1 "Reverse corner lot" means a corner lot the side street
2 line of which is substantially a continuation of the lot front
3 line of the lot upon which the rear of the corner lot abuts.
4

5 "Sanitarium" means a health station or retreat or other
6 place where resident patients are kept, and which specializes in
7 giving clinical, temporary, and emergency services of a medical
8 or surgical nature to human patients and licensed by state
9 agencies under provisions of law to provide facilities and
10 services in surgery, obstetrics, and general medical practice as
11 distinguished from treatment of mental and nervous disorders and
12 alcoholics, but not excluding surgical and postsurgical
13 treatment of mental cases.
14

15 "School" means any institution of learning giving general
16 academic instruction in the several branches of learning and
17 study required by the education code² of the state to be taught
18 in the public and parochial schools.
19

20 "Shorelines of the state" means lakes, rivers, ponds,
21 streams, inland waters, underground waters, salt waters, and all
22 other surface waters and watercourses within the jurisdiction of
23 the state of Washington, as classified in chapter 90.58 RCW.
24

25 "Side yard" means an open area measured from the lot side
26 line toward the center of the lot and extending from the rear
27 line of the required front yard, or from the lot front line if
28 there is no required front yard, toward the lot rear line to a
29 point measuring two-thirds of the depth of the lot, except that
30 on the side street side of corner lots and reverse corner lots
31 the required side yard shall extend to the rear line of the lot.
32 The width of the side yard shall be measured horizontally from,
33 and be parallel to the lot side line from which it is measured.
34

35 "Slope" means an inclined ground surface, the inclination
36 of which is expressed as a ratio (percentage) of vertical
37 distance to horizontal distance by the following formula:
38

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 23 of 124

$$\frac{\text{vertical distance}}{\text{horizontal distance}} \times 100 = \% \text{ slope}$$

Another method of measuring the inclination of the land surface is by measuring the angle, expressed in degrees, of the surface above a horizontal plane. The following chart shows the equivalents between these two methods of measurement for several slopes:

Percent Slope	Angle of Inclination
8.7	5.0°
15.0	8.5°
25.0	14.0°
30.0	16.7°
40.0	21.8°
50.0	26.6°
100.0	45.0°

"Small animal hospital or clinic" means an establishment in which veterinary medical services, clipping, bathing, and similar services are rendered to dogs, cats, and other small animals and domestic pets, but not including kennels.

"Solid waste container" means a garbage can, dumpster, or other receptacle used for disposal and/or storage of trash, rubbish, garbage, junk, scrap, debris, refuse, recycling, yard waste, and other discarded materials.

"Specified anatomical areas" means:

(1) Less than completely and opaquely covered human genitals, anus, pubic region, buttock, or female breast below a point immediately above the top of the areola; or

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 24 of 124

1 (2) Human male genitals in a discernibly turgid state,
2 even if completely and opaquely covered.

3
4 "Specified sexual activities" means any of the following:

5
6 (1) Human genitals in a state of sexual stimulation or
7 arousal;

8
9 (2) Acts of human masturbation, sexual intercourse,
10 sodomy, oral copulation, or bestiality;

11
12 (3) Fondling or other erotic touching of human
13 genitals, pubic region, buttocks, or female breasts, whether
14 clothed or unclothed, of oneself or of one person by another; or

15
16 (4) Excretory functions as part of or in connection
17 with any of the activities set forth in this section.

18
19 "Stable" means a detached building in which horses or
20 other beasts of burden owned by the occupants of the premises
21 are kept, and in which no such animals are kept for hire,
22 remuneration, or sale.

23
24 "Structural alterations" means any change in the
25 supporting members of a building or structure, such as
26 foundations, bearing walls, columns, beams, floor or roof
27 joists, girders or rafters, or changes in the exterior
28 dimensions of the building or structure, or increase in floor
29 space.

30
31 "Substantial change" means modification of the scope,
32 use, or other attribute of a pending land use action that
33 results in, or may result in, significant differences in the
34 type or degree of impact(s), as determined by the Planning,
35 Building, and Public Works Director.

36
37 "Through lot" means a lot having frontage on two streets,
38 including a lot at the intersection of two streets when the
39 street sides of such lot form an internal angle of less than 45

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 25 of 124

1 degrees. Corner lots and reverse corner lots as defined in this
2 section are not through lots.

3
4 "Townhouse development" means two or more lots approved
5 through the subdivision or short subdivision process for
6 townhouse dwellings.

7
8 "Townhouse dwelling" means one dwelling unit on an
9 internal lot within a townhouse development designed exclusively
10 for occupancy by one family. A townhouse dwelling is located at
11 an internal lot line and attached to one or more other townhouse
12 dwellings. The first floor of a townhouse dwelling is at or near
13 ground level. A townhouse dwelling occupies the building area
14 from ground level to the roof with no townhouse dwelling located
15 above or below another townhouse dwelling.

16
17 "Trailer court" means any area or tract of land used or
18 designed to accommodate two or more automobile house trailers.

19
20 "Trailer park" means any area or tract of land used or
21 designed to accommodate two or more automobile house trailers.

22
23 "Transitional lot" means a residentially zoned lot a side
24 line of which forms a common boundary with contiguous property
25 zoned for either a higher density residential use or commercial
26 or industrial uses.

27
28 "Unlisted uses" means uses which are not specifically
29 named as permitted in any zone contained within this Title.

30
31 "Use" means the nature of the occupancy, the type of
32 activity, or the character and form of improvements to which
33 land is devoted or may be devoted.

34
35 "Variance" means an adjustment in the application of the
36 specific regulations of this Title to a particular piece of
37 property which property, because of special circumstances
38 applicable to it, is deprived of privileges commonly enjoyed by

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 26 of 124

1 other properties in the same vicinity and zone and which
2 adjustment remedies disparity in privileges.

3
4 "Vehicle" as used in this Title, means all
5 instrumentalities capable of movement by means of circular
6 wheels, skids, or runners of any kind, along roadways or paths
7 or other ways of any kind, specifically including, but not
8 limited to, all forms of automotive vehicles, buses, trucks,
9 cars and vans, all forms of trailers or mobile homes of any size
10 whether capable of supplying their own motive power or not,
11 without regard to whether the primary purpose of which
12 instrumentality is or is not the conveyance of persons or
13 objects, and specifically including all such automobiles, buses,
14 trucks, cars, vans, trailers, and mobile homes even though they
15 may be at any time immobilized in any way and for any period of
16 time of whatever duration.

17
18 "Zone" means an area accurately defined as to boundaries
19 and location on an official map and within which area only
20 certain types of land uses are permitted, and within which other
21 types of land uses are excluded, as set forth in this Title.

22
23 **Sec. 6. 18.01.0.060. Liability.** It is the
24 specific intent of this Title and procedures adopted under this
25 Title to place the obligation of complying with the requirements
26 of this chapter upon the permittee, and no provision is intended
27 to impose any duty upon the City, or any of its officers,
28 employees, or agents. Nothing contained in this Title is
29 intended to be or shall be construed to create or form the
30 basis for liability on the part of the City, or its officers,
31 employees, or agents, for any injury or damage resulting from
32 the failure of the permittee to comply with the provisions of
33 this Title, or by reason or in consequence of any act or
34 omission in connection with the implementation or enforcement of
35 this Title or any procedures adopted under this Title by the
36 City, its officers, employees, or agents.

37
38 **Sec. 7. 18.01.0070. Enforcement.** It shall be the
39 duty of the City Manager or the City Manager's designee to

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 27 of 124

1 enforce all provisions of this Title; provided, however, the
 2 City Manager or the City Manager's designee is authorized to
 3 delegate such authority by written administrative order.

4
 5 **Sec. 8. 18.01.0080. Unauthorized use of structures or**
 6 **land prohibited.** It shall be a violation of the City Zoning
 7 Code (hereinafter "Code") for any person to use or cause to be
 8 used any structure or land in a manner not specifically
 9 authorized by the Code.

10
 11 **Sec. 9. 18.01.090. Enforcement - Violation -**
 12 **Penalty.**

13
 14 (1) Violation. No person shall violate or fail to
 15 comply with the provisions of this Title.

16
 17 (2) Civil Infraction. A violation or a failure to
 18 comply with the provisions of this Title is a civil infraction
 19 and a violator may be penalized as is more specifically set
 20 forth in chapter 1.24 Civil Infractions.

21
 22 (3) Civil Violation and Penalty. A violation or a
 23 failure to comply with the provisions of this Title is further a
 24 civil violation and may be penalized and or abated as is set
 25 forth in chapter 1.28 Civil Violations and Penalties.

26
 27 (4) Criminal Penalty. In addition to or as an
 28 alternative to any other penalty provided in this Title or by
 29 law, a person convicted of a violation of this Title is guilty
 30 of a gross misdemeanor. Upon conviction a person may also be
 31 ordered to abate, discontinue or correct a violation of this
 32 Title.

33
 34 (5) Superior Court - Civil Action. In addition to or
 35 an alternative to any other penalty provided in this Title or by
 36 law, a violation or a failure to comply with the provisions of
 37 this Title may be enforced by a civil action filed in King
 38 County Superior Court in any manner allowed by law.

39
 Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 28 of 124

(6) Violation of Title 18 - Enforcement by Civil Penalty. In addition to or as an alternative to any other penalty provided in this Title or by law, a violation or a failure to comply with the provisions of this Title may be enforced as is set forth in sections 18.01.100 - 18.01.120 below.

Sec. 10. 18.01.100. Enforcement by civil penalty - Appeal.

(1) Based on a citizen complaint or at the direction of the City Manager or the City Manager's designee or the City Council, the Planning, Building, and Public Works Director shall investigate any structure or use that is apparently in violation of this Title, and if it is determined that a violation exists, the Planning, Building, and Public Works Director shall have a notice of violation served upon the owner, tenant, or other person responsible for the condition.

(2) The notice shall be served by personal service, registered mail, or certified mail with return receipt requested addressed to the last known address of the owner, tenant, or other person responsible.

The notice of violation shall be posted at a conspicuous place on the property. The notice shall state separately each violation, contain a reasonable time for compliance, describe the civil penalties for failure to comply, and the appeal procedures.

(3) When calculating a reasonable time for compliance, the Planning, Building, and Public Works Director shall take into consideration the following criteria:

- (a) Type and degree of violation;
- (b) Intent to comply if intent has been expressed;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 29 of 124

1 (c) Procedural requirements for obtaining a
2 permit to carry out corrective action;
3

4 (d) Complexity of corrective action;
5

6 (e) Any other circumstances beyond the control of
7 the responsible party.
8

9 (4) The Planning, Building, and Public Works Director
10 may extend the date of compliance upon the receipt of a written
11 request from the responsible person prior to the date of
12 compliance.
13

14 (5) Any person affected by a notice of violation may
15 file a written appeal stating in what respects the decision of
16 the Planning, Building, and Public Works Director is erroneous
17 and the specific grounds for reversal or modification of the
18 order. The appeal with the required filing fee shall be filed
19 with the City Clerk prior to 4:30 p.m. on the compliance date.
20 In the absence of a timely appeal, the findings of the Planning,
21 Building, and Public Works Director contained in the notice of
22 violation shall be deemed true and final.
23

24 (6) Jurisdiction is granted to the Hearing Examiner to
25 hear and determine such appeals in accordance with the Hearing
26 Examiner Code. The Hearing Examiner may affirm, reverse, or
27 modify the decision of the Planning, Building, and Public Works
28 Director; provided, that the standard of review specified by
29 DMMC 18.20.230 shall apply.
30

31 (7) In addition to any other sanction or remedial
32 procedure that may be available, any person failing to comply
33 with a final order of the Planning, Building, and Public Works
34 Director, or, in the event of an appeal, the Hearing Examiner or
35 City Council, shall be subject to a cumulative penalty or
36 forfeiture in the amount of \$25.00 per day for each violation
37 from the date set for compliance in the final order until the
38 order is complied with; provided, however, the rate of daily
39 penalty shall double every six months, with a maximum daily

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 30 of 124

1 penalty of \$200.00 per day for single-family residential and
 2 suburban estate zones, \$300.00 per day for commercial zones, and
 3 \$500.00 per day for multiple residential zones, except that
 4 owners of a single condominium unit shall be subject to a
 5 maximum daily penalty of \$200.00; and provided further, that the
 6 maximum cumulative penalty shall not exceed the greater of
 7 \$10,000 or the then fair-market value of the property on the
 8 date the violation or violations are perceived to exist; and
 9 finally, provided, that the property owner shall be allowed to
 10 claim a 90-day grace period from such daily penalties once in
 11 any five-year period. Jurisdiction is granted to the Des Moines
 12 Municipal Court to hear and determine applications for judgment,
 13 and following entry of judgment, if any, the City shall pursue
 14 collection thereof in any manner otherwise available for the
 15 collection of judgments.

16
 17 **Sec. 11. 18.01.110. Enforcement by criminal**
 18 **penalties.**

19
 20 (1) At the conclusion of steps (1) through (7) in DMMC
 21 18.01.100, if the City Manager or the City Manager's designee
 22 believes civil penalties are inadequate, he may direct the City
 23 attorney to initiate criminal proceedings.

24
 25 (2) A violation of the provisions of DMMC 18.01.100 is
 26 a criminal offense.

27
 28 **Sec. 12. 18.01.120. Enforcement by superior court**
 29 **civil action.** The City Manager or the City Manager's designee,
 30 with the consent of the City Council, may seek legal or
 31 equitable relief to enjoin any acts or practices and abate any
 32 condition which constitutes or will constitute a violation of
 33 the code when civil or criminal penalties are inadequate to
 34 effect compliance.

35
 Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
 Page 31 of 124

Sec. 13. 18.01.130. 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. 14. 18.01.140. Appeal. 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 18.05
Comprehensive Plan and Map; Zoning Classifications, Uses Permitted, and Provisions Applicable to All Zones

Sections:

18.05.010	Title.
18.05.020	Application.
18.05.030	Purpose.
18.05.040	Authority.
18.05.050	Preferred land use map designation.
18.05.060	Adoption of comprehensive plan.
18.05.070	Comprehensive plan filed and maintained in the office of the City Clerk.
18.05.080	Names of zones.
18.05.100	If only one building on a lot or building site, it constitutes a main building.
18.05.110	Zone of unlisted uses and clarification of ambiguity.
18.05.120	Uncertainty of boundaries.
18.05.130	Property not zoned.
18.05.140	Classification of rights-of-way.
18.05.150	Lot area requirement symbol.
18.05.160	Limitation of land use.
18.05.170	Individual lot on building site is unit of application.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 32 of 124

1 **Sec. 15. 18.05.010. Title.** This chapter shall be
2 entitled "Comprehensive Plan and Map; Zoning Classifications,
3 and Provisions Applicable to all Zones."

4 **Sec. 16. 18.05.020. Application.** This chapter shall
5 apply to all zoning in the City of Des Moines and all zoning
6 actions as specified in this Title.

7 **Sec. 17. 18.05.030. Purpose.** This chapter adopts the
8 comprehensive plan and land use maps, and sets forth the zoning
9 classifications for the City of Des Moines and general
10 provisions applicable to such classifications.

11 **Sec. 18. 18.05.040. Authority.** This chapter is
12 adopted pursuant to the authority set forth in DMMC 18.01.040.

13 **Sec. 19. 18.05.050. Preferred land use map**
14 **designation.** The map filed in the City Clerk's office and
15 marked Exhibit "B" to Ordinance No. 1469 and adopted
16 November 12, 2009, as amended by Exhibit "B" to Ordinance No.
17 1528, is amended as described in Exhibit "B" to Ordinance No.
18 1551, and constitutes the comprehensive land use map, also
19 referred to as the preferred land use map, for the City. The map
20 referenced herein supersedes all previously adopted preferred
21 land use maps.

22 **Sec. 20. 18.05.060. Adoption of Comprehensive Plan.**
23 The document consisting of 11 chapters, entitled "2009 City of
24 Des Moines Comprehensive Plan," and attached as Exhibit "A" to
25 Ordinance No. 1469 is adopted by reference and constitutes the
26 comprehensive plan for the City.

27 **Sec. 21. 18.05.070. Comprehensive plan filed and**
28 **maintained in the office of the City Clerk.** The City Clerk
29 shall file, maintain, and make available for public inspection
30 the City of Des Moines Comprehensive Plan adopted by the
31 ordinance codified in this chapter.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 33 of 124

Sec. 22. 18.05.080. Names of zones. To accomplish the purpose of this Title, the following use zones are established and regulations are set forth therein defining the permissible uses, the height and bulk of buildings, the area of yards and other open spaces about buildings, and the density of population; such zones are known as follows:

(1) Residential Zones.

(a) Single-Family Residential Zones.

(i) RS-15,000 Residential: Single-Family
15,000;

(ii) RS-9,600 Residential: Single-Family
9,600;

(iii) RS-8,400 Residential: Single-Family
8,400;

(iv) RS-7,200 Residential: Single-Family
7,200;

(v) RS-4,000 Residential: Single-Family
4,000.

(b) R-SE Residential: Suburban Estate;
R-SR Residential: Suburban Residential

(c) Multifamily Residential Zones.

(i) RA-3,600 Residential: Attached
Townhouse and Duplex 3,600;

(ii) RM-2,400 Residential: Multifamily
2,400;

(iii) RM-1,800 Residential: Multifamily
1,800;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 34 of 124

- (iv) RM-900 Residential: Multifamily 900;
- (v) RM-900A Residential: Multifamily 900A;
- (vi) RM-900B Restricted Service Zone;
- (vii) PRR Pacific Ridge Residential.

(2) Commercial Zones.

- (a) N-C Neighborhood Commercial;
- (b) I-C Institutional Campus;
- (c) B-C Business Commercial;
- (d) B-P Business Park;
- (e) C-C Community Commercial;
- (f) D-C Downtown Commercial;
- (g) C-G General Commercial;
- (h) H-C Highway Commercial;
- (i) PR-C1 Pacific Ridge Commercial;
- (j) PR-C2 Pacific Ridge Commercial

Sec. 23. 18.05.100. If only one building on a lot or building site, it constitutes a main building. Any building which is the only building on a lot or building site is a main building unless otherwise authorized by variance. No accessory building or use is allowed on a lot or building site unless the primary use to which it is accessory exists on the same lot or building site.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 35 of 124

Sec. 24. 18.05.110. Zone of unlisted uses and clarification of ambiguity.

(1) In creating zones, the City Council has considered the characteristics of uses which make them comparable, compatible, or similar. The City Council recognizes that it is not possible to enumerate and classify every use to which land may be devoted, either now or in the future, and that ambiguity may exist with reference to the appropriate and consistent zone of a use. Therefore:

(a) When any known and identifiable use is not listed as a permissible use in any zone; or

(b) When any use has now come into existence by reason of any technical development in the trades, sciences, and equipment; or

(c) When any use already listed in the zone which, because of any process, equipment, or materials used, possesses different performance standards than those which are usually associated with the uses in the zone as presently classified and which, therefore, makes it reasonable that such a use should be placed in the more restrictive zone.

(2) It shall be the responsibility and duty of the Planning, Building, and Public Works Department to ascertain all pertinent facts relating to any such use and make what it deems to be the appropriate recommendation for zoning. Any proceedings under this section shall be processed as an amendment.

Sec. 25. 18.05.120. Uncertainty of boundaries. Where uncertainty exists as to the boundaries of any zone shown upon the zoning map or any part or unit thereof, the following rules shall apply:

(1) Where such boundaries are indicated as approximately following street or alley lines or lot lines, such lines shall be construed to be such boundaries;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 36 of 124

1 (2) In the case of unsubdivided property, and where a
2 zone boundary divides such property, the location of such
3 boundaries, unless the same are indicated by dimensions, shall
4 be determined by use of the scale appearing on the zoning map;

5 (3) Where a public street or alley is officially
6 vacated or abandoned, the area comprising such vacated street or
7 alley shall acquire the zone of the property to which it
8 reverts;

9 (4) Where a lot subdivided and recorded subsequent to
10 the zoning of the area in which it is located becomes so placed
11 that it is unequally bisected longitudinally by the boundary
12 lines of different zones, the zone boundary shall be considered
13 as following the lot lines of the lot in such manner as to place
14 the lot wholly in that zone which applies to the major portion
15 of the lot;

16 (5) Where property abuts a lake, river, or body of
17 water, the zone shall extend to the inner harbor line and where
18 no harbor line exists, to a line which the army engineers would
19 define as the line of navigability;

20 (6) Where a lot is equally bisected longitudinally by a
21 zone boundary line, the total lot shall acquire the most
22 restrictive zone and the highest area requirement of the two
23 zones involved;

24 (7) Where a lot is bisected by the boundary line
25 between two zones and such boundary line parallels or
26 approximately parallels the street on which such lot fronts, the
27 total area of such bisected lot shall acquire the same zone
28 requirement as the front portion of the lot. This provision
29 shall not apply to through lots.

30 **Sec. 26. 18.05.130. Property not zoned.** Any property
31 which, for any reason other than the fact that it is a right-of-
32 way of a street, alley, or railroad, is located within an
33 adopted part of the zoning map but is not designated as being
34 zoned shall be deemed to be zoned RS-15,000.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 37 of 124

Sec. 27. 18.05.140. Classification of rights-of-way.

Areas of streets or alleys and railroad rights-of-way, other than such as are designated on the zoning map as being classified in one of the zones provided in this Title, shall be deemed to be unclassified and, in the case of streets, permitted to be used only for street purposes as defined by law, and in the case of railroad rights-of-way, permitted to be used solely for the purpose of accommodating tracks, signals, other operating devices, the movement of rolling stock, public utility lines, and facilities accessory to and used directly for the delivery, distribution, or rendering of services to bordering land uses.

Sec. 28. 18.05.150. Lot area requirement symbol.

In the single-family residential zone where a number follows the indicated zone on the zoning map such number shall indicate which of the minimum lot area, yards, and open spaces required in the zone applies to the properties involved.

Sec. 29. 18.05.160. Limitation of land use.

Except as provided in this Title, no building or structure shall be erected, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose except as specifically provided in this Title and allowed in the zone in which such building, land, or use is located.

Sec. 30. 18.05.170. Individual lot on building site

is unit of application. Unless otherwise specifically stated in this Title, an individual lot or building site as each is defined in this Title is intended to be the unit to which all of the provisions, requirements, permitted uses, yards, and open spaces apply.

**Chapter 18.10
Official Zoning Map**

Sections:

18.10.010 Title.

18.10.020 Application.

Draft Ordinance No. 13-170.2

November 8, 2013

Ordinance No. ____
Page 38 of 124

1 18.10.030 Purpose.
2 18.10.040 Authority.
3 18.10.050 Adoption of official zoning map.
4 18.10.060 Interpretation and regulation.

5 **Sec. 31. 18.10.010. Title.** This chapter shall be
6 entitled "Comprehensive Plan and Map; Zoning Classifications,
7 Uses Permitted, and Provisions Applicable to all Zones."

8 **Sec. 32. 18.05.020. Application.** This chapter
9 shall apply to all zoning in the City of Des Moines and all
10 zoning actions as specified in this Title.

11 **Sec. 33. 18.05.030. Purpose.** This chapter
12 adopts the comprehensive plan and land use maps, and sets forth
13 the zoning classifications for the City of Des Moines and
14 general provisions applicable to such classifications.

15 **Sec. 34. 18.05.040. Authority.** This chapter is
16 adopted pursuant to the authority set forth in DMMC 18.01.040.

17 **18.05.050 Preferred land use map designation.**

18 The map filed in the City Clerk's office and marked Exhibit "B"
19 to Ordinance No. 1469 and adopted November 12, 2009, as amended
20 by Exhibit "B" to Ordinance No. 1528, is amended as described in
21 Exhibit "B" to Ordinance No. 1551, and constitutes the
22 comprehensive land use map, also referred to as the preferred
23 land use map, for the City. The map referenced herein supersedes
24 all previously adopted preferred land use maps.

25 **Sec. 35. 18.05.060. Adoption of Comprehensive**
26 **Plan.** The document consisting of 11 chapters, entitled "2009
27 City of Des Moines Comprehensive Plan," and attached as Exhibit
28 "A" to Ordinance No. 1469 is adopted by reference and
29 constitutes the Comprehensive Plan for the City.

30 **Sec. 36. 18.05.070. Comprehensive Plan filed and**
31 **maintained in the office of the City Clerk.** The City Clerk
32 shall file, maintain, and make available for public inspection
Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 39 of 124

1 the City of Des Moines Comprehensive Plan adopted by the
2 Ordinance codified in this chapter.

3 **Sec. 37. 18.05.080. Names of Zones.** To
4 accomplish the purpose of this Title, the following use Zones
5 are established and regulations are set forth therein defining
6 the permissible uses, the height and bulk of buildings, the area
7 of yards and other open spaces about buildings, and the density
8 of population; such Zones are known as follows:

9 (1) Residential Zones.

10 (a) Single-Family Residential Zones.

11 (i) RS-15,000 Residential: Single-Family
12 15,000;

13 (ii) RS-9,600 Residential: Single-Family
14 9,600;

15 (iii) RS-8,400 Residential: Single-Family
16 8,400;

17 (iv) RS-7,200 Residential: Single-Family
18 7,200;

19 (v) RS-4,000 Residential: Single-Family
20 4,000.

21 (b) R-SE Residential: Suburban Estate;
22 R-SR Residential: Suburban Residential

23 (c) Multifamily Residential Zones.

24 (i) RA-3,600 Residential: Attached
25 Townhouse and Duplex 3,600;

26 (ii) RM-2,400 Residential: Multifamily
27 2,400;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 40 of 124

- 1 (iii) RM-1,800 Residential: Multifamily
- 2 1,800;
- 3 (iv) RM-900 Residential: Multifamily 900;
- 4 (v) RM-900A Residential: Multifamily
- 5 900A;
- 6 (vi) RM-900B Restricted Service Zone;
- 7 (vii) PRR Pacific Ridge Residential.
- 8 (2) Commercial Zones.
- 9 (a) N-C Neighborhood Commercial;
- 10 (b) I-C Institutional Campus;
- 11 (c) B-C Business Commercial;
- 12 (d) B-P Business Park;
- 13 (e) C-C Community Commercial;
- 14 (f) D-C Downtown Commercial;
- 15 (g) C-G General Commercial;
- 16 (h) H-C Highway Commercial;
- 17 (i) PR-C1 Pacific Ridge Commercial;
- 18 (j) PR-C2 Pacific Ridge Commercial.

19 **Sec. 38. 18.05.100. If only one building on a lot**
 20 **or building site, it constitutes a main building.** Any building
 21 which is the only building on a lot or building site is a main
 22 building unless otherwise authorized by variance. No accessory
 23 building or use is allowed on a lot or building site unless the
 24 primary use to which it is accessory exists on the same lot or
 25 building site.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 41 of 124

Sec. 39. 18.05.110. Zone of unlisted uses and clarification of ambiguity.

(1) In creating zones, the board has considered the characteristics of uses which make them comparable, compatible, or similar. The board recognizes that it is not possible to enumerate and classify every use to which land may be devoted, either now or in the future, and that ambiguity may exist with reference to the appropriate and consistent zone of a use. Therefore:

(a) When any known and identifiable use is not listed as a permissible use in any zone; or

(b) When any use has now come into existence by reason of any technical development in the trades, sciences, and equipment; or

(c) When any use already listed in the zone which, because of any process, equipment, or materials used, possesses different performance standards than those which are usually associated with the uses in the zone as presently classified and which, therefore, makes it reasonable that such a use should be placed in the more restrictive zone.

(2) It shall be the responsibility and duty of the Planning, Building, and Public Works Department to ascertain all pertinent facts relating to any such use and make what it deems to be the appropriate recommendation for zoning. Any proceedings under this section shall be processed as an amendment.

Sec. 40. 18.05.120. Uncertainty of boundaries.
Where uncertainty exists as to the boundaries of any zone shown upon the zoning map or any part or unit thereof, the following rules shall apply:

(1) Where such boundaries are indicated as approximately following street or alley lines or lot lines, such lines shall be construed to be such boundaries;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 42 of 124

1 (2) In the case of unsubdivided property, and where a
2 zone boundary divides such property, the location of such
3 boundaries, unless the same are indicated by dimensions, shall
4 be determined by use of the scale appearing on the zoning map;

5 (3) Where a public street or alley is officially
6 vacated or abandoned, the area comprising such vacated street or
7 alley shall acquire the zone of the property to which it
8 reverts;

9 (4) Where a lot subdivided and recorded subsequent to
10 the zoning of the area in which it is located becomes so placed
11 that it is unequally bisected longitudinally by the boundary
12 lines of different zones, the zone boundary shall be considered
13 as following the lot lines of the lot in such manner as to place
14 the lot wholly in that zone which applies to the major portion
15 of the lot;

16 (5) Where property abuts a lake, river, or body of
17 water, the zone shall extend to the inner harbor line and where
18 no harbor line exists, to a line which the army engineers would
19 define as the line of navigability;

20 (6) Where a lot is equally bisected longitudinally by
21 a zone boundary line, the total lot shall acquire the most
22 restrictive zone and the highest area requirement of the two
23 zones involved;

24 (7) Where a lot is bisected by the boundary line
25 between two zones and such boundary line parallels or
26 approximately parallels the street on which such lot fronts, the
27 total area of such bisected lot shall acquire the same zone
28 requirement as the front portion of the lot. This provision
29 shall not apply to through lots.

30 **Sec. 41. 18.05.130. Property not zoned.** Any
31 property which, for any reason other than the fact that it is a
32 right-of-way of a street, alley, or railroad, is located within
33 an adopted part of the zoning map but is not designated as being
34 zoned shall be deemed to be zoned RS-15,000.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
Page 43 of 124

Sec. 42. 18.05.140. Classification of rights-of-way. Areas of streets or alleys and railroad rights-of-way, other than such as are designated on the zoning map as being classified in one of the zones provided in this Title, shall be deemed to be unclassified and, in the case of streets, permitted to be used only for street purposes as defined by law, and in the case of railroad rights-of-way, permitted to be used solely for the purpose of accommodating tracks, signals, other operating devices, the movement of rolling stock, public utility lines, and facilities accessory to and used directly for the delivery, distribution, or rendering of services to bordering land uses.

Sec. 43. 18.05.150. Lot area requirement symbol. In the single-family residential zone where a number follows the indicated zone on the zoning map such number shall indicate which of the minimum lot area, yards, and open spaces required in the zone applies to the properties involved.

Sec. 44. 18.05.160. Limitation of land use. Except as provided in this Title, no building or structure shall be erected, reconstructed, or structurally altered, nor shall any building, structure, or land be used for any purpose except as specifically provided in this Title and allowed in the zone in which such building, land, or use is located.

Sec. 45. 18.05.170. Individual lot on building site is unit of application. Unless otherwise specifically stated in this Title, an individual lot or building site as each is defined in this Title is intended to be the unit to which all of the provisions, requirements, permitted uses, yards, and open spaces apply.

Chapter 18.10 Official Zoning Map

Sections:

- 18.10.010 Title.
- 18.10.020 Application.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 44 of 124

1 18.10.030 Purpose.
2 18.10.040 Authority.
3 18.10.050 Adoption of official zoning map.
4 18.10.060 Interpretation and regulation.

5 **Sec. 46. 18.10.010. Title.** This chapter shall be
6 entitled "Official Zoning Map."

7 **Sec. 47. 18.10.020. Application.** This chapter
8 shall apply to all zoning in the City of Des Moines and all
9 zoning actions as specified in this Title.

10 **Sec. 48. 18.10.030. Purpose.** This chapter adopts
11 the official zoning map for the City of Des Moines.

12 **Sec. 49. 18.10.040. Authority.** This chapter is
13 adopted pursuant to the authority set forth in DMMC 18.01.040.

14 **Sec. 50. 18.10.050. Adoption of official zoning**
15 **map.** The map filed in the City Clerk's office and marked
16 Exhibit "A" to Ordinance No. 1576 and adopted September 12,
17 2013, constitutes the zoning map for the City. The map
18 referenced herein supersedes all previously adopted maps. If the
19 designations of the map are found to be in conflict with other
20 land use designations, the map is deemed to control.

21 **Sec. 51. 18.10.060. Interpretation and regulation.**
22 The description of the land use zones and the establishment of
23 these zones as shown on the map are to be interpreted and
24 regulated by the text portions of this Title.

25

26

27

Chapter 18.15 Nonconforming Buildings and Uses

28 **Sections:**

29 18.15.010 Title.
30 18.15.020 Application.
31 18.15.030 Purpose.
32 18.15.040 Authority.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 45 of 124

- 1 18.15.050 Effect of removal or destruction of nonconforming
- 2 buildings.
- 3 18.15.060 Reconstruction of buildings partially destroyed or
- 4 damaged.
- 5 18.15.070 Structural alteration or enlargement of
- 6 nonconforming buildings.
- 7 18.15.080 Required conformance of existing uses required to
- 8 be in entirely enclosed building.
- 9 18.15.090 Required conformance to exterior improvements.
- 10 18.15.100 Continuation of nonconforming use in a
- 11 nonconforming building.
- 12 18.15.110 Abatement of nonconforming uses.
- 13 18.15.120 Nonconforming churches may alter or expand.
- 14 18.15.130 Residences and dwelling units in commercial zones
- 15 nonconforming.
- 16 18.15.140 Dwelling units in commercial zones nonconforming.

17 **Sec. 52. 18.15.010. Title.** This chapter shall be
 18 entitled "Nonconforming Buildings and Uses."

19 **Sec. 53. 18.15.020. Application.**

20 (1) The foregoing regulations set forth in this Title
 21 shall be subject to the general provisions, conditions, and
 22 exceptions contained in this chapter.

23 (2) The provisions of this chapter shall apply to
 24 buildings, structures, land, and uses which become nonconforming
 25 as a result of the application of this Title to them, or from
 26 classification or reclassification of the property under this
 27 Title or any subsequent amendments thereto. If a use originally
 28 authorized by a variance, conditional use permit, or other valid
 29 use permit prior to August 3, 1964, is located within a zone in
 30 which such use is not permitted by the terms of this Title, such
 31 use shall be a nonconforming use. Uses validly established prior
 32 to August 3, 1964, shall not be deemed nonconforming only
 33 because of failure to secure a conditional use permit required
 34 under this Title.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 46 of 124

Sec. 54. 18.15.030. Purpose. This chapter regulates legal nonconforming lots, structures, uses, and other development situations, which were made nonconforming through the adoption of, or amendments to, this Code. This chapter also specifies those circumstances, conditions, and procedures under which such nonconformities may be permitted to continue, expand, or be modified.

Sec. 55. 18.15.040. Authority. This chapter is adopted pursuant to the authority set forth in DMMC 18.01.040.

Sec. 56. 18.15.050. Effect of removal or destruction of nonconforming buildings.

(1) Except as provided in subsection (2) of this section, if any nonconforming building is, in the judgment of the Planning, Building, and Public Works Director, removed, destroyed by means to an extent of more than 50 percent of its replacement cost at time of destruction, every future building constructed, reconstructed or otherwise permitted to remain on the land on which the building was located shall conform to the provisions of this Title. The Planning, Building, and Public Works Director may issue written notice to owners of property deemed to be subject to the provisions of this section. The Planning, Building, and Public Works Director's determination to the extent of removal or destruction shall be considered a Type I land use action, which is subject to appeal to the Hearing Examiner as provided in DMMC 18.20.150.

(2) Reconstruction Conditions for Nonconforming Single-Family and Condominium-Residential Buildings. In any residential zone, nonconforming single-family residential buildings and condominiums destroyed by catastrophe or disaster such as fire, explosion, earthquake, flooding, etc., may be reconstructed as existed prior to the catastrophic event, subject to the following limitations:

(a) This subsection (2) shall not apply to reconstruction necessitated by a criminal act involving the property owner, including but not limited to arson.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 47 of 124

(b) Reconstructed building height and lot coverage shall not exceed pre-existing height and lot coverage or the provisions of this Title, whichever is greater.

(c) Reconstructed yard areas shall not be less than pre-existing yards or the provisions of this Title, whichever is less.

(d) When new building area is proposed in addition to reconstruction of a nonconforming building, the new building area shall conform to the provisions of this Title.

(e) Reconstructed building area shall conform to the requirements of Title 14 DMMC (Buildings and Construction).

Sec. 57. 18.15.060. Reconstruction of buildings partially destroyed or damaged.

(1) Except as provided in subsection (2) of this section, a nonconforming building damaged or partially destroyed to the extent of not more than 50 percent of its market value at the time of its destruction by fire, explosion, or other casualty or act of God or the public enemy, may be restored and the occupancy or use of such building or part thereof which existed at the time of such partial destruction or damage may be continued subject to all other provisions of this chapter.

(2) In a single-family residential zone, nonconforming single-family residential buildings partially destroyed by catastrophe or disaster such as fire, explosion, earthquake, flooding, etc. may be reconstructed as existed prior to the catastrophic event, subject to the following limitations:

(a) This subsection shall not apply to reconstruction voluntarily initiated by the property owner.

(b) Reconstructed building height and lot coverage shall not exceed pre-existing height and lot coverage or the provisions of this Title, whichever is greater.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 48 of 124

1 (c) Reconstructed yard areas shall not be less
2 than pre-existing yards or the provisions of this Title,
3 whichever is less.

4 (d) When new building area is proposed in
5 addition to partial reconstruction of a nonconforming building,
6 the new building area shall conform to the provisions of this
7 Title.

8 (e) Reconstructed building area shall conform
9 to the requirements of Title 14 DMMC (Buildings and
10 Construction).

11 **Sec. 58. 18.15.070. Structural alteration or**
12 **enlargement of nonconforming buildings.**

13 (1) Unless otherwise specifically provided in this
14 Title, nonconforming buildings may not be enlarged or
15 structurally altered unless an enlargement or structural
16 alteration makes the building more conforming, or is required by
17 law; however, where a building or buildings and customary
18 accessory buildings are nonconforming only by reason of
19 substandard yards, open spaces, area, or height, the provisions
20 of this Title prohibiting structural alterations or enlargements
21 shall not apply; provided, any structural alterations or
22 enlargements of an existing building under such circumstances
23 shall not increase the degree of nonconformity and any
24 enlargements or new buildings and structures shall observe the
25 yards and open spaces required.

26 (2) Structural alterations may be permitted if
27 necessary to adapt a nonconforming building to new technologies
28 or equipment pertaining to uses housed in such building. Any
29 enlargement necessary to adapt to new technologies shall be
30 authorized only by a variance.

31 (3) Upkeep, repairing, and maintenance of
32 nonconforming buildings is permitted.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 49 of 124

Sec. 59. 18.15.080. Required conformance of existing uses required to be in entirely enclosed building.

Where this Title requires a use to be contained within an entirely enclosed building as such term is defined in this Title, and a use existing on August 3, 1964, is not in an entirely enclosed building, the building or structure containing such use shall be made to conform to the requirements of this Title with respect to such enclosure within a period of not more than three years from the date of notification as required in DMMC 18.15.110.

Sec. 60. 18.15.090. Required conformance to exterior improvements.

Where a use exists on August 3, 1964, and such use is nonconforming only because it does not meet the requirements of this Title with respect to improvement of outside areas used for storage, parking, or outside activities, or if the property on which any use is located has a property line common with residential property and no wall, fence, or hedge exists on such property line where required by this Title, such use shall be made to conform to the requirements of this Title with respect to such features within a period of not to exceed two years from the date of notification as required in DMMC 18.15.110.

Sec. 61. 18.15.100. Continuation of nonconforming use in a nonconforming building.

(1) A nonconforming use in a nonconforming building may be continued, and may be expanded or extended throughout such building so long as such nonconforming building remains nonconforming; provided, no structural alterations or additions are made except those that may be required by law or which are specifically permitted in this chapter. A nonconforming use in a nonconforming building may be changed to another use of the same or more conforming zone.

(2) The permission to continue the nonconforming use in a nonconforming building shall not apply where the building is nonconforming only by reason of substandard yards, open

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 50 of 124

1 space, area, or height, in which case the use shall be abated in
2 the same manner as provided in DMMC 18.15.110.

3 **Sec. 62. 18.15.110. Abatement of nonconforming**
4 **uses.** Nonconforming uses of land, buildings, or structures
5 shall be subject to abatement as follows:

6 (1) By resolution of the City Council, the Hearing
7 Examiner shall be directed to conduct a public hearing, which
8 shall be evidentiary in nature, to take testimony relative to
9 abatement schedules for any class of nonconforming use. The
10 Hearing Examiner shall schedule a public hearing within 45 days
11 of receipt of such resolution. Notice of the public hearing
12 shall be given by publication in the official newspaper of the
13 City not less than 15 days prior to the scheduled hearing date
14 and by mailing an appropriate notice, by certified mail, within
15 15 days of the hearing date to the owner of record and to the
16 occupant/tenant of real property which may be affected by the
17 proceedings. Thereafter, the Hearing Examiner shall conduct a
18 public hearing and evidentiary hearing in general conformity
19 with the Hearing Examiner Code. At the conclusion of the
20 hearing, the Hearing Examiner shall transmit findings and
21 recommendations to the City Council. Such findings and
22 recommendations shall be based on the factors described in
23 subsection (3) of this section.

24 (2) Upon receipt of the findings and recommendations
25 of the Hearing Examiner, the City Council shall set a public
26 hearing to consider the issue, giving again such public notice
27 as is described in subsection (1) of this section. Abatement
28 proceedings shall not be subject to the one open record public
29 hearing requirement for a proposed land use action specified in
30 chapter 18.20 DMMC (Land Use Review Procedures). All persons
31 wishing to be heard shall be heard; provided, however, testimony
32 and evidence may not go beyond the scope of that presented to
33 the Hearing Examiner. Following such public hearing, the City
34 Council shall adopt by ordinance an appropriate abatement period
35 for the nonconforming use.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 51 of 124

(3) The period of abatement for a nonconforming use shall be determined by providing a sufficient residue of reasonable use through "amortization of nonconforming uses." Factors that may be considered in establishing the abatement period through amortization are investment of the property owner, estimated remaining economic life of investment, depreciated value from federal income tax records, value and condition of the improvement, nature of the use, possibility of alternative uses that conform or that are more conforming, degree of incompatibility of the use with current zoning, impact of the use on other uses in the area where it is located, existence or nonexistence of a lease and contingency clauses permitting lease termination, and such other factors that tend to permit the nonconforming user to amortize investment during the period of permitted nonconformity, bearing in mind that the public interest in eliminating undesirable nonconforming uses is sufficient to justify the reduction of property value.

Sec. 63. 18.15.120. Nonconforming churches may alter or expand. Nonconforming churches may be structurally altered or enlarged; provided, the requirements of this Title for off-street parking shall be met and maintained for any seating capacity in excess of that which existed immediately prior to the alterations or additions whether provided by additional seats in the nave or by additional floor space to be used simultaneously for assembly purposes if there are no fixed seats.

Sec. 64. 18.15.130. Residences and dwelling units in commercial zones nonconforming. Residential buildings and buildings containing dwelling units on the ground floor existing in commercial zones on August 3, 1964, shall be considered as nonconforming buildings but, as such, shall be subject only to those provisions of this chapter pertaining to abatement which provide that a nonconforming building removed or destroyed shall not be replaced by other than a conforming building, that the nonconforming building may not be enlarged or expanded unless such enlargement or expansion makes the building more

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 52 of 124

conforming, and that the degree of nonconformity may not be increased by changing to a less restrictive residential use.

Sec. 65. 18.15.140. Dwelling units in commercial zones nonconforming. Dwelling units in commercial zones existing on February 4, 1985, shall be considered nonconforming uses and shall be subject to DMMC 18.15.130 and 18.48.120, governing nonconforming residential uses in commercial zones; provided, however, should any dwelling unit or building containing a dwelling unit be damaged or destroyed by fire, explosion, or other casualty or act of God or the public enemy, it may be restored and the occupancy or use which existed at the time of such damage or destruction may be continued.

Chapter 18.20 Land Use Review Procedures

Sections:

18.20.010	Title.
18.20.020	Application.
18.20.030	Purpose.
18.20.040	Authority.
18.20.050	Concurrent review.
18.20.060	Exempt actions.
18.20.070	Land use classifications.
18.20.080	Project review.
18.20.080A	Project review chart.
18.20.090	Application forms, timelines and fees.
18.20.100	Pre-application meetings.
18.20.110	Acceptance for vesting.
18.20.120	Notice of complete application.
18.20.130	Public notice of proposed land use action.
18.20.140	Staff reports.
18.20.150	Review process for Type I land use action.
18.20.160	Appeal from administrative decisions - Time for filing - Substantial weight requirement - Standard of review - Failure to exhaust administrative remedies.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 53 of 124

- 1 18.20.170 Review process for Type II land use action.
- 2 18.20.180 Review process for Type III land use action.
- 3 18.20.190 Review process for Type IV land use action.
- 4 18.20.200 Review process for Type V land use action.
- 5 18.20.210 Review process for Type VI land use action.
- 6 18.20.220 Written report or decision.
- 7 18.20.230 Procedures for open record public hearings.
- 8 18.20.240 Procedures for closed record appeal hearings.
- 9 18.20.250 Reconsideration.
- 10 18.20.260 Remand.
- 11 18.20.270 Final decision.
- 12 18.20.280 City Council action on appeal from Hearing Examiner
- 13 - Procedure - Burden of proof - Criteria to affirm,
- 14 modify, reverse, or remand.
- 15 18.20.290 Appeal from decision of the City Council.
- 16 18.20.300 Appeal fees.
- 17 18.20.310 Establishment of rules for conduct of hearings.
- 18 18.20.320 Limitations on refiling of applications.
- 19 18.20.330 Records.
- 20 18.20.340 Setting of hearings.
- 21 18.20.350 Hearings may be continued without public notice.
- 22 18.20.360 Withdrawal of application or petition - Effect -
- 23 Refund of fees.
- 24

25 **Sec. 66. 18.20.010. Title.** This chapter shall be
 26 entitled "Land Use Review Procedures."

27
 28 **Sec. 67. 18.20.020. Application.** This chapter shall
 29 apply to the processing and appeal of all land use actions as
 30 defined by RCW 36.70B.030 unless specifically excluded herein.

31
 32 **Sec. 68. 18.20.030. Purpose.** The purpose of this
 33 chapter is to establish standard procedures for land use and
 34 related development decisions made by the City of Des Moines.
 35 The procedures are designed to promote timely and informed
 36 public participation, eliminate redundancy in the application,
 37 land use review, and appeal processes, minimize delay and
 38 expense, and result in land use actions that further the City
 39 goals, policies, and strategies as set forth in the City of Des

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 54 of 124

1 Moines Comprehensive Plan. As required by RCW 36.70B.060, these
2 procedures provide for an integrated and consolidated land use
3 review process. The procedures integrate the environmental
4 review process specified in Title 16 DMMC (Environment) with the
5 procedures for land use actions specified in Title 14 DMMC
6 (Buildings and Construction), Title 17 DMMC (Subdivisions), and
7 Title 18 DMMC (Zoning), and provide for the consolidation of
8 appeal processes for land use actions.

9
10 **Sec. 69. 18.20.040. Authority.** This chapter is
11 adopted pursuant to the authority set forth in DMMC 18.01.040.

12 **Sec. 70. 18.20.050. Concurrent review.** Except when a
13 land use action is categorically exempt from SEPA, environmental
14 review shall be conducted concurrently with review of other
15 proposed land use actions requested by an applicant.

16 When a proposed development requires more than one land use
17 action, the applicant may request concurrent review of all
18 proposed land use actions.

19 **Sec. 71. 18.20.060. Exempt actions.**

20 (1) As authorized by RCW 36.70B.140(1), the following
21 land use actions are not subject to the provisions of RCW
22 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and
23 36.70B.130 because the City Council has determined that these
24 projects present special circumstances that warrant a review
25 process different from the process specified by this chapter:

- 26 (a) Business park master plans (DMMC 18.105.050);
- 27 (b) Street vacations and other actions relating
28 to use of public areas or facilities (Title 12 DMMC);
- 29 (c) Type VI land use actions (DMMC 18.20.210);
- 30 and
- 31 (d) Abatement of nonconforming uses (DMMC
32 18.15.110).

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 55 of 124

(2) As authorized by RCW 36.70B.140(2), the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130:

(a) Lot line adjustments (chapter 17.25 DMMC).

(b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.05 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

Sec. 72. 18.20.070. Land use classifications. Land use actions are classified into six types, based upon the entity responsible for the decision, the amount of discretion exercised by the decision-maker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The six categories of land use actions are as follows:

(1) Type I. Administrative decision made without legal requirement for public comment.

(2) Type II. Administrative decision made after legally required opportunity for public comment.

(3) Type III. Quasi-judicial and other decisions by Hearing Examiner made after legally required opportunity for public comment.

(4) Type IV. Quasi-judicial and other nonlegislative decisions by City Council made after legally required opportunity for public comment.

(5) Type V. Quasi-judicial and other nonlegislative decisions by City Council made without legal requirement for public comment.

(6) Type VI. Legislative decision by City Council made after legally required opportunity for public comment.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 56 of 124

1 **Sec. 73. 18.20.080. Project review.**

2 (1) Specific types of project approval are categorized
3 as is set forth in 18.20.080A Permit below.

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
Type I - Administrative land use decisions made without legal requirement for public comment	Planning, Building and Public Works Director	DMMC 18.20.150.160
Accessory living quarters (ALQ) development permit		DMMC 18.55.150
Building height bonus		DMMC 18.15.060(2)
Comprehensive signage design plan permit		DMMC 18.200.120-140
Lot line adjustment (exempt DMMC 18.20.060(2))		Chapter 17.25 DMMC
Sign permit		DMMC 18.200.080
Special use sign permit		DMMC 18.200.110
Construction permit required under Title 14 DMMC		Title 14 DMMC
Construction permits required under Title 14 DMMC (Buildings and Construction) categorically exempt from SEPA (exempt DMMC 18.20.160(2))		Title 14 DMMC
Design review decisions		DMMC 18.235.110-120
Determination that action is categorically exempt		DMMC 16.05.110
Reasonable use exceptions or determinations in environmentally critical areas.		Chapter 16.10 DMMC and DMMC 16.10.400
Interpretation of Title 12 DMMC (Sidewalks, Streets and Public Places), 14 DMMC (Buildings and Construction), Title 16 DMMC		Chapter 12.55 DMMC Chapter 14.30 DMMC

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 57 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
(Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning)		Chapter 16.02 DMMC Chapter 17.02 DMMC Chapter 18.50 DMMC
Off-street parking permit	Building Official	DMMC 18.215.060
Reduction of the minimum retail trade or personal business services requirements for mixed use developments		DMMC 18.115.050(9)(b)
Waiver of zoning requirements		DMMC 18.35.050
Street vacations and other actions relating to use of public areas or facilities (exempt DMMC 18.20.060(1))		Title 12 DMMC
Type II - Administrative land use decisions made after legally required opportunity for public comment		DMMC 18.20.170
Applications for small domestic animals, large domestic animals and bee review	City Manager or City Manager's Designee	Chapter 18.50 DMMC
Short subdivisions, preliminary approval		DMMC 17.05.060- 090 and DMMC 17.05.140- 210
Modified short subdivisions		DMMC 17.05.060- 090 and DMMC 17.05.140- 210
Alteration or vacation of binding site plan with no more than four		Chapter 17.20 DMMC

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
Page 58 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
lots		
Alteration or vacation of short subdivision without public dedication		DMMC 17.20.050(2) and Chapter 17.05 DMMC
Binding site plan with no more than four lots		DMMC 17.20.050(2) and Chapter 17.30 DMMC
Determination of the adequacy of a final environmental impact statement		Chapter 16.05.150-170 and DMMC 16.05.300-320
Determination of nonsignificance (DNS) and mitigated DNS		DMMC 16.05.140 and DMMC 16.05.300-320
Determination of significance (DS) (appeal by LUPA action only)		DMMC 16.05.320(4) (d)
Planning, Building, and Public Works Director approval, conditional approval, or denial of a project based upon chapter 16.05 DMMC (SEPA rules)		DMMC 16.05.300-320
Administrative decision made pursuant to chapter 16.15 DMMC Flood hazard areas	City Manager or the City Manager's designee	DMMC 16.15.170
Townhouse development with no more than four lots		DMMC 18.60.050(2) and DMMC 17.05.150
Exemptions from shoreline substantial development permit		Chapter 16.20 DMMC
Type III - Quasi-judicial and other decisions by the Hearing Examiner made after legally required opportunity for public	Hearing Examiner	DMMC 18.20.180

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 59 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
comment		
Approval of an administrative/land use decision	Hearing Examiner	DMMC 18.20.160
Conditional use permit	Hearing Examiner	Chapter 18.140 DMMC
Environmentally critical area development exception	Hearing Examiner	
Hearing Examiner approval, conditional approval or denial of a project based upon chapter 16.05 DMMC		Chapter 16.05 DMMC
Modification of parking provisions by Hearing Examiner	Hearing Examiner	DMMC 18.215.070
Shoreline substantial development permit and revisions	Hearing Examiner	Chapter 16.20 DMMC
Variance	Hearing Examiner	DMMC 18.35.070
Abatement of non-conforming uses (exempt DMMC 18.20.060(1))	Hearing Examiner	DMMC 18.15.110
Type IV - Quasi-judicial and other non-legislative decisions by the City Council made after legally required opportunity for public comment	City Council - Planning agency shall conduct public meeting for review of action, and makes recommendations to the City Council - City Council holds an _____ public hearing	DMMC 18.20.180
Zoning map amendments (site specific)		Chapter 18.30 DMMC
Subdivisions - preliminary plat approval		DMMC 17.10.130-200

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 60 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
Modified subdivision - preliminary		DMMC 17.15.060-090
Alteration or vacation of a subdivision - preliminary		DMMC 17.20.050 and chapter 17.10 DMMC
Alteration or vacation of a short plat with public dedication - preliminary		DMMC 17.20.050 and Chapter 17.05 DMMC
Alteration or vacation of a binding site plan with public dedication - preliminary		DMMC 17.20.050(b) and Chapter 17.10 DMMC
Alteration of vacation of binding site plan with more than 4 lots; not involving a public dedication - preliminary		DMMC 17.20.050(1) and Chapter 17.30 DMMC
Approval of business park master plan (exempt DMMC 18.20.060(1))		DMMC 18.105.050
Binding site plan with more than 9 lots, preliminary approval		DMMC 17.30.050(2), .090
Planned unit development, preliminary approval		Chapter 18.230 DMMC
Townhouse development with more than 9 lots		DMMC 18.50.050(3) and DMMC 17.10.120-170
City Council approval, conditional approval or denial of a project based upon chapter 16.05 DMMC		Chapter 16.05 DMMC
Shoreline substantial development permit with an environmental impact statement		DMMC 16.20.____
Shoreline conditional use		DMMC 16.20.____
Shoreline variance		DMMC 16.01.090
Unclassified use permit		

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 61 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
Type V - Quasi-judicial and other non-legislative decisions by the City Council without requirement for public comment	City Council is decision-maker - Planning agency shall conduct a public meeting for review and send recommendations to City Council	
Final alteration or vacation of binding site plan with public dedication		DMMC 17.20.060, .070
Final alteration or vacation of binding site plan with more than four lots and not involving a public dedication		DMMC 17.20.060, .070
Final alteration or vacation of short subdivision with public dedication		DMMC 17.20.060, .070 and Chapter 17.05 DMMC
Final alteration or vacation of subdivision		17.20.060 DMMC and Chapter 17.10 DMMC
Final binding site plan with more than four lots		DMMC 17.30.070
Final modified short subdivision		DMMC 17.15.090
Final modified subdivision		DMMC 17.15.090
Final planned unit development		Chapter 18.230 DMMC
Final townhouse development with more than four lots		Chapter 18.60 DMMC
Subdivision - final plat		DMMC 17.10.240-270
Type VI - Legislative decisions made by the City Council made after legally required opportunity	City Council is decision maker - Public	DMMC 18.20.210

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 62 of 124

18.20.080A Project Review Chart	Decision Maker	Applicable Code Section
for public comment (exempt pursuant to DMMC 18.20.060(1))	hearing of planning agency, recommendations to the City Council	
Area-wide rezones		DMMC 18.30.100
Comprehensive plan adoption or amendments		DMMC 18.25.050
Textual code amendment of Title 12, 14, 16 and 17 DMMC (Subdivisions) and Title 18 DMMC (Zoning)	(Planning, Building, and Public Works Director schedules public meeting before the planning agency.)	Chapter 17.45 DMMC and DMMC 18.30.100

Sec. 74. 18.20.090. Application forms, timelines and fees.

(1) All applications for land use actions and other City approvals specified in Title 12 DMMC (Streets, Sidewalks and Public Places), Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) shall be submitted on the forms contained in Appendix A to this chapter and pursuant to the specific provisions of the DMMC identified above. All applications shall be authorized by the property owner.

(2) All applications shall be processed in such a manner that they may be heard, decided or extended by written agreement of the applicants by the appropriate body within the time periods set forth in the above-identified Titles from the date a completed application is filed, unless the delay is a

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 63 of 124

1 result of the failure of the applicant to provide information
2 required and necessary for review of the application.

3 (3) Fees for applications for land use actions should
4 be as set forth in the Fee Resolution approved by the City
5 Council:

6 **Sec. 75. 18.20.100. Pre-application meetings.**

7 (1) Informal Pre-Application Meetings. Applicants for
8 a land use action may participate in an informal meeting prior
9 to submittal of the application for land use action or the
10 formal pre-application meeting. The purpose of the meeting is to
11 discuss, in general terms, the proposed land use action,
12 alternatives, required approvals, and the land use action
13 process.

14 (2) Formal Pre-Application Meetings. Unless waived by
15 the Planning, Building, and Public Works Director, potential
16 applicants or their designees are required to attend a formal
17 pre-application meeting for all Type III, Type IV, and Type VI
18 land use actions. The purpose of the meeting is to discuss the
19 nature of the proposed development, application and approval
20 requirements, fees, review process and schedule, and applicable
21 policies and regulations. As appropriate, the Planning,
22 Building, and Public Works Director shall invite representatives
23 of affected agencies, such as other City departments and special
24 purpose districts, to attend any formal pre-application meeting.
25 This meeting requirement should be deemed waived in the event
26 the Planning, Building, and Public Works Director or the
27 Planning, Building, and Public Works Director's designee is
28 unavailable to meet within 10 days of a request for such
29 meeting.

30 **Sec. 76. 18.20.110. Acceptance for vesting.**

31 (1) An application for a proposed land use action
32 shall not serve to vest any development rights until the
33 Planning, Building, and Public Works Director determines the
34 application is complete as specified by this code.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 64 of 124

(2) Applications found to include material errors shall be deemed withdrawn and subsequent submittals shall be treated as a new application and shall require a new application fee.

(3) Applicant-generated requests for revision(s), i.e., those requests which are not made in response to staff review or public appeal, that result in a substantial change to the proposed land use action, as determined by the Planning, Building, and Public Works Director, shall be treated as a new application as of the date of receipt of the revision by the Planning, Building, and Public Works Department and shall require a new application fee.

Sec. 77. 18.20.120. Notice of complete application.

(1) An application for land use action is complete for purposes of this section when it contains all of the following:

- (a) A completed application form.
- (b) All applicable fees.
- (c) Written authorization of the property owner.
- (d) A completed environmental checklist for projects subject to review under the State Environmental Policy Act (SEPA).
- (e) Information required in applicable titles of the Des Moines Municipal Code.

(2) Notice of complete application shall be provided as provided in RCW 36.70B.070.

(3) For the purposes of this section, applications will only be deemed "received" if filed during regular business

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 65 of 124

1 hours with the appropriate department and date-stamped by a City
2 official authorized to accept such applications.

3 (4) More than one request for additional information
4 may be required by the Planning, Building, and Public Works
5 Director prior to the issuance of a notice of complete
6 application. The Planning, Building, and Public Works Director
7 shall attempt to minimize the number of requests for additional
8 information. The applicant shall attempt to provide the
9 requested information in a complete and prompt manner.

10 **Sec. 78. 18.20.130. Public notice of proposed**
11 **land use action.**

12 (1) Upon a determination that a complete application
13 for a land use action has been filed, the Planning, Building,
14 and Public Works Director shall issue a notice of proposed land
15 use action.

16 (2) The notice of proposed land use action shall be
17 provided as specified below and as set forth in DMMC 16.05.190-
18 260;

19 (3) Notice of hearing required.

20 (a) All applications to be heard by the Hearing
21 Examiner, except appeals of an administrative decision, require
22 public notice. Unless the ordinance governing the application
23 provides otherwise, written notice is mailed to all persons
24 entitled by this chapter to receive notice and notice is given
25 by at least one publication in the official newspaper of the
26 City not less than 15 days prior to the scheduled hearing date.
27 The form of the notice and the manner in which it is given shall
28 conform with the requirements of this chapter. The Hearing
29 Examiner may require or provide such additional notice as deemed
30 necessary to serve the public interest, including publication in
31 a newspaper of general circulation. The Planning, Building, and
32 Public Works Department shall be responsible for ensuring that
33 appropriate public notice is given.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 66 of 124

1 (b) Public information signs shall be
2 installed, as provided in chapter 16.05 DMMC (SEPA Rules).

3 (c) On appeals from administrative decisions
4 notice shall be required only to the administrator whose
5 decision is being appealed and the appellant.

6 (4) Notice of hearing - Content. Each public notice
7 required by this chapter shall contain at least the following
8 information:

9 (a) The date, time, and place of the hearing,
10 as designated by the Hearing Examiner, except legal holidays,
11 specified in DMMC 1.01.055;

12 (b) A legal description and common location
13 description of the property;

14 (c) A description of the proposed action;

15 (d) A statement that any person may appear or
16 be heard and that written comments will be accepted and made
17 part of the record;

18 (e) A statement that the hearing will be held
19 pursuant to the rules of procedure of the Hearing Examiner; and

20 (f) The name, address, and office telephone
21 number of the person within the Planning, Building, and Public
22 Works Department or other City department from whom additional
23 information may be obtained.

24 (5) Persons entitled to notice.

25 (a) The Planning, Building, and Public Works
26 Department shall cause written public notice to be mailed to all
27 owners of record of property located within 300 feet, exclusive
28 of public rights-of-way, of the property that is the subject of
29 the application, including any property that is contiguous and
30 under the same or common ownership and control.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 67 of 124

(b) The Planning, Building, and Public Works Department shall cause written public notice to be mailed to:

(i) Any person who has made a written request to receive such notice;

(ii) Any jurisdiction or government agency that might have an interest in or be affected by a proposed action, as determined by the Planning, Building, and Public Works Department.

(6) Notice of hearing - When given. Notices of hearings required under this chapter shall be mailed or posted at least 15 days prior to the scheduled hearing date.

(7) Unless an open record public hearing is required, public notice of a land use action is not required for a Type I land use action or an action categorically exempt under chapter 16.05 DMMC.

(8) The notice of proposed land use action shall indicate that a 15-day public comment period is provided.

(9) Written comment in response to a notice of proposed land use action shall be provided to the Planning, Building, and Public Works Department during the 15-day public comment period.

(10) If allowed by chapter 197-11 WAC, notice of proposed land use action may be combined with notice of proposed DNS for the purpose of consolidating comment periods.

Sec. 79. 18.20.140. Staff reports.

(1) The Planning, Building, and Public Works Department shall coordinate and assemble the comments and remarks of other city departments and make a written report on all applications.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 68 of 124

(2) The report of the Planning, Building, and Public Works Department generally contains a description of the proposed use, a summary of applicable zoning and plan requirements and policies, other applicable requirements and policies, recommended findings and conclusions relating to the proposed use, a recommendation, and proposed conditions if the recommendation is for approval.

(3) Where a hearing is required, at least seven days prior to the scheduled hearing, the department shall file its report with the hearing body and cause a copy to be mailed to the applicant or the applicant's representative. A copy of the report will be made available to any other person if the request for the copy is made at least 24 hours prior to the scheduled hearing.

(4) If a report is not available as provided in this section, the hearing body may reschedule or continue the hearing upon his own motion or upon the motion of a party, or the hearing body may decide the matter without the report.

(5) Staff reports shall be consistent with RCW 36.70B.0606(5).

Sec. 80. 18.20.150. Review process for Type I land use action.

(1) The Planning, Building, and Public Works Director may approve, approve with conditions, or deny a Type I land use action without public notice.

(2) The decision of the Planning, Building, and Public Works Director shall be effective on the date issued.

(3) The Planning, Building, and Public Works Director's decision regarding a Type I land use action is appealable to the Hearing Examiner for an open record public hearing as provided in DMMC 18.20.220.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 69 of 124

Sec. 81. 18.20.160. Appeal from administrative decisions - Time for filing - Substantial weight requirement - Standard of review - Failure to exhaust administrative remedies.

Any person or persons aggrieved by any administrative decision, made under a provision of this code which expressly provides that such administrative decision is subject to review by the Hearing Examiner, may seek review of such decision by the Hearing Examiner by filing with the City Clerk a written notice of appeal of an administrative decision within 10 days of the decision that is being challenged. The City Clerk may reject or dismiss any appeal sought to be filed by a person not given the right to appeal under this code, or any incomplete appeal. An appeal will be considered incomplete if it fails to satisfy the requirements set forth above or if it does not provide at least the following:

(1) Applicable filing fee, a schedule of which is available by contacting the City Clerk;

(2) The appellant's name, address, telephone number and fax line, and other information which would facilitate prompt communications with the appellant;

(3) A copy of the administrative decision that is the subject of the appeal;

(4) A detailed statement identifying specifically the error of fact, law or procedure made by the administrative decision-maker, and the effect(s) of the alleged error(s) on the decision that is the subject of the appeal; and

(5) A statement of the redress sought by the appellant.

The administrative decision appealed shall be given substantial weight by the Hearing Examiner. On any such appeal, the standard of review shall be whether the administrative decision was clearly erroneous based on a review of all evidence, or the administrative decision was arbitrary or capricious. Failure of a party to request review by the Hearing Examiner of an

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 70 of 124

1 administrative decision shall be a bar to any further judicial
2 review.

3 **Sec. 82. 18.20.170 Review process for Type II land**
4 **use action.** A notice of application is required for a Type II
5 action.

6 (1) Upon conclusion of the 15-day public comment
7 period, the Planning, Building, and Public Works Director may
8 approve, approve with conditions, or deny a Type II land use
9 action subject to applicable public notice and appeal
10 provisions.

11 (2) The Planning, Building, and Public Works
12 Director's decision regarding a Type II land use action shall be
13 effective on the date issued.

14 (3) Except as provided by subsections (4) and (5) of
15 this section, the Planning, Building, and Public Works
16 Director's decision regarding a Type II land use action is
17 appealable to the Hearing Examiner for an open record public
18 hearing as provided in DMMC 18.20.220.

19 (4) A determination of significance (DS) is not
20 appealable to the Hearing Examiner or the City Council and may
21 be appealed by filing a land use petition with the superior
22 court of Washington for King County as provided by chapter
23 36.70C RCW.

24 (5) Within the Pacific Ridge area, a SEPA
25 determination is not appealable to the Hearing Examiner or the
26 City Council and may be appealed by filing a land use petition
27 with the superior court of Washington for King County as
28 provided by chapter 36.70C RCW.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 71 of 124

Sec. 83. 18.20.180. Review process for Type III land use action. A notice of application is required for a Type III action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the Hearing Examiner in an open record public quasi-judicial hearing may approve, approve with conditions, or deny a Type III land use action as specified by chapter 18.240 DMMC (Hearing Examiner).

(2) The Hearing Examiner's decision regarding a Type III land use action, other than an action for abatement of a public nuisance pursuant to DMMC 18.15.110, is appealable to the Superior Court of Washington for King County as specified by chapter 18.240 DMMC (Appeals from decision of Hearing Examiner).

Sec. 84. 18.20.190. Review process for Type IV land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the City Council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing Examiner Code).

(2) The City Council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the City Council).

Sec. 85. 18.20.200. Review process for Type V land use action.

(1) The City Council may approve, approve with conditions, or deny a Type V land use action without public notice other than the notice requirements for public meetings.

(2) The decision of the City Council shall be effective on the date final action is taken during a public

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 72 of 124

1 meeting, if no other effective date is identified in the City
2 Council action, or as otherwise provided by law.

3 (3) The City Council's decision regarding a Type V
4 land use action is appealable the Superior Court of Washington
5 for King County as specified by DMMC 18.20.280 (Appeal from
6 decision of the City Council).

7 **Sec. 86. 18.20.210. Review process for Type VI**
8 **land use action.**

9 (1) For textual code amendments, the Planning,
10 Building and Public Works Director may schedule a public hearing
11 before the City Council as provided in DMMC 18.60.120.
12

13 (2) Upon conclusion of the 15-day comment period, the
14 City Council may approve, approve with conditions, or deny a
15 Type VI land use action upon compliance with the procedural
16 requirements of chapter 18.60 DMMC (Amendments, Unclassified Use
17 Permits, Planned Unit Developments, and Appeals).
18

19 (3) Except for matters subject to review by the
20 Central Puget Sound Growth Management Hearings Board as provided
21 by RCW 36.70A.280 as presently constituted or as may be
22 subsequently amended, the City Council's decision regarding a
23 Type VI land use action is appealable the Superior Court of
24 Washington for King County as specified by DMMC 18.94.300
25 (Appeal from decision of the City Council).

26 **Sec. 87. 18.20.220. Written report or decision.**
27 A written report of the decisions identified above shall be
28 provided as required by RCW 36.70B.060 and 36.70B.130.

29 **Sec. 88. 18.20.230. Procedures for open record**
30 **public hearings.**

31 (1) Open record public hearings shall be conducted as
32 required by chapter 4.12 DMMC (City Council - Rules of
33 Procedure) and chapter 18.240 DMMC (Hearing Examiner) and other
34 applicable law.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 73 of 124

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of the open record public hearing by the presiding officer of the City Council hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the City Council hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the City Council hearing, no additional written information or oral testimony from the public or other agencies will be accepted or considered.

Sec. 89. 18.20.240. Procedures for closed record appeal hearings.

(1) Closed record appeal hearings shall be conducted in accordance with chapter 4.12 DMMC (City Council - Rules of Procedure) and chapter 18.240 DMMC (Hearing Examiner) and other applicable law.

(2) Closed record public hearing shall be conditional as required by RCW 36.70B.020, .060, .110 and .120 and RCW 43.21C.070 and all other applicable laws.

(3) Except as specified by procedures for reconsideration or remand, no new evidence or testimony shall be given or received during a closed record appeal hearing. However, the parties to the appeal may submit written statements limited to the issue(s) appealed.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
 Page 74 of 124

1 **Sec. 90. 18.20.250. Reconsideration.** A party to
 2 a public hearing or closed record appeal may seek
 3 reconsideration of a final decision. Requests for
 4 reconsideration shall be submitted and considered as specified
 5 by DMMC 18.240.240 (Hearing Examiner Decision), 18.20.250 (City
 6 Council Decision).

7 **Sec. 91. 18.20.260. Remand.** The City Council may
 8 remand a hearing Type VI decision to the planning agency. A
 9 closed record appeal may not be remanded.

10 **Sec. 92. 18.20.270. Final decision.** When written
 11 notice of a final decision is required, such notice shall be
 12 provided as specified by RCW 36.70B.060, 36.70B.090, and
 13 36.70B.130.

14 **Sec. 93. 18.20.280. City Council action on appeal**
 15 **from Hearing Examiner - Procedure - Burden of proof - Criteria**
 16 **to affirm, modify, reverse, or remand.**

17 (1) The City Council, in a closed record hearing, may
 18 affirm, reverse, modify, or remand the decision of the Hearing
 19 Examiner. The City Council may adopt all or portions of the
 20 Hearing Examiner's findings and conclusions. No new testimony
 21 shall be taken or new evidence accepted by the City Council,
 22 except as provided for de novo consideration of a matter as
 23 authorized by subsection (3) of this section. The decision of
 24 the City Council shall be in writing in the City Council minutes
 25 and shall contain modified or amended findings and conclusions
 26 wherever such findings or conclusions are different from those
 27 of the appealed decision. Each material finding shall be
 28 supported by evidence in the record. The burden of proof with
 29 regard to modification or reversal of the decision of the
 30 examiner shall rest with the appellant. The decision of the
 31 Hearing Examiner is to be given substantial weight by the City
 32 Council.

33 (2) The procedure on appeal to the City Council shall
 34 be as follows: The presiding officer shall at the onset
 35 establish time limitations for oral argument by the appellant

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
 Page 75 of 124

1 and opponent to the appeal; provided, that the appellant may
 2 reserve a portion of its time for rebuttal; and provided
 3 further, that such time limitations shall not be less than 10
 4 minutes per side. Such oral argument shall be confined to the
 5 record and to any alleged errors therein or to any allegation of
 6 irregularities in procedure before the Hearing Examiner. If the
 7 City Council finds that:

8 (a) There has been substantial error; or

9 (b) The proceedings were materially affected by
 10 irregularities in procedure; or

11 (c) The Hearing Examiner's decision was
 12 unsupported by material and substantial evidence in view of the
 13 entire record as submitted; or

14 (d) The Hearing Examiner's decision is in
 15 conflict with the City's comprehensive plan; or

16 (e) Insufficient evidence was presented as to
 17 the impact of the land use action on the surrounding area; or

18 (f) The appellant is seeking to enter
 19 information that was not previously available for reasons beyond
 20 the control of that party and that such information is more
 21 likely than not to affect the outcome;

22 it may remand the matter for reconsideration before the Hearing
 23 Examiner, or reject or modify the Hearing Examiner's decision;
 24 provided, any rejection or modification of the Hearing
 25 Examiner's decision shall be in the form of written findings and
 26 conclusions by council which are supported by evidence in the
 27 record.

28 (3) For a Hearing Examiner decision that is not
 29 related to a proposed land use action, the City Council may
 30 reject the Hearing Examiner's decision and set a public hearing
 31 for a date certain at which time the City Council will consider
 32 the application de novo, or for any reason listed in the

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 76 of 124

1 preceding subsections (a), (b), (c), or (f) it may choose to
2 modify the Hearing Examiner's decision; provided, any such
3 modification shall be in the form of written findings and
4 conclusions by council which are supported by evidence in the
5 record.

6 (4) Affirmance. If the City Council finds neither a
7 procedural nor a factual basis for the appeal and concludes that
8 there has been no substantial error in the Hearing Examiner's
9 decision, the City Council may adopt the findings of the Hearing
10 Examiner and affirm the decision of the Hearing Examiner.

11 (5) Reversal or Remand Modification.

12 (a) If the council remands the decision to the
13 Hearing Examiner, it sets forth in the minutes its reasons and
14 the issues to be considered by the Hearing Examiner on remand.

15 (b) Within five days of the date of the
16 council's written remand order, the Hearing Examiner mails
17 notice of the council's decision, the date, time, and place of
18 the remand hearing, and the issues to be considered to all
19 parties of record. The Hearing Examiner holds a public hearing,
20 limited to the issues set forth in the council's order, within
21 30 days of the date of the remand order.

22 (c) If the City Council finds a procedural or a
23 factual basis for the appeal and concludes that there has been a
24 substantial error in the Hearing Examiner's decision, the City
25 Council may adopt new findings and reverse or modify the
26 decision of the Hearing Examiner.

27 (6) The participation of the City Attorney or any
28 member of the legal department of the City in such appeal shall
29 be limited to that of legal advisor to the City Council.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 77 of 124

1 **Sec. 94. 18.20.290. Appeal from decision of the**
2 **City Council.** If the decision of the City Council requires
3 adoption of an ordinance, the decision of the City Council shall
4 be considered final on the effective date of the ordinance.
5 Otherwise, the decision of the City Council shall be considered
6 final as of the date upon which the City Council casts its vote
7 to affirm, modify, or reverse the Hearing Examiner. The action
8 of the City Council, approving, modifying, or reversing a
9 decision of the examiner, shall be final and conclusive, unless
10 an aggrieved party, who was a party of record in the hearing
11 before the examiner and City Council, files a land use petition
12 in the Superior Court of Washington for King County as specified
13 by chapter 36.70C RCW. [However, appeals from City Council
14 decisions on shoreline substantial development permits shall be
15 taken to the shoreline hearings board pursuant to the provisions
16 of chapter 90.58 RCW]. For purposes of the land use petition
17 proceedings, the petitioner shall be responsible for
18 transcribing the record and bear the costs of the transcription.

19 **Sec. 95. 18.20.300. Appeal fees.** The fee for
20 appeals made pursuant to this chapter, excluding DMMC 18.20.280,
21 shall be set by administrative order of the City Manager or the
22 City Manager's designee and shall be payable in advance,
23 provided: (1) the City Manager or the City Manager's designee
24 shall waive such fees upon a finding of indigence according to
25 standards adopted by the Des Moines municipal court, and (2) the
26 decision-making body shall have discretion and jurisdiction to
27 direct that any fees paid shall be refunded to a prevailing
28 appellant upon a finding of just cause.

29 **Sec. 96. 18.20.310. Establishment of rules for**
30 **conduct of hearings.** The Hearing Examiner shall conduct
31 public hearings in accordance with the provisions of the Hearing
32 Examiner Code (DMMC 18.240).

33 **Sec. 97. 18.20.320. Limitations on refileing of**
34 **applications.** Upon final action in denying an application or
35 petition for an action permitted by the zoning code or upon the
36 verbal or written withdrawal of an application or petition

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 78 of 124

1 following convening of a public hearing, the Planning, Building,
 2 and Public Works Department shall not accept further filing of
 3 an application for substantially the same property involving
 4 substantially the same use within six months from the date of
 5 final action or withdrawal.

6 **Sec. 98. 18.20.330. Records.** The City shall
 7 cause to be kept a brief minute record of the proceeding. Such
 8 record, applications filed pursuant to this Title, the written
 9 order or motion showing the action and the reasons therefore and
 10 the evidence of notice, and other material shall become a part
 11 of the records of the City to which application is made.
 12 Provisions for custody of such additional records or minutes may
 13 be adopted by the City.

14 **Sec. 99. 18.20.350. Hearings may be continued**
 15 **without public notice.** If, for any reason, testimony on any
 16 matter set for public hearing, or being heard, cannot be
 17 completed on the date set for such hearing, the person presiding
 18 at such public hearing or meeting may, before adjournment or
 19 recess of such matters under consideration, publicly announce
 20 the time and place to, and at which, the hearing or meeting will
 21 be continued and no further notice is required.

22 **Sec. 100. 18.20.360. Withdrawal of application or**
 23 **petition - Effect - Refund of fees.** An application or petition
 24 for an action permitted by the zoning code that is withdrawn
 25 verbally or in writing is subject to the following provisions:

26 (1) If a verbal or written withdrawal request is made
 27 prior to the convening of a public hearing, the withdrawal is
 28 permitted as a matter of right and the limitation on refiling of
 29 the application or petition as provided in DMMC 18.20.320 is
 30 inapplicable.

31 (2) If a verbal or written withdrawal request is made
 32 after the convening of a public hearing, the applicant is
 33 prohibited from further filing of an application for
 34 substantially the same property involving substantially the same
 35 use for a period of six months from the date of withdrawal.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 79 of 124

(3) The Planning, Building, and Public Works Director may authorize a full or partial refund of application or petition fees. The amount of the refund is reduced in proportion to the costs incurred by the City up to and including the date a refund claim is made.

(4) A full refund of fees is granted only when the withdrawal is caused by an error or omission on the part of the City.

(5) A person claiming a refund must submit a statement in writing to the Planning, Building, and Public Works Director giving the basis for the refund claim. Such statement shall be made within 10 days of the acceptance of the withdrawal.

Chapter 18.25 Amendments to Comprehensive Plan

Sections:

18.25.010	Title.
18.25.020	Application.
18.25.030	Purpose.
18.25.040	Authority.
18.25.050	Amendment of comprehensive plan.
18.25.060	Initiation of amendment.
18.25.070	Development regulations to be consistent with and implement the City of Des Moines Comprehensive Plan.
18.25.080	Schedule for initiation and review of amendments.
18.25.090	Contents of application for amendment.
18.25.100	Decision criteria.

Sec. 101. 18.25.010. Title. This chapter shall be entitled "Amendments to Comprehensive Plan."

Sec. 102. 18.25.020. Application. This chapter shall apply to all amendments to the Comprehensive Plan.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 80 of 124

1 **Sec. 103. 18.25.030. Purpose.** The purpose of this
2 chapter is to implement the goals and requirements of Chapter
3 36.70A RCW.

4 **Sec. 104. 18.25.040. Authority.** This chapter is
5 adopted pursuant to the provisions of chapters 35.63, 36A.63 and
6 36.70A RCW and other applicable laws.

7 **Sec. 105. 18.25.050. Amendment of Comprehensive**
8 **Plan.**

9 (1) Amendment of the City of Des Moines Comprehensive
10 Plan shall be considered by the City Council no more frequently
11 than once every calendar year. Exceptions to this limitation are
12 as follows:

13 (a) The initial adoption of a subarea plan;

14 (b) The adoption or amendment of the shoreline
15 master program under the procedures set forth in chapter 90.58
16 RCW, as presently constituted or as may be subsequently amended;

17 (c) The amendment of the capital facilities
18 element that occurs concurrently with the adoption or amendment
19 of the City's budget; or

20 (d) Whenever an emergency exists as declared by
21 the City Council, or to resolve an appeal of a comprehensive
22 plan filed with the GMHB or court.

23 (2) All requests for amendment of the comprehensive
24 plan shall be considered by the City Council concurrently so the
25 cumulative effect of the various requests can be ascertained.

26 (3) The Planning, Building, and Public Works Director
27 shall maintain a docket of amendments to be considered by the
28 City Council during the annual amendment of the comprehensive
29 plan.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 81 of 124

(4) Requests for redesignation of property shall be considered and the final decision rendered prior to City Council consideration of any request for reclassification of the same property.

Sec. 106. 18.25.060. Initiation of amendment.
 Amendments to the City of Des Moines Comprehensive Plan may be initiated as follows:

(1) Application by the owner(s) of property proposed for redesignation;

(2) Adoption of a motion by the City Council directing the Planning, Building and Public Works Department to initiate the amendment; or

(4) The Planning, Building and Public Works Department with the approval of the City Manager.

Sec. 107. 18.25.070. Development regulations to be consistent with and implement the City of Des Moines Comprehensive Plan.

(1) For the purpose of compliance with RCW 36.70A.040(3)(d), the development regulations contained in Titles 12, 14, 16, 17 and 18 shall be consistent with and implement the City of Des Moines Comprehensive Plan.

(2) Future amendments of City development regulations shall be consistent with the City of Des Moines Comprehensive Plan.

(3) Where the City of Des Moines Comprehensive Plan and development regulations adopted by subsection (1) of this section are in conflict the development regulations shall prevail, or in the absence of applicable development regulations, the goals, findings, policies and strategies of the City of Des Moines Comprehensive Plan shall apply.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 82 of 124

Sec. 108. 18.25.080. Schedule for initiation and review of amendments.

(1) Applications for amendment of the City of Des Moines Comprehensive Plan may be submitted to the Planning, Building and Public Works Department between January 1st and June 30th of each calendar year.

(2) Applications for amendment of the City of Des Moines Comprehensive Plan that do not require an environmental impact statement as determined by the Planning, Building and Public Works Director shall be acted upon by the City Council between September 1st and December 31st of the calendar year of application. In the event the City Council cannot act upon the applications for amendment by December 31st of the calendar year, the City Council may extend its review to the following calendar year.

(3) Applications for amendment of the City of Des Moines Comprehensive Plan that require an environment impact statement as determined by the Planning, Building, and Public works Director may be acted upon by the City Council between September 1st and December 31st of the year following completion of the environmental impact statement.

(4) By resolution, the City Council may adopt an alternative review schedule from the schedule specified by this section for a particular calendar year.

Sec. 109. 18.25.090. Contents of application for amendment.

(1) Application for amendment of the City of Des Moines Comprehensive Plan shall be submitted in writing to the planning, building and public works department. Every application for amendment shall include all of the following information:

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 83 of 124

1 (a) A completed application form as provided by
2 the planning, building and public works director.

3 (b) For an amendment of the text of the City of
4 Des Moines Comprehensive Plan, the requested change(s) shall be
5 shown in legislative format (strikeouts and underlining).

6 (c) For an amendment of the preferred land use
7 maps within the land use element, the request shall include a
8 legal description of the subject property area and a parcel map
9 identifying the subject property.

10 (d) An explanation of why the amendment is
11 being proposed.

12 (e) The application fee as specified by the
13 planning, building and public works department fee schedule.

14 (2) The following information may also be required as
15 determined by the planning, building and public works director:

16 (a) A completed SEPA checklist with the
17 applicable fee as specified by the planning, building and public
18 works department fee schedule.

19 (b) Property owner and tenant information as
20 specified by DMMC 16.04.160(5) (Public notice procedure - Notice
21 of DNS, mitigated DNS, or DS).

22 (c) One or more public notice signs as
23 specified by DMMC 16.04.160(1) (Public notice procedure - Notice
24 of DNS, mitigated DNS, or DS).

25 (d) One or more special studies, special public
26 notice provisions, or other information as necessary to review
27 and process the proposed amendment.

28 (3) Separate applications shall be required when the
29 proposed amendment addresses more than one issue or policy, as
30 determined by the Planning, Building and Public Works Director.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 84 of 124

(4) The applicant shall be responsible for and may be required to reimburse the City for administrative costs associated with proposed amendments including special studies, staff review, mapping, printing, public notice, etc., as determined by the planning, building and public works director.

(5) The Planning, Building and Public Works Director may waive specific submittal requirements determined to be unnecessary for review of an application.

(6) The Planning, Building and Public Works Director with the approval of the City Manager or the City Manager's designee may alter a privately initiated amendment relating to a specific property in order to allow the consideration of nearby property, similarly situated property, or area-wide impacts.

Sec. 110. 18.25.100. Decision criteria.

(1) Amendment of the City of Des Moines Comprehensive Plan is a legislative action (Type VI land use action) and the City Council shall be afforded the broadest possible discretion during review of amendment requests. The City Council may approve, approve with modifications, or deny any application for amendment.

(2) The City Council may approve or approve with modifications an amendment to the City of Des Moines Comprehensive Plan when:

(a) The amendment would correct a technical error; or

(b) The amendment addresses changing circumstances or the needs of the City as a whole, and will benefit the City as a whole; and

(c) All of the following conditions are satisfied:

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 85 of 124

1 (i) The amendment is consistent with the
 2 Growth Management Act.

3
 4 (ii) The amendment is not inconsistent
 5 with other elements or policies of the City of Des Moines
 6 Comprehensive Plan.

7
 8 (iii) The amendment will not adversely
 9 impact community facilities and bears a reasonable relationship
 10 to public health, safety, and welfare.

11
 12 (iv) For amendments relating to a
 13 specific property:

14
 15 (A) The amendment is compatible
 16 with adjacent land use and the surrounding development pattern
 17 as existing or as specified by the City of Des Moines
 18 Comprehensive Plan; and

19
 20 (B) The subject property is
 21 suitable for development as allowed by the development
 22 regulations of the potential zone.

23
 24 (3) During the review of a proposed amendment to the
 25 City of Des Moines Comprehensive Plan, factors that may be
 26 considered by the Planning, Building and Public Works Director
 27 and the City Council include, but are not limited to, the
 28 following:

29
 30 (a) The effect upon the physical environment.

31
 32 (b) The effect upon the economic environment.

33
 34 (c) The effect upon the social environment.

35
 36 (d) The effect upon open space, surface waters,
 37 and environmentally critical areas.

38
 Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 86 of 124

(e) The effect upon parks of local significance.

(f) The effect upon historic and archaeological resources of local significance.

(g) The compatibility with an impact upon adjacent land uses and surrounding neighborhoods.

(h) The adequacy of and impact upon capital facilities, utilities, and public services.

(i) The quantity and location of land planned for the proposed land use type and density.

(j) The current and forecasted population in the area or City.

(k) The effect upon other aspects of the City or the City of Des Moines Comprehensive Plan.

Chapter 18.30
Amendments to the Zoning Code, Map
and Planned Unit Developments

Sections:

18.30.010	Title.
18.30.020	Application.
18.30.030	Purpose.
18.30.040	Authority.
18.30.050	Zoning Code may be amended.
18.30.060	Initiation of amendment.
18.30.070	Public hearing required.
18.30.080	Criteria for a site-specific rezone.
18.30.090	Decision of City Council.
18.30.100	Textual changes to Zoning Code or area-wide rezones.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 87 of 124

1 **Sec. 111. 18.30.010. Title.** This chapter shall be
2 entitled "Amendments to the Zoning Code, Map and Planned Unit
3 Developments."

4 **Sec. 112. 18.30.020. Application.** This chapter
5 shall apply to all amendments of the Zoning Code, zoning map or
6 planned unit developments.

7 **Sec. 113. 18.30.030. Purpose.** This chapter sets
8 for the basis of and the process by which the Zoning Code,
9 zoning map and planned unit developments may be amended.

10 **Sec. 114. 18.30.040. Authority.** This chapter is
11 adopted pursuant to the provisions of chapters 35.63, 35A.63 and
12 36.70A RCW and other applicable laws.

13 **Sec. 115. 18.30.050. Zoning Code may be amended.**
14 Whenever public necessity, convenience, and general welfare
15 require, the boundaries of the zones established on maps by this
16 Title, the zone of property uses in this Title, or other
17 provisions of this Title may be amended as follows:

18 (1) By the adoption of or the amendment of a zoning
19 map or maps; or

20 (2) By adoption of a planned unit development; or

21 (3) By amending the text of the Title.

22 **Sec. 116. 18.30.060. Initiation of amendment.**
23 Amendment to this Title and the zoning map of the City are
24 initiated as follows:

25 (1) Amendments to the zoning map of the City may be
26 initiated by:

27 (a) The verified application of one or more
28 owners of property which is proposed to be reclassified or
29 rezoned;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 88 of 124

(b) Adoption of a motion by the City Council directing the Planning, Building, and Public Works Department to initiate the amendment;

(c) The Planning, Building, and Public Works Department with the approval of the City Manager

(2) In the case of textual changes to the Zoning Code, in the manner provided in DMMC 18.30.100.

Sec. 117. 18.30.070 Public hearing required. The City Council shall hold one public hearing before taking action on any amendment to this Title, application for a planned unit development, and notice of the hearing shall be given as provided in chapter 18.20 DMMC.

Sec. 118. 18.30.080. Criteria for a site-specific rezone. All site-specific zoning map amendment requests must meet all of the following criteria:

(1) The amendment meets the concurrency requirements set forth in chapter 36.70A RCW;

(2) The amendment is consistent with the Comprehensive Plan;

(3) The amendment bears a substantial relation to the public health, safety and welfare;

(4) The amendment is warranted in order to achieve consistency with the Comprehensive Plan or because of a need for additional property in the proposed zoning district classification, or because the proposed zoning classification is appropriate for reasonable development of the subject property;

(5) The property in question is adjacent and contiguous (which shall include corner touches and property located across a public right-of-way) to property of the same or higher zoning classification;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 89 of 124

(6) The amendment will not be materially detrimental to uses or property in the immediate vicinity of the subject property;

(7) The amendment has merit and value for the community as a whole.

Sec. 119. 18.30.090. Decision of City Council.

Enactment of a resolution or ordinance by the City Council approving a site-specific amendment to the Zoning Code or planned unit developments, shall constitute final action. When the action of the City Council is to deny a request for a site-specific amendment to the Zoning Code or planned unit development, the adoption of the motion shall constitute final action. Written notice of the action shall be forwarded to the Planning, Building, and Public Works Department to be attached to the permanent file of the case and the Planning, Building, and Public Works Department shall notify the applicant of the final action of the City Council.

Sec. 120. 18.30.100. Textual changes to Zoning Code or area-wide rezones. Amendments to this Title that constitute a textual change or an area-wide rezone are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this Title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezone); or

(b) Actions relating to adoption or amendment to the comprehensive plan.

(2) No textual change is made without at least one public hearing before the City Council.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 90 of 124

(3) The City Council shall set a date for the public hearing by motion. Notice of the public hearing shall generally conform with DMMC 17.44.030 (Notice). Continued hearings may be held at the discretion of the City Council but no additional notice is required.

Chapter 18.35 Waiver of Zoning Requirements and Variances

Sections:

18.35.010	Title.
18.35.020	Application.
18.35.030	Purpose.
18.35.040	Authority.
18.35.050	Setback requirements - Waiver limitations.
18.35.060	Appeal procedure.
18.35.070	Variance criteria.

Sec. 121. 18.35.010. Title. This chapter shall be entitled "Waiver of Zoning Requirements and Variances."

Sec. 122. 18.35.020. Application. In those instances where the City Council has passed an ordinance amending the zoning map and such amendment has restricted the use of the rezoned property, by ordinance or concomitant agreement or development agreement pursuant to RCW 36.70B.170-210, to a specified and unified project in accordance with plans and specifications incorporated by reference in the ordinance granting the zoning amendment, the City Manager or the City Manager's designee shall have the authority to waive certain setback requirements as described in DMMC 18.35.050.

Sec. 123. 18.35.030. Purpose. The purpose of this chapter is to allow a limited waiver of set back requirements as described in DMMC 18.35.050 as in specific circumstances set forth below.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 91 of 124

1 **Sec. 124. 18.35.040. Authority.** This chapter is
2 adopted pursuant to the provisions of chapters 35.63, 35A.63 and
3 36.70A RCW and other applicable laws.

4 **Sec. 125. 18.35.050. Setback requirements - Waiver**
5 **limitations.** The setback requirements which may be waived are
6 the open spaces between buildings which are required where lots
7 have been short platted and which would not have been required
8 if the lots had not been short platted. Prior to granting the
9 setback requirement waiver, the City Manager or the City
10 Manager's designee must be satisfied that the waiver is
11 consistent with and effectuates the intent of the City Council
12 in granting the project zoning.

13 **Sec. 126. 18.35.060. Appeal procedure.** Any person
14 aggrieved by the decision of the City Manager or the City
15 Manager's designee in either granting or denying a setback
16 requirement waiver in accordance with this chapter may appeal
17 such decision to the Hearing Examiner by filing such appeal in
18 writing with the City Clerk within 10 days of the rendering of
19 such decision. Such appeal shall be in accordance with DMMC
20 18.94.

21 **Sec. 127. 18.35.070. Variance criteria.** The
22 Hearing Examiner may grant a variance, in specific cases, from
23 the provisions of the zoning ordinance or other land use
24 regulatory ordinances as the City may adopt, which will not be
25 contrary to the public interest; but only where, owing to
26 special conditions, a literal enforcement of the provisions of
27 such ordinance(s) would result in unnecessary hardship. A
28 variance from the provisions of such ordinance(s) shall not be
29 granted by the Hearing Examiner unless the Hearing Examiner
30 finds that all of the following facts and conditions exist:

31 (1) The variance shall not constitute a grant of
32 special privilege inconsistent with the limitation upon uses of
33 other properties in the vicinity and zone in which the property
34 on behalf of which the application was filed is located; and

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 92 of 124

1 (2) That such variance is necessary, because of
2 special circumstances relating to the size, shape, topography,
3 location, or surroundings of the subject property, to provide it
4 with use rights and privileges permitted to other properties in
5 the vicinity and in the zone in which the subject property is
6 located; and

7 (3) That the special conditions and circumstances do
8 not result from the actions of the applicant; and

9 (4) That the granting of such variance will not be
10 materially detrimental to the public welfare or injurious to the
11 property or improvements in the vicinity and zone in which the
12 subject property is situated; and

13 (5) The authorization of such variance will not
14 adversely affect the implementation of the comprehensive land
15 use plan; and

16 (6) That the granting of such a variance is necessary
17 for the preservation and enjoyment of a substantial property
18 right of the applicant possessed by the owners of the other
19 property in the same zone or vicinity; and

20 (7) No conforming use of neighboring lands,
21 structures, or buildings in the same zone, and no permitted use
22 of lands, structures, or buildings in other zones, shall be
23 considered grounds for issuance of a variance; and

24 (8) In granting any variance, the Hearing Examiner may
25 prescribe appropriate conditions and safeguards in conformity
26 with the provisions of the zoning ordinance or other land use
27 regulatory ordinances as the City may adopt. Violation of such
28 conditions and safeguards, when made part of the terms under
29 which the variance is granted, shall be deemed a violation of
30 this section; and

31 (9) With respect to uses of land, buildings, and other
32 structures, this section is declared to be a definition of the
33 public interest by the City Council, and the spirit of this

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 93 of 124

1 section will be controverted by any variance which permits a use
2 not generally or by special exception permitted in the zone
3 involved, or any use expressly or by implication prohibited, by
4 the terms of this section in the zone; and

5 (10) Therefore, under no circumstances shall the
6 Hearing Examiner grant a variance to permit a use not generally
7 or by special exception permitted in the zone involved, or any
8 use expressly or by implication prohibited, by the terms of the
9 zoning ordinance in the zone.

10

11

12

Chapter 18.40 Revocation, Expiration of Permits

13 **Sections:**

14 18.40.010 Title.
15 18.40.020 Application.
16 18.40.030 Purpose.
17 18.40.040 Authority.
18 18.40.050 Permits or variances may be revoked.
19 18.40.060 Initiation of revocation proceedings.
20 18.40.070 Expiration.

21

22

Sec. 128. 18.40.010. Title. This chapter shall be
entitled "revocation, expiration of permits."

23

24

25

Sec. 129. 18.40.020. Application. This chapter
shall apply to any permit associated with a "Type III, IV or V"
action that meets the criteria set forth below.

26

27

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Sec. 130. 18.40.030. Purpose. The purpose of this
chapter is to set forth a process by which a permit expires or
may be revoked.

29

30

31

Sec. 131. 18.40.040. Authority. This chapter is
adopted pursuant to the provisions of chapters 35.63, 35A.63 and
36.70A RCW and other applicable laws.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 94 of 124

1 **Sec. 132. 18.40.050. Permits or variances may be**
2 **revoked.**

3 (1) The City Council, after a recommendation from the
4 Planning, Building, and Public Works Department, may revoke or
5 modify any permit associated with a Type IV or Type V land use
6 action.

7 (2) The Hearing Examiner, after a recommendation from
8 the Planning, Building, and Public Works Department, may revoke
9 or modify any permit associated with a Type III land use action.

10 (3) The Hearing Examiner has jurisdiction to revoke or
11 modify any conditional use permit that was issued prior to the
12 enactment of the Ordinance codified in this chapter.

13 (4) Such revocation or modifications pursuant to (1)
14 through (3) above shall be made on any one or more of the
15 following grounds:

16 (a) That the approval was obtained by fraud;

17 (b) That the use for which such approval was granted
18 has been abandoned;

19 (c) That the use for which such approval was granted
20 has at any time ceased for one year or more;

21 (d) That the permit or variance granted is being
22 exercised contrary to the terms or conditions of such approval
23 or in violation of any statute, ordinance, code, law, or
24 regulations; or

25 (e) That the use for which the approval was granted
26 was so exercised as to be detrimental to the public health or
27 safety.

28 (5) Any action on a revocation or modification under
29 this section is a Type III or Type IV land use action.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 95 of 124

Sec. 133. 18.40.060. Initiation of revocation proceedings. The Planning, Building and Public Works Department, following approval of the City Manager or the City Manager's designee, may initiate proceedings to revoke a conditional use permit or variance, or any use permit which was issued prior to the enactment of this chapter. Individuals who are aggrieved may petition the Planning, Building and Public Works Department to initiate revocation proceedings.

Sec. 134. 18.40.070. Expiration. Any permit or variance granted pursuant to this Title becomes null and void if not exercised within the time specified in such permit or variance or, if no date is specified, within one year from the effective date of approval of the permit or variance.

Chapter 18.45 Occupancy and Enforcement

Sections:

18.45.010	Title.
18.45.020	Application.
18.45.030	Purpose.
18.45.040	Authority.
18.45.050	Certificates of occupancy.
18.45.060	No conflicting licenses or permits shall be issued.

Sec. 135. 18.45.010. Title. This chapter shall be entitled "Occupancy and Enforcement."

Sec. 136. 18.45.020. Application. This chapter shall apply to all buildings or structures or the use of property as regulated by this Title.

Sec. 137 18.45.030. Purpose. The purpose of this chapter is to require certificates of occupancy and provide for the enforcement of the provisions of this Title.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 96 of 124

1 **Sec. 138. 18.45.040. Authority.** This chapter is
2 adopted pursuant to the provisions of Title 14 DMMC and other
3 applicable laws.

4 **Sec. 139. 18.45.050. Certificates of occupancy.**

5 (1) To assure compliance with the provisions of this
6 Title, a certificate of occupancy shall be obtained from the
7 Building Official before:

8 (a) Any new building is initially occupied or
9 used;

10 (b) Any existing building is structurally
11 altered or enlarged;

12 (c) Any change or addition to the occupancy of
13 a building or premises is made.

14 (2) If the subject requiring a certificate of
15 occupancy is also required to secure a building permit, a
16 business license, or any other evidence of authority required by
17 law, such required certificate of occupancy for such use may
18 constitute a separately identified part of such permit, license,
19 or other evidence, and shall be cleared through the Building
20 Official as conforming, or not conforming, to the provisions of
21 this Title before any other license or permit or authority may
22 be issued.

23 (3) Each certificate of occupancy shall be issued only
24 upon application signed by the authorized applicant, and shall
25 contain over the signature of the applicant a correct statement
26 of the use intended to be established and such certificate of
27 occupancy may be issued only if such declared intended use
28 conforms in every respect to the provisions of this Title.

29 **Sec. 140. 18.45.060. No conflicting licenses or**
30 **permits shall be issued.** No license or permit in conflict with
31 the provisions of this Title shall be issued, and if issued, any
32 such license or permit shall be null and void.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 97 of 124

Chapter 18.50
Interpretation of Title 18 DMMC

Sections:

18.50.010 Title.
 18.50.020 Application.
 18.50.030 Purpose.
 18.50.040 Authority.
 18.50.050 Interpretation.
 18.50.060 Provisions not affected by headings.

Sec. 141. 18.50.010. Title. This chapter shall be entitled "Interpretation of Title 18 DMMC."

Sec. 142. 18.50.020. Application. This chapter shall apply to the interpretation of Titles 18 DMMC.

Sec. 143. 18.50.030 Purpose. The purpose of this chapter is to provide for the interpretation of development code provisions in Title 18 DMMC.

Sec. 144. 18.50.040 Authority. This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63 and 36.70A RCW and other applicable laws.

Sec. 145. 18.50.050 Interpretation.

(1) Interpretation of Title 18 DMMC shall be responsibility of the Planning, Building and Public Works Director.

(2) Interpretations of Title 18 DMMC 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.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 98 of 124

(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. 146. 18.50.060. Provisions not affected by headings. Chapter and section headings contained in this Title shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of any section hereof.

Chapter 18.150 Keeping of Animals in Residential Zones

Sections:

18.150.010	Title.
18.150.020	Application.
18.150.030	Purpose.
18.150.040	Authority.
18.150.050	Types of animals regulated.
18.150.060	Minimum requirements - Additional controls authorized when.
18.150.070	Household pet requirements.
18.150.080	Small domestic animal requirements.
18.150.090	Large domestic animal requirements.
18.150.100	Bee requirements.
18.150.110	Notification to nearby property owners required when.
18.150.120	Modification of regulations - City Manager authority.

Sec. 147. 18.150.010. Title. This section shall be entitled "Supplemental Conditions for Specific Uses." This chapter shall be entitled "Keeping of Animals in Residential Zones."

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 99 of 124

1 **Sec. 148. 18.150.020. Application.** This chapter
2 applies to the keeping of animals in any zone where a dwelling
3 unit is permitted; provided, that with respect to suburban
4 estate zones found in chapter 18.85 DMMC this chapter is
5 intended to supplement the provisions contained therein, and any
6 conflict between this chapter and chapter 18.85 DMMC shall be
7 resolved in favor of chapter 18.85 DMMC; and provided further,
8 that this chapter is intended to supplement the provisions of
9 chapter 18.55 DMMC (related to the keeping of horses or cattle)
10 and any conflict between this chapter and chapter 18.55 DMMC
11 shall be resolved in favor of this chapter; and provided
12 further, that the keeping of animals is forbidden in commercial
13 zones except as otherwise specifically permitted.

14 **Sec. 149. 18.150.030. Purpose.** The limitations on
15 keeping of animals in residential zones contained in this
16 chapter have the following purposes:

17 (1) To maintain the general health and sanitation of
18 the City;

19 (2) To maintain the character of residential
20 neighborhoods within the City; and

21 (3) To minimize any nuisances which may result from
22 the keeping of animals.

23 **Sec. 150. 18.150.040. Authority.** This chapter is
24 adopted pursuant to the provisions of chapters 35.63, 35A.63 and
25 36.70A RCW and other applicable laws.

26 **Sec. 151. 18.150.050. Types of animals regulated.**
27 Animals are regulated according to the following categories. The
28 expression "adult animal" refers to any animal that has attained
29 the age of 90 days.

30 (1) Household Pets. The following adult animals are
31 regulated as household pets:

32 (a) Three dogs or fewer per dwelling unit;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
Page 100 of 124

- 1 (b) Three cats or fewer per dwelling unit;
2 (c) Three rabbits or fewer per dwelling unit;
3 (d) Two miniature potbellied pigs per dwelling
4 unit;
5 (e) In combination, no more than three of the
6 following animals: dogs, cats, miniature potbellied pigs, or
7 rabbits per dwelling unit;
8 (f) Gerbils;
9 (g) Guinea pigs;
10 (h) Hamsters;
11 (i) Mice;
12 (j) Cage birds;
13 (k) Tank fish;
14 (l) Nonvenomous reptiles and amphibians; and
15 (m) Other animals normally associated with a
16 dwelling unit, and that are generally housed within the dwelling
17 unit.
18 (2) Small Domestic Animals. The following adult
19 animals are regulated as small domestic animals:
20 (a) More than three dogs per dwelling unit;
21 (b) More than three cats per dwelling unit;
22 (c) More than three rabbits per dwelling unit;
23 (d) More than two miniature potbellied pigs per
24 dwelling unit;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 101 of 124

(e) In combination, more than three of the following animals: dogs, cats, miniature potbellied pigs, or rabbits per dwelling unit; and

(f) Fowl.

(3) Large Domestic Animals. The following adult animals are regulated as large domestic animals:

(a) Horses;

(b) Cattle;

(c) Sheep;

(d) Pigs;

(e) Goats; and

(f) Other grazing or foraging animals.

(4) Bees.

Sec. 152. 18.150.060. Minimum requirements - Additional controls authorized when. DMMC 18.150.070 through 18.150.100 constitute the minimum requirements for the keeping of animals in the City. Nothing contained in DMMC 18.150.070 through 18.15.100 shall limit the authority of the City Manager or the City Manager's designee to require additional controls if, in his judgment, additional controls are needed to effect the purposes of this chapter. Further, nothing contained in DMMC 18.150.070 through 18.150.100 shall relieve a keeper of animals from compliance with any other City, county, or state law regulating the keeping of animals. The City Manager or the City Manager's designee is authorized to delegate his review authority.

Sec. 153. 18.150.070. Household pet requirements. Minimum requirements for the keeping of household pets are as follows:

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 102 of 124

- 1 (1) Required procedure: none;
- 2 (2) Application information: none;
- 3 (3) Maximum number of adult animals per one dwelling
- 4 unit:
- 5 (a) Dogs: three;
- 6 (b) Cats: three;
- 7 (c) Rabbits: three;
- 8 (d) Miniature potbellied pigs: two;
- 9 (e) In combination, a total number of dogs,
- 10 cats, miniature potbellied pigs, or rabbits: three;
- 11 (f) Other: no maximum;
- 12 (4) Minimum lot size: As required by general zoning
- 13 regulations;
- 14 (5) Minimum setback: None;
- 15 (6) Special regulations and requirements: Household
- 16 pets, excluding dogs, cats, rabbits, and miniature potbellied
- 17 pigs shall be housed within the dwelling unit. If housed outside
- 18 of the dwelling units, household pets excluding dogs, cats,
- 19 rabbits, and miniature potbellied pigs are regulated as small
- 20 domestic animals.

21 **Sec. 154. 18.150.080. Small domestic animal**
 22 **requirements.** Minimum requirements for the keeping of small
 23 domestic animals are as follows:

- 24 (1) Required procedure: City Manager or the City
- 25 Manager's designee review;
- 26 (2) Application information:

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
Page 103 of 124

1 (a) A site plan indicating the location of the
2 dwelling units, and structure used to house the animals, and any
3 roaming or grazing area;

4 (b) A vicinity map indicating the type of use
5 on property abutting the subject property and the location of
6 any structures on abutting property;

7 (c) The type and number of animals to be kept
8 by the applicant;

9 (3) Maximum number of adult animals per one dwelling
10 unit: 10 per 22,000 square feet, plus an additional five adult
11 animals for each 11,000 square feet of lot size;

12 (4) Minimum lot size: 22,000 square feet per dwelling
13 unit;

14 (5) Minimum setback: Any structure or enclosure used
15 to house animals must be at least 35 feet from a property line
16 and at least 45 feet from any dwelling unit located on an
17 adjacent lot. Any "run" or animal exercise area must be at least
18 20 feet from any property line, and at least 30 feet from any
19 dwelling unit located on an adjacent lot, and shall be
20 constructed to effect these setbacks;

21 (6) Special regulations and requirements:

22 (a) The City may limit the number of animals
23 allowed to less than the maximum considering:

24 (i) Proximity to dwelling units both on
25 and off the subject property;

26 (ii) Lot size and isolation;

27 (iii) Compatibility with surrounding uses;

28 (iv) Potential noise impacts;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 104 of 124

(b) The applicant must provide a suitable structure to house the animals, and must maintain that structure in a clean condition;

(c) If an abutting property owner files a signed and notarized statement in support of the request, the City may permit a "run" or exercise area to extend to the property line in common with the abutting property. Such release shall be effective until revoked in writing by the abutting property owner and the City;

(7) Screening: The City may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the City.

Sec. 155. 18.150.090. Large domestic animal requirements. Minimum requirements for the keeping of large domestic animals are as follows:

(1) Required procedure: City Manager or the City Manager's designee review;

(2) Application information:

(a) A site plan indicating the location of the dwelling units, and structure used to house the animals, and any roaming or grazing area;

(b) A vicinity map indicating the type of use on property abutting the subject property and the location of any structures on abutting property;

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 105 of 124

1 (c) The type and number of animals to be kept
2 by the applicant;

3 (3) Maximum number of adult animals per one dwelling
4 unit: One per 35,000 square feet and one per each additional
5 17,500 square feet;

6 (4) Minimum lot size: 35,000 square feet per dwelling
7 unit;

8 (5) Minimum setback: Any structure or enclosure used
9 to house animals must be at least 35 feet from a property line
10 and at least 45 feet from any dwelling unit located on an
11 adjacent lot. Roaming or grazing areas must be at least 20 feet
12 from any property line, and at least 30 feet from any dwelling
13 unit located on an adjacent lot, and shall be constructed to
14 effect these setbacks;

15 (6) Special regulations and requirements:

16 (a) If an abutting property owner files a
17 signed and notarized statement in support of the request, the
18 City may permit roaming or grazing areas to extend to the
19 property line in common with the abutting property. Such release
20 shall be effective until revoked in writing by the abutting
21 property owner and the City;

22 (b) The City may limit the number of animals
23 allowed to less than the maximum considering:

24 (i) Proximity to dwelling units both on
25 and off the subject property;

26 (ii) Lot size and isolation;

27 (iii) Compatibility with surrounding uses;

28 (iv) Potential noise impacts;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 106 of 124

(c) The applicant must provide a suitable structure to house the animals, and must maintain that structure in a clean condition;

(7) Screening: The City may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the City.

Sec. 156. 18.150.100. Bee requirements. Minimum requirements for the keeping of bees are as follows:

(1) Required procedure: City Manager or the City Manager's designee review;

(2) Application information: Show compliance with subsections (4), (5) and (6) of this section;

(3) Maximum number of adult animals per one dwelling unit: No maximum;

(4) Minimum lot size: 12,500 square feet per dwelling unit;

(5) Minimum setback: Hive must be at least 20 feet from a property line;

(6) Special regulations and requirements:

(a) A hive must be enclosed by a fence, at least four feet high;

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 107 of 124

(b) The applicant must install at least two signs, measuring two square feet each, which provide notice and warning of the hive;

(7) Screening: The City may require screening to mitigate financial, health, and aesthetic impacts on adjacent residential property when such residential property is used for residential purposes. The screening shall consist of a solid wall, a view-obscuring fence or hedge not less than five feet nor more than six feet in height, which will be erected and maintained on any exterior boundary that is common with property used for residential purposes, or shall consist of predominantly view-obscuring evergreen shrubs and trees of a type, number, location, height, and size approved by the City.

Sec. 157. 18.150.110. Notification to nearby property owners required when. In order to give all interested parties an opportunity to avail themselves of the appellate procedure contained in DMMC 18.20.170, the following procedure shall be followed in applications for small domestic animals, large domestic animals, and bee review. The applicant shall give notice of the pending application to all property owners within 300 feet of the applicant's property in the same manner as that required for a zoning amendment. Thereafter, the City Manager or the City Manager's designee shall give notice of his decision to any such property owner who has previously requested such notification in writing.

Sec. 158. 18.150.120. Modification of regulations - City Manager or the City Manager's designee authority. The City Manager or the City Manager's designee shall have authority, either at the request of a property owner or on his own initiative, to modify any approval granted pursuant to this chapter if conditions on adjacent lots have substantially changed and the City Manager or the City Manager's designee concludes such modifications are necessary to effect the purposes of

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 108 of 124

Chapter 18.155
Multifamily Recreation Areas

Sections:

18.155.010 Title.
 18.155.020 Application.
 18.155.030 Purpose.
 18.155.040 Authority.
 18.155.050 Minimum area required.
 18.155.060 Play space for preadolescent children.
 18.155.070 General provisions.
 18.155.080 In-lieu cash contribution.
 18.155.090 King County Division of Parks and Recreation Play
 Area Design and Inspection Handbook.

Sec. 159. 18.155.010. Title. This chapter shall be
 entitled "Multifamily Recreation Areas."

Sec. 160. 18.155.020. Application. This chapter
 shall apply to all multi-family residential developments within
 the jurisdiction of the City of Des Moines.

Sec. 161. 18.155.030. Purpose. This chapter is
 intended to provide recreation areas for residents of
 multifamily developments, to separate such areas from
 automobile-oriented areas, and to enhance the quality of
 multifamily residential developments, thus promoting the public
 health, safety, and welfare of the community of Des Moines.

Sec. 162. 18.155.040. Authority. This chapter is
 adopted pursuant to the provisions of chapters 35.63, 35A.63 and
 36.70A RCW and other applicable laws.

Sec. 163. 18.155.050. Minimum area required.

(1) Common Recreation Areas. Each multifamily building
 or complex of four or more units shall provide a minimum area of
 200 square feet of common recreation space per dwelling unit,
 including those used by the owner or building management
 personnel. The common recreation area(s) shall be available to
 Draft Ordinance No. 13-170.2

November 8, 2013

Ordinance No. _____
Page 109 of 124

1 all residents of the building/complex. Not more than 50 percent
2 of the required recreation area shall be indoors. Common
3 recreation areas shall include fixtures and facilities, as
4 approved by the Planning, Building, and Public Works Director,
5 that promote passive and/or active recreational activities.

6 (2) Private Recreation Areas. A minimum of 60 square
7 feet of private outdoor recreation area shall be provided for
8 each dwelling unit. The minimum dimension of any private
9 recreation area shall be six feet. Required private recreation
10 areas shall be adjacent to, and directly accessible from, the
11 corresponding dwelling unit.

12 **Sec. 164. 18.155.060. Play space for preadolescent**
13 **children.** At least 50 percent of the required common recreation
14 area shall be designed and improved as play space for
15 preadolescent children. For the purposes of this chapter, play
16 spaces for preadolescent children mean environments designed to
17 support and suggest activities that are an essential part of a
18 child's learning and development (social, emotional, cognitive,
19 and physical). Each play space shall include at least two play
20 equipment fixtures, and at least one adult seating area as
21 approved by the Planning, Building, and Public Works Director.
22 Play equipment fixtures include, but are not limited to, sand
23 boxes, slides, swing sets, cargo net play equipment, horizontal
24 overhead ladders, and similar features. All play areas and
25 equipment shall conform to the design, installation, and
26 maintenance guidelines described in the King County Division of
27 Parks and Recreation "Play Area Design and Inspection Handbook."
28 Planning, Building, and Public Works Director may approve a
29 reduction in the percentage of common recreation area that must
30 be designed and improved as play space for children where the
31 applicant can demonstrate to the director's satisfaction that
32 few or no children will reside in the development. In
33 considering approval of such reduction, the director may
34 consider items such as:

35 (1) Number of bedrooms per dwelling unit, and the
36 total number of bedrooms proposed;

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 110 of 124

1 (2) Location of the development site; and

2 (3) Availability of nearby public play space for
3 children.

4 **Sec. 165. 18.155.070. General provisions.**

5 (1) Where the required common area is less than 3,000
6 square feet, the common outdoor space shall be concentrated in
7 one area. The common recreation area shall be at least 25 feet
8 in width. Where the required common area is 3,000 square feet or
9 more, the space may be divided among multiple areas; provided,
10 that at least one recreation area is a minimum of 2,000 square
11 feet in area with a minimum width of 25 feet. All other areas
12 shall be at least 1,000 square feet in area with a minimum width
13 of 10 feet.

14 (2) No part of a required recreation area may be used
15 for driveways, parking, or other vehicular use. Adequate fence
16 and plant screening, as approved by the Planning, Building, and
17 Public Works Director, shall separate outdoor recreation areas
18 from vehicular areas.

19 (3) Required recreation areas may not be located in
20 undevelopable buffer areas required in chapter 16.10 DMMC.

21 (4) The required front yard area shall not be counted
22 toward satisfying the common recreation area requirement. The
23 side and rear yard areas may be counted toward recreation area
24 requirements if the design satisfies the purpose and intent of
25 this chapter, without resulting in adverse impacts upon nearby
26 properties. Active recreation areas are not permitted where the
27 activity would adversely impact required on-site landscaping.

28 (5) Unless otherwise approved by the Planning,
29 Building, and Public Works Director, required play spaces for
30 children shall be accessible from all on-site dwellings by
31 pedestrian paths separate from vehicular areas.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
Page 111 of 124

1 (6) The provisions of DMMC 18.155.060 shall not apply
2 to senior citizen housing developments, such as continuing care
3 retirement communities, nursing homes, respite care facilities,
4 and retirement housing developments, and other developments not
5 required by law to accept children as residents.

6 (7) The required private and common recreation areas
7 shall be designated on development plans reviewed by the
8 Planning, Building, and Public Works Department. The property
9 owners and/or responsible parties shall maintain the required
10 recreation areas for the life of the project.

11 (8) A subdivision or planned unit development
12 containing several multifamily residential lots, and multifamily
13 developments which are built in phases, shall provide on-site
14 recreation facilities for each phase or shall provide the total
15 amount of required recreation area in the first phase of
16 construction.

17 **Sec. 166. 18.155.080. In-lieu cash contribution.**

18 Where the size of the development site is insufficient to
19 provide a quality common recreation area, or the improvement of
20 City park facilities in the vicinity will be of greater benefit
21 to the residents of the proposed dwellings, the Planning,
22 Building, and Public Works Director may allow the applicant to
23 make a voluntary payment to the City in lieu of providing the
24 required on-site common recreation facilities. Acceptance of
25 such a voluntary contribution is discretionary on the part of
26 the City. Such payments shall be placed in a neighborhood park
27 fund to be used for capital improvements in existing parks, or
28 for the development of new parks in the vicinity of the
29 development site. The administration of in-lieu contributions,
30 including any refund of the contribution, shall comply with the
31 provisions of chapter 82.02 RCW as hereafter amended. The amount
32 of payment shall be based upon the current assessed value (as
33 determined by the county assessor) of the entire development
34 site. The amount of in-lieu contribution shall be as follows:

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 112 of 124

Required common recreation area minus (-)
 provided common recreation area equals (=) X

X/site area = Y

Assessed value multiplied by Y = In-lieu contribution

**Sec. 167. 18.155.090. King County Division of Parks
 and Recreation Play Area Design and Inspection Handbook.**

Pursuant to RCW 35.21.180 the King County Division of Parks and Recreation "Play Area Design and Inspection Handbook," including all subsequent revisions, is adopted by reference. A current copy of the King County Division of Parks and Recreation "Play Area Design and Inspection Handbook" adopted by reference in this section shall be maintained on file in the office of the Planning, Building, and Public Works Director and shall be available for public inspection.

**Chapter 18.160
 Adult Entertainment Facility Zoning**

Sections:

18.160.010 Title.
 18.160.020 Findings of fact.
 18.160.030 Adult entertainment facilities prohibited in certain areas.
 18.160.040 Amortization of any nonconforming use.
 18.160.050 Conflicts.

Sec. 168. 18.160.010. Title. This chapter shall be entitled "Adult Entertainment Facility Zoning."

Sec. 169. 18.160.020. Findings of fact.

(1) The City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression.

Draft Ordinance No. 13-170.2

November 8, 2013

Ordinance No. _____
Page 113 of 124

1 (2) The City has made a detailed review of the
2 national record, including studies from the cities of New York,
3 Indianapolis, and Los Angeles, the police records of various
4 cities, and court decisions regarding adult entertainment uses,
5 including adult retail establishments. The City Council finds
6 that adult entertainment uses, including adult retail
7 establishments, require special supervision from public safety
8 agencies in order to protect and preserve the health, safety,
9 and welfare of the patrons and employees of said business as
10 well as the citizens of the City.

11 (3) The City Council finds that concerns about crime
12 and public sexual activity generated and/or occurring within or
13 near adult entertainment and adult retail establishments are
14 legitimate, substantial and compelling concerns of the City
15 which demand reasonable regulation.

16 (4) The City Council finds that adult entertainment
17 and adult retail establishments, due to their nature, have
18 secondary adverse impacts upon the health, safety, and welfare
19 of the citizenry through increases in crime and opportunity for
20 spread of sexually transmitted diseases.

21 (5) There is convincing documented evidence that adult
22 entertainment and adult retail establishments have a detrimental
23 effect on both the existing businesses around them and the
24 surrounding residential areas adjacent to them, causing
25 increased crime, the downgrading of quality of life and property
26 values and the spread of urban blight. Reasonable regulation of
27 the location of these facilities will provide for the protection
28 of the community, protect residents, patrons, and employees from
29 the adverse secondary effects of such facilities.

30 (6) The City recognizes that adult entertainment and
31 adult retail establishments, due to their very nature, have
32 serious objectionable operational characteristics, particularly
33 when located in close proximity to residential neighborhoods,
34 day care centers, religious facilities, public parks, schools,
35 and public facilities open to families, such as post offices and
36 medical clinics, and thereby having a deleterious impact upon
Draft Ordinance No. 13-170.2

November 8, 2013

Ordinance No. _____
 Page 114 of 124

the quality of life in the surrounding areas. It has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of the establishments are minimized.

(7) This chapter is intended to protect the general public health, safety, and welfare of the citizenry of the City through the regulation of the location of adult entertainment and adult retail establishments. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult entertainment and adult retail establishments, and to isolate dangerous and unlawful conduct associated with these facilities.

(8) It is not the intent of this chapter to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5 of the Washington State Constitution, but to enact content-neutral legislation which addresses the negative secondary impacts of adult entertainment and adult retail establishments.

(9) It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials.

(10) The City Council, at its duly advertised public hearing on September 13, 2001, considered the subject matter of adult entertainment and adult retail establishments, at which public hearing the City Council received comments from the public on that subject matter, which the City Council believes to be true, and which, together with the findings heretofore set forth, form the basis for the adoption of the ordinance codified in this chapter.

Sec. 170. 18.160.030. Adult entertainment facilities prohibited in certain areas.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
Page 115 of 124

1 (1) Adult entertainment facilities as defined in this
2 Title are prohibited:

3 (a) Within 1,000 feet of any residential zone
4 or any single-family or multiple-family residential use;

5 (b) Within 1,000 feet of any public or private
6 elementary or secondary school;

7 (c) Within 1,000 feet of any day care center
8 for children, nursery, or preschool;

9 (d) Within 1,000 feet of any church or other
10 facility or institution used primarily for religious purposes;

11 (e) Within 1,000 feet of any public park or
12 public facility open to families, including post offices, City
13 Hall, and medical clinics; and

14 (f) Within 1,000 feet of any other adult retail
15 use.

16 As used herein, the distances shall mean the straight-line
17 distance between the edge or corner of the property on which the
18 adult retail use is located to the nearest edge or corner of the
19 property of another adult retail use or any of the sensitive
20 uses set forth above.

21 (2) Exception. Adult entertainment facilities, as
22 defined in this Title, shall be permitted within the PR-C1 zone:

23 (a) So long as such uses are located within a
24 building that fronts Pacific Highway South and obtains its
25 access exclusively from such highway; and

26 (b) So long as such uses are located no less
27 than 500 feet from any other adult entertainment or adult retail
28 use.

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 116 of 124

1 **Sec. 171. 18.160.040 Amortization of any**
 2 **nonconforming use.** Any adult entertainment, activity, use, or
 3 retail use located within the City limits on the effective date
 4 of the ordinance codified in this section that is made
 5 nonconforming by this chapter shall be terminated within one
 6 year; provided, however, that such termination date may be
 7 extended upon the approval of an application filed with the City
 8 within 120 days of the effective date of the ordinance codified
 9 in this section requesting an extension of such one-year
 10 amortization period. The decision on whether or not to approve
 11 any extension period and the length of such period shall be
 12 based upon the applicant clearly demonstrating extreme economic
 13 hardship based upon an irreversible financial investment or
 14 commitment made prior to the effective date of the ordinance
 15 codified in this section, which precludes reasonable alternative
 16 uses of the subject property.

17 **Sec. 172. 18.160.050. Conflicts.** In the event of a
 18 conflict between this chapter and any other provision of this
 19 Code, this chapter applies and supersedes.

20 **Chapter 18.165**
 21 **Hazardous Substances**

22 **Sections:**
 23 18.165.010 Title.
 24 18.165.020 Application.
 25 18.165.030 Purpose.
 26 18.165.040 Authority.
 27 18.165.050 Hazardous Substances in Residential Zones.
 28 18.165.060 Hazardous Waste & Hazardous Substances in
 29 Commercial Zones.
 30 18.165.070 Hazardous Waste and Hazardous Substances in B-P
 31 and I-C Zones.

32 **Sec. 173. 18.165.010. Title.** This chapter shall be
 33 entitled "Hazardous Substances."

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 117 of 124

Sec. 174. 18.165.020. Application. This chapter shall apply to the use and storage of all hazardous waste and substances in all zones of the City of Des Moines.

Sec. 175. 18.165.030. Purpose. This chapter is intended to regulate the use hazardous substances.

Sec. 176. 18.165.040. Authority. This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63 and 36.70A RCW and other applicable laws.

Sec. 177. 18.165.050. Hazardous Substances in Residential Zones.

(1) This section is applicable to chapters 18.55, 18.160, 18.65, 18.70, 18.75, 18.80, 18.55, 18.130 and 18.135 (Pacific Ridge Zone) DMMC.

(2) No use permitted in this chapter, with the exception of public utility and service facilities, shall store any hazardous substance, except that for the purposes of this chapter the following substances shall be exempt:

(a) Heating oil stored in an underground tank sufficiently contained so as to preclude soil and ground water contamination;

(b) Gasoline stored in an approved Underwriters Laboratory container;

(c) Prepackaged retail quantities of fertilizers, pesticides, and auto and home care products only for home and personal use.

(3) Failure to comply with any of the requirements of this section shall be deemed a violation and shall result in enforcement by civil penalty as set forth in DMMC 18.01.080 and 18.01.110. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the Planning,

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
 Page 118 of 124

Building, and Public Works Director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the City in superior court.

Sec. 178. 18.165.060. Hazardous Waste & Hazardous Substances in Commercial Zones.

(1) This section is applicable to chapters 18.90, 18.95, 18.100, 18.105, 18.110, 18.115, 18.120, 18.125 and 18.135 (Pacific Ridge Zone) DMMC.

(2) Any use permitted by this section which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(a) Off-site hazardous waste facilities are prohibited.

(b) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this section by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(c) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
Page 119 of 124

1 (d) Violation - Civil Penalty, Revocation of
2 Business License. Failure to comply with any of the requirements
3 of this section shall result in enforcement by civil penalty as
4 set forth in DMMC 18.01.080 through 18.01.100 and revocation of
5 business license as set forth in DMMC 5.04.060.

6 (e) Violation - Abatement Authorized. Any
7 person or business who fails to comply with the provisions of
8 this chapter, or permits a violation to continue after receiving
9 written notice of violation from the Planning, Building, and
10 Public Works Director, shall be deemed to be causing or
11 permitting a public nuisance and shall be liable in an action
12 for abatement filed by the City in superior court.

13 **Sec. 179. 18.165.070 Hazardous Waste and Hazardous**
14 **Substances in B-P and I-C Zones.**

15 (1) Prohibited uses, activities and equipment. No use,
16 activity, or equipment shall be permitted which creates a
17 nuisance or is offensive, objectionable, or hazardous by reason
18 of creation of odors, noise, sound, vibrations, dust, dirt,
19 smoke, or other pollutants, noxious, toxic, or corrosive fumes
20 or gases, radiation, explosion or fire hazard, or by reason of
21 the generation, disposal, or storage of hazardous or dangerous
22 wastes or materials.

23 (2) Hazardous Waste and Hazardous Substances.

24 (a) A use permitted by this chapter that
25 involves hazardous waste storage or the use or handling of
26 hazardous substances shall comply with all applicable
27 regulations to include chapter 70.105 RCW (Hazardous Waste
28 Management) and chapter 70.109D RCW (Hazardous Waste Cleanup -
29 Model Toxics Control Act).

30 (b) On-site hazardous waste disposal facilities
31 shall be prohibited.

32 (c) The use or handling of hazardous substances
33 is permitted as an accessory use only; provided, that the

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. _____
 Page 120 of 124

transport, storage, containment, application, and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of an individual or harm the environment.

Chapter 18.170
Temporary Uses

Sections:

18.170.010	Title.
18.170.020	Application.
18.170.030	Purpose.
18.170.040	Authority.
18.170.050	Temporary construction buildings.
18.170.060	Temporary real estate office.
18.170.070	Temporary use of trailer as residence.

Sec. 180. 18.170.010. Title. This chapter shall be entitled "Temporary Uses."

Sec. 181. 18.170.020. Application. This chapter shall apply to the temporary structures specifically described in this chapter.

Sec. 182. 18.170.030. Purpose. The purpose of this chapter is to allow certain temporary structures to accommodate storage, construction and residential requirements.

Sec. 183. 18.170.040. Authority. This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63 and 36.70A RCW and other applicable laws.

Sec. 184. 18.170.050. Temporary construction buildings. Temporary structures for the housing of tools and equipment, or containing supervisory offices in connection with construction projects may be established and maintained during the progress of such construction on such projects, and shall be abated within 30 days after completion of the project, or 30 days after cessation of work.

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. _____
Page 121 of 124

Sec. 185. 18.170.060. Temporary real estate office.
One temporary real estate sales office may be located on any new subdivision in any zone; provided, the activities of such office shall pertain only to the initial selling of property within the subdivision upon which the office is located.

Sec. 186. 18.170.070. Temporary use of trailer as residence. After a building permit has been issued and a residence is in the process of being constructed, a trailer as defined in this Title may be located upon a site for the temporary use by the owner of such property as a residence for a period of six months; provided, such trailer remains mobile; and provided further, that a permit is obtained from the building department to insure compliance with this code as to yards and to local health department requirements. In cases where substantial progress is shown on the construction of the residence and additional time is needed to complete the work, a permit may be renewed for one additional six-month period. Upon the expiration of the permit, the use of the trailer as a residence shall be discontinued.

Chapter 18.175

Public Utilities

Sections:

18.175.010 Title.
18.175.020 Public utilities - Distribution.

Sec. 187. 18.175.010. Title. This chapter shall be entitled "Public Utilities."

Sec. 188. 18.175.020. Public utilities - Distribution.

(1) The provisions of this Title shall not be construed to limit or interfere with the installation, maintenance, and operation of streets, public utility pipelines, electric or telephone transmission and distribution lines, poles, towers, and appurtenances or railroads (but not including

Draft Ordinance No. 13-170.2
November 8, 2013

Ordinance No. ____
 Page 122 of 124

switching yards or roundhouses) when located within the rights-of-way, easements, franchises, ownerships, or license rights of such public utilities.

(2) The minimum lot area and frontage provisions of this Title shall not apply to public utility sites; the area and frontage need only be such as will accommodate the facilities in compliance with all other requirements in this Title.

Chapter 18.180 **Family Day Care Providers**

Sections:

18.180.010 Title.

18.180.020 Family day care providers.

Sec. 189. 18.180.010. Title. This chapter shall be entitled "Family Day Care Providers."

Sec. 190. 18.180.020. Family day care providers. A family day care provider home facility is a permitted use in all zones, subject to the following conditions:

(1) The family day care provider is currently licensed by the state of Washington Department of Social and Health Services and adheres to all licensing standards;

(2) The family day care provider is currently licensed under chapter 5.04 DMMC;

(3) Family day care services are provided in a residential dwelling exclusively in the family living quarters;

(4) The structure in which family day care services are provided complies with all building, fire, safety, and health codes;

(5) Signs identifying the residence as a family day care provider are prohibited;

Draft Ordinance No. 13-170.2
 November 8, 2013

Ordinance No. ____
 Page 123 of 124

(6) The Washington State Department of Social and Health Services certifies that there are adequate child drop-off and pick-up areas;

(7) Hours of operation are limited to 6:00 a.m. to 9:00 p.m.; and

(8) Prior to state licensing, the family day care provider provides written notification to the immediately adjoining property owners of the provider of the intent to locate and maintain the facility in order to provide the Washington State Department of Social and Health Services an opportunity to provide a forum to resolve any dispute.

Sec. 191. Savings clause. Title 18 DMMC, which is repealed and replaced by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

Sec. 192. Repealer. Title 18 DMMC as presently constituted and codified is hereby repealed in its entirety along with all underlying ordinances.

Sec. 193. Severability - Construction.

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

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

Sec. 194. Effective date. This Ordinance shall take effect and be in full force on January 1, 2014.

Draft Ordinance No. 13-170.2
 November 8, 2013



MEMORANDUM

Attorney-Client Privileged Communication

TO: Pat Bosmans, City Attorney

FROM: *Michael P. Connelly*

DATE: November 7, 2013

RE: Proposed Amendments to Sections I and III of Title 18

GENERAL AMENDMENTS – SECTION I

Amendments contained in section I (chapters 18.01 – 18.50) include a significant reorganization of portions of Title 18, specifically included sections from chapters 18.02, 18.04, 18.06, 18.48, 18.56, 18.60, 18.61, 18.64, 18.68, 18.72, and 18.76, and portions of 18.94 concerning the process of project review. Sections within these chapters that were duplicative of other sections were deleted. The specific decisions and types were organized into a chart contained in section 18.20.080A. This chart identifies the action, the decision maker and the applicable code section. The chart includes actions from Title 12, 14, 16, 17 and 18, even if the specific actions are excluded from the specific provisions of chapter 36.70B RCW, for easier reference. Some minor language was changed for clarification purposes. Definitions were moved from individual chapters and placed in chapter 18.01. If a definition did not correspond to a provision of the Title, or if it was a word with a common dictionary meaning, it was removed. Each chapter was reorganized to contain the standard headings of “Title,” “Application,” “Purpose” and “Authority.” Specific changes and or additions are discussed below.

GENERAL AMENDMENTS – SECTION III

1. Section III collected supplemental conditions for specific uses that are found in various portions of the zoning code.

a. Chapter 18.150 contains the provisions found in existing chapter 18.33. Section 18.33.140 was deleted.

b. Chapter 18.155 contains provisions found in existing chapter 18.45.

c. Chapter 18.160 contains provisions found in existing chapter 18.99.

d. Chapter 18.165 collects the provisions found in most of the individual zoning classifications and divides the conditions into those residential or commercial



Pat Bosmans
November 7, 2013
Page 2 of 4

zones that are applicable. Some supplemental provisions may still be found in the individual zone classification chapters.

e. Chapter 18.170 contains the provisions concerning temporary uses found in existing sections 18.36.090 --18.36.130.

f. Chapter 18.175 contains those provisions found in chapter 18.36.140.

g. Chapter 18.180 contains the provisions found in existing section 18.36.150.

SPECIFIC CHAPTER AMENDMENTS

1. Chapter 18.01 contains the general provisions that are applicable to all chapters within Title 18. It also contains the definitions for terms used within this Title as is set forth above.

a. Duplicative definitions, definitions that no longer referenced words contained in the text, as well as words that had a common dictionary meaning were removed. The wording, however, of the remaining definitions was left intact. The definitions no longer listed can be identified by comparing existing chapter 18.04 with the words defined in proposed section 18.01.050. Because some chapters and sections of Title 18 were moved to other titles, i.e. former chapter 18.86 Environmental Critical Areas and chapter 18.90 Shoreline Master Program, the definitions associated with those chapters were also moved.

b. This chapter also contains the standard provisions for "construction," "liability," "enforcement," "severability," and "appeal" contained in the other titles reviewed.

c. The enforcement section contains the additional options previously found in existing chapter 18.72, as well as the summary list of options found in each Title.

2. Chapter 18.05 contains the provision relating to the adoption of the comprehensive plan and the establishment of the various zoning categories. It also contains general rules relating to application of the zoning regulations. Existing section 18.06.030 was deleted and section 18.05.170 was inserted from chapter 18.72. The language of the provisions is unchanged other than to insert minor clarifications or avoid duplicative language.



Pat Bosmans
November 7, 2013
Page 3 of 4

3. Chapter 18.10 adopts the official zoning map for the City. It deletes language contain in former chapter 18.02 which adopted portions of the King County Zoning Code or Map. See existing section 18.02.010.

4. Chapter 18.15 relocates existing chapter 18.48, and is modified only to the extent the standard headings are inserted.

5. Chapter 18.20 combines the provisions of existing chapter 18.56, chapter 18.64 and portions of chapter 18.94 into one chapter to assist in understanding the project review process and subsequent appeals.

a. The standard initial provisions were modified. The purpose and intent provisions remain the same.

b. In proposed section 18.20.060, existing section 18.56.020 was shortened to simply describe all exempt actions.

c. The chart was added as section 18.20.080A, replacing the provisions contained in sections 18.56.030 - 080. The remainder of the chapter combines the existing provisions of chapters 18.56, 18.64, and 18.94 dealing with processing and the appeal of land use applications.

d. Section 18.56.260(2) was deleted. State statutes and case law would control this issue.

e. Section 18.64.020 was deleted and specific application forms should be included as appendices to the code.

f. Duplicative language concerning fees was also deleted in that fees for the entire Title will be covered in a separate chapter.

g. I left intact the provisions concerning notice beginning at sections 18.20.120–130. This section references the notice provisions set forth in section 16.05.190–260 (see sections 18.20.130(2) and 18.20.130(3)(b)), as supplemental to the provisions contained within this chapter. There is some duplication in the two Titles but no substantive changes have been made at this time.

6. Chapter 18.25 concerns amendments to the comprehensive plan. The only change made is to include the standard headings at the beginning of the chapter. This section is from the existing chapter 18.84.



Pat Bosmans
November 7, 2013
Page 4 of 4

7. Chapter 18.30 concerns amendments to the Zoning Code and Map. It includes language from existing chapter 18.60.

a. Section 18.60.020 was removed and will be placed in chapter 18.140 along with conditional use permits.

b. I also added a section setting forth the criteria for a zone change which was missing from your existing code. This is a substantive change.

c. The definitional section set forth in existing section 18.20.120 was deleted.

d. Existing sections 18.60.130 and 18.60.140 were not included in chapter 18.30. If the City wishes to keep existing 18.60.130 it should be included within chapter 18.20. Existing section 18.60.140 seemed duplicative to the two notice sections already referenced.

8. Chapter 18.35 contains the provisions set forth in existing chapter 18.61. Language concerning variances from existing chapter 18.94 was also included in this chapter.

9. Chapter 18.40 contains the provisions set forth in existing chapter 18.68. Existing section 18.68.040 was removed as duplicative. The Hearing Examiner chapter will require the public hearing. Section 18.68.050 was deleted.

10. Chapter 18.45 contained the occupancy requirements set forth in existing chapter 18.72. The enforcement provisions of this chapter were moved to proposed chapter 18.01.

11. Chapter 18.50 contains the provisions relating to the interpretation of Title 18.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Years 2014 – 2019 Draft Capital Improvement Plan

FOR AGENDA OF: November 14, 2013

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

DATE SUBMITTED: November 8, 2013

1. Draft Resolution 13-254
2. Municipal Capital Improvement Fund Summary
3. Transportation Capital Improvement Fund Summary
4. Marina Depreciation and Improvement Fund Summary
5. Surface Water Management Capital Improvement Fund Summary
6. Transportation Impact Fee Fund Summary

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this report is to request the City Council approve the Years 2014 – 2019 Draft Capital Improvement Plans for the Municipal Capital Improvement Fund, the Transportation Capital Improvement Fund, the Marina Depreciation & Improvement Fund, and the Surface Water Management Capital Fund by adopting Resolution No.13-254. The Transportation Impact Fee Fund 2014 activity includes estimated transportation impact fee revenues of \$292,641 and fund balance of \$9,727. Once all Capital Improvement Plans have been presented and approved by the City Council, staff recommends the City Council adopt the following motion.

Suggested Motion

“I move to adopt draft Resolution No. 13-254 approving the City of Des Moines 2014 – 2019 Capital Improvement Plan.”

Background

The Capital Improvement Plan provides a multi-year list of proposed capital expenditures and associated operating costs for the City. The Growth Management Act of 1990 requires communities to adopt comprehensive plans to guide the orderly development of growth. Also, the Plan focuses the community and Council's attention on prioritizing projects, given the competing needs for projects.

The 2014 – 2019 Capital Improvement Plan reflects the capital projects of the Municipal Capital Improvements Fund, Transportation Capital Improvement Fund, Transportation Impact Fee Fund, Surface Water Management Capital Fund, and the Marina Depreciation and Improvement Fund.

Discussion

None.

Alternatives

None.

Financial Impact

None.

Recommendation or Conclusion

Staff recommends that the City Council approve the Years 2014 – 2019 Draft Capital Improvement Plans by adopting Draft Resolution No. 13-254.

Concurrence

None.

CITY ATTORNEY'S FIRST DRAFT 11/5/2013

DRAFT RESOLUTION NO. 13-254

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, relating to capital improvement planning, adopting the 2014-2019 City of Des Moines Capital Improvement Plan, and superseding Resolution No. 1211.

WHEREAS, the City Council of the City of Des Moines adopted the 2013-2018 Capital Improvement Plan by Resolution No. 1211, and

WHEREAS, the City Council finds it to be in the public interest to adopt the 2014-2019 Capital Improvement Plan; now therefore,

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

Sec. 1. The City of Des Moines Capital Improvement Plan 2014-2019 is adopted by reference, as a guide for future capital improvement projects and policies.

Sec. 2. The City Manager is directed to submit to the City Council, for approval or adoption, annual updates to the Des Moines Capital Improvement Plan at least once a year.

Sec. 3. The City Manager is directed to submit to the City Council, for approval or adoption, amendments to specific projects contained in the Capital Improvement Plan when any project exceeds or will exceed budgetary authorization.

Sec. 4. The City Manager is directed to submit to the City Council, for approval, significant changes to the scope of any project contained in the Capital Improvement Plan as adopted in this resolution. Determinations regarding what constitutes a significant change in a CIP project shall rest with the City Manager, provided in all circumstances that the provisions of Sec. 3 are enforced. Finally, three City Councilmembers may determine a significant change has occurred or is proposed to occur with respect to any project contained in the CIP, which determination shall bring the matter before the full City Council for approval or authorization.

Sec. 5. Any new capital project meeting the criteria for inclusion in the CIP shall not be authorized without review and amendment to the 2014-2019 Capital Improvement Plan by the City Council.

Sec. 6. Capital Improvement Plan projects identified in the Comprehensive Transportation Plan (CTP) as "Intersection and

Resolution No. _____
 Page 2 of 2

Roadway Capacity Improvement Projects" are eligible for funding by Traffic Impact Fees authorized under Ordinance No. 1322. Eligible projects shall be funded from Traffic Impact Fees, to the extent such funds are available, in the following priority order:

(1) Payment of debt service on bonds or loans for CTP-identified eligible projects.

(2) Reimbursement of past CIP transportation capital expenditures for CTP-identified eligible projects.

(3) Reimbursement of current CIP transportation capital expenditures for CTP-identified eligible projects.

(4) Use as matching funds required to obtain grants for CTP-identified eligible projects.

Sec. 7. Resolution No. 1211 is hereby superseded.

ADOPTED BY the City Council of the City of Des Moines, Washington 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



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Municipal Capital Improvement**

2014 - 2019 PROPOSED CIP									
Project No.	2014	2015	2016	2017	2018	2019	2014-2019 6 - YEAR TOTAL		
BEGINNING FUND BALANCE	\$ 474,670	\$ 206,125	\$ 109,433	\$ 193,670	\$ 357,920	\$ 182,370	\$474,670		
LOCAL REVENUES									
Interest Earnings	1,100	1,000	800	1,100	2,800	4,100	10,900		
Real Estate Excise Tax	550,000	550,000	600,000	600,000	600,000	600,000	3,500,000		
Park In Lieu Fees	10,000	47,500	50,000	50,000	50,000	50,000	257,500		
Impact Fees	-	-	-	-	-	50,000	50,000		
Transfer-in from General Fund (25% One-Time Sales & B&O Taxes)	194,078	-	-	-	-	-	194,078		
TOTAL LOCAL REVENUES	\$ 755,178	\$ 598,500	\$ 650,800	\$ 651,100	\$ 652,800	\$ 704,100	\$ 4,012,478		
PROJECT REVENUES									
WA State Heritage Funds (Confirmed)	-	-	-	-	-	-	-	824,000	
WA State Heritage Funds (Confirmed)	824,000	-	-	-	-	-	-	12,000	
4-Culture Arts Grant (Confirmed)	12,000	-	-	-	-	-	-	12,000	
4-Culture Arts Grant (Unconfirmed)	-	12,000	-	-	-	-	-	200,952	
WA State Heritage Funds (Unconfirmed) *	-	200,952	-	-	-	-	-	287,400	
RCO	-	287,400	-	-	-	-	-	334,000	
King County Parks Levy	55,000	55,000	55,000	55,000	55,000	55,000	330,000	100,000	
RCO (unconfirmed)	-	-	100,000	-	-	-	-	75,000	
KC Youth Park Facilities (Unconfirmed)	-	-	75,000	-	-	-	-	360,889	
DOE/CDBG	-	-	-	-	-	-	-	500,000	
CDBG	-	360,889	-	-	-	-	-	3,019,250	
Bond Proceeds	-	-	-	-	500,000	-	-	500,000	
RCO (unconfirmed)	-	-	-	-	3,019,250	-	-	1,000,000	
RCO (unconfirmed)	-	-	-	-	500,000	-	-	245,263	
KC Youth Park Facilities	-	-	-	-	-	-	-	-	
TOTAL PROJECT REVENUES	\$ 891,000	\$ 982,754	\$ 347,100	\$ 116,650	\$ 4,074,250	\$ 1,055,000	\$ 7,466,754		

* Removed from CIP projects list per Council, 11/08/12. Restored for 2014-2019 CIP



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Municipal Capital Improvement**

2014 - 2019 PROPOSED CIP														
Project No.	2014	2015	2016	2017	2018	2019	2014-2019 6 - YEAR TOTAL							
UNIDENTIFIED FUNDING SOURCES														
To Be Determined	\$	-	\$	-	\$	-	\$	-	\$					
To Be Determined	-	-	-	-	-	-	-	-	1,020,000					
To Be Determined	-	187,145	-	-	-	-	-	-	187,145					
To Be Determined	92,000	-	-	-	-	-	-	-	92,000					
To Be Determined	-	300,000	-	-	-	-	-	-	300,000					
To Be Determined	-	-	-	-	-	-	-	-	43,300					
To Be Determined	13,000	31,000	31,000	6,000	6,000	6,000	-	-	93,000					
To Be Determined	-	-	-	-	-	-	-	-	250,000					
To Be Determined	-	-	-	-	-	-	-	-	224,190					
To Be Determined	-	-	-	-	-	-	-	-	818,000					
To Be Determined	-	-	-	-	-	-	-	-	1,000,000					
To Be Determined	-	-	-	-	-	-	-	-	997,000					
Other Beach Park Projects:														
To Be Determined	-	428,000	-	-	-	-	-	-	428,000					
To Be Determined	-	271,263	-	-	-	-	-	-	271,263					
To Be Determined	-	150,150	-	-	-	-	-	-	150,150					
To Be Determined	-	220,000	(55,000)	(55,000)	(55,000)	(55,000)	-	-	-					
To Be Determined	-	85,520	-	-	-	-	-	-	85,520					
To Be Determined	-	227,125	-	-	-	-	-	-	227,125					
To Be Determined	-	66,512	-	-	-	-	-	-	66,512					
To Be Determined	-	151,500	-	-	-	-	-	-	151,500					
To Be Determined	-	50,300	-	-	-	-	-	-	50,300					
To Be Determined	-	77,890	-	-	-	-	-	-	77,890					
TOTAL UNIDENTIFIED REVENUES														
	\$	105,000	\$	2,246,405	\$	(24,000)	\$	(49,000)	\$	3,303,490	\$	951,000	\$	6,532,895
TOTAL REVENUES & FUND BALANCE														
	\$	2,225,848	\$	4,033,784	\$	1,083,333	\$	912,420	\$	8,388,460	\$	2,892,470	\$	18,486,797

* Removed from CIP projects list per Council, 11/08/12. Restored for 2014-2019 CIP



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Municipal Capital Improvement**

2014 - 2019 PROPOSED CIP										2014-2019 6 - YEAR TOTAL
Project No.	2014	2015	2016	2017	2018	2019				
PROJECT EXPENDITURES										
Des Moines Beach Park Rehab-Dining Hall	310,050.200	\$ 1,187,623	\$ -	\$ -	\$ -	\$ -	-	\$ -	-	\$ 1,187,623
Des Moines Beach Park Rehab-Sun Home Lodge *	310,050.202	-	640,952	-	-	-	-	-	-	640,952
Des Moines Beach Park Rehab-Picnic Shelter	310,050.201	-	123,530	-	-	-	-	-	-	123,530
Des Moines Beach Park Rehab-Founders Lodge Repairs	-	-	-	-	-	-	-	997,000	-	997,000
Playground Repair and Replacement - Beach Park	-	-	-	199,375	-	-	-	-	-	199,375
Lifecycle Park Replacement Projects	20,000	181,225	234,200	123,300	-	-	-	-	-	558,725
Steven J Underwood Meml Park C-3 Parking Lot	-	-	-	-	402,540	-	-	-	-	402,540
Parkside Park & Playground Repair & Replacement	-	360,889	-	-	-	-	-	-	-	360,889
City Hall Parking Lot Rebuild	-	75,000	-	-	-	-	-	-	-	75,000
City Hall/Engineering Emergency Generator	-	187,145	-	-	-	-	-	-	-	187,145
Activity Center Emergency Generator	92,000	-	-	-	-	-	-	-	-	92,000
Police Dept Storage Building for Seized Property	-	300,000	-	-	-	-	-	-	-	300,000
Demo Sonju Property Outbuildings	-	-	-	-	43,300	-	-	-	-	43,300
Marina District Banners and Readerboards	29,000	31,000	31,000	6,000	6,000	6,000	-	-	-	109,000
Keyless Entry Systems (CH/PWSC/PW Engineering)	83,272	-	-	-	-	-	-	-	-	83,272
Activity Center Expansion	-	-	-	-	4,019,250	-	-	4,019,250	-	4,019,250
Midway Park Expansion	-	-	-	-	1,020,000	-	-	1,020,000	-	1,020,000
Steven J Underwood Meml Park C-4 Soccer Field	-	-	-	-	1,418,000	-	-	1,418,000	-	1,418,000
South Des Moines Park Acquisition	-	-	-	-	-	-	-	-	-	-
Beach Park Pay Parking Stations	-	-	-	-	-	2,050,000	-	-	-	2,050,000
Other Beach Park Projects:										
Carlson House Rehabilitation *	-	271,263	-	-	-	-	-	-	-	271,263
Turf Repair and Irrigation Projects	-	150,150	-	-	-	-	-	-	-	150,150
Restroom Building Rehabilitation	-	574,800	-	-	-	-	-	-	-	574,800
Roadside Cabin Rehabilitation *	-	85,520	-	-	-	-	-	-	-	85,520
Roadway & Parking Overlays	-	227,125	-	-	-	-	-	-	-	227,125
Sports Cabin Rehabilitation *	-	66,512	-	-	-	-	-	-	-	66,512
Undergrounding Utilities	-	151,500	-	-	-	-	-	-	-	151,500
Replace Wooden Bridge over DM Creek	-	50,300	-	-	-	-	-	-	-	50,300
Caretakers Cabin Rehabilitation *	-	77,890	-	-	-	-	-	-	-	77,890
TOTAL PROJECT EXPENDITURES										
	\$ 1,451,895	\$ 3,554,801	\$ 464,575	\$ 129,300	\$ 7,906,090	\$ 2,056,000	\$ -	\$ -	\$ -	\$ 15,562,661

* Removed from CIP projects list per Council, 11/08/12. Restored for 2014-2019 CIP



2014 - 2019 CAPITAL IMPROVEMENT PLAN
Municipal Capital Improvement

2014 - 2019 PROPOSED CIP

Project No.	2014	2015	2016	2017	2018	2019	2014-2019 6 - YEAR TOTAL
DEBT SERVICE PAYMENTS/OPERATING TRANSFERS							
Debt-1997 GO Bond-City Hall Expansion / 2008 Refunding Bonds							
Transfer to General Fund	\$ 123,750	\$ 119,550	\$ 125,088	\$ 125,200	\$ -	\$ -	\$ 493,588
Transfer to Transportation CIP Fund	194,078	-	-	-	-	-	194,078
	250,000	250,000	300,000	300,000	300,000	300,000	1,700,000
	567,828	369,550	425,088	425,200	300,000	300,000	2,387,666
TOTAL DEBT/OPERATING TRANSFERS	\$ 2,019,723	\$ 3,924,351	\$ 889,663	\$ 554,500	\$ 8,206,090	\$ 2,356,000	\$ 17,950,327
TOTAL EXPENDITURES	\$ 206,125	\$ 109,433	\$ 193,670	\$ 357,920	\$ 182,370	\$ 536,470	\$ 536,470
ENDING FUND BALANCE							
RESERVED FUND BALANCE							
Park In Lieu Fees	\$ 14,323	\$ 40,173	\$ 90,173	\$ 140,173	\$ 1,823	\$ 51,823	\$ 51,823
King County Parks Levy	64,327	9,327	9,327	9,327	9,327	9,327	9,327
DM Creek Urban Trail Improvements	\$ 78,650	\$ 49,500	\$ 99,500	\$ 149,500	\$ 11,150	\$ 61,150	\$ 61,150
TOTAL RESERVED FUND BALANCE	\$ 127,474	\$ 59,932	\$ 94,169	\$ 208,419	\$ 171,219	\$ 475,319	\$ 475,319
UNRESERVED FUND BALANCE							
PORTION OF PROJECTS FUNDED BY PARK IN LIEU							
Fieldhouse Park Ballfield Expansion	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Steven J Underwood Meml Park C-3 Parking Lot	-	-	-	-	138,350	-	138,350
Steven J Underwood Meml Park C-4 Soccer Field	-	-	-	-	50,000	-	50,000
Lifecycle Park Replacement Projects	-	21,650	-	-	-	-	21,650
TOTAL FUNDED BY PARK IN LIEU	\$ -	\$ 21,650	\$ -	\$ -	\$ 188,350	\$ -	\$ 210,000
PORTION OF PROJECTS FUNDED BY IMPACT FEES							
South DM Park Acquisition	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ 50,000
TOTAL FUNDED BY IMPACT FEES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ 50,000
PORTION OF PROJECTS FUNDED BY REET							
Des Moines Beach Park Rehab-Auditorium	\$ 223,560	-	-	-	-	-	223,560
Des Moines Beach Park Rehab-Dining Hall	-	-	-	-	-	-	40,000
Des Moines Beach Park Rehab-Picnic Shelter	-	40,000	-	-	-	-	-
Des Moines Beach Park Rehab-Sun Home Lodge	-	-	-	-	-	-	-
Des Moines Beach Park Rehab-Restroom Building	-	12,400	-	-	-	-	12,400
Playground Repair and Replacement - Field House Park	-	-	-	-	-	-	-
Playground Repair and Replacement - Beach Park	-	-	-	-	-	-	-
Lifecycle Park Replacement Projects	-	-	24,375	-	-	-	24,375
Steven J Underwood Meml Park C-3 Parking Lot	20,000	93,062	117,100	61,650	-	-	291,812
Steven J Underwood Memorial Park - PH 4	-	-	-	-	-	-	40,000
Activity Center Expansion	-	-	-	-	40,000	-	40,000
Debt-1997 GO Bond-City Hall Expansion / 2008 Refunding Bonds	123,750	119,550	125,088	125,200	50,000	-	50,000
Transfer to Transportation CIP Fund	250,000	145,388	300,000	300,000	250,000	-	250,000
	617,310	410,400	566,563	486,850	640,000	300,000	1,595,388
TOTAL AMOUNT FUNDED BY REET	\$ 617,310	\$ 410,400	\$ 566,563	\$ 486,850	\$ 640,000	\$ 300,000	\$ 3,021,123



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Municipal Capital Improvement**

2014 - 2019 PROPOSED CIP							
Project No.	2014	2015	2016	2017	2018	2019	2014-2019 6 - YEAR TOTAL
PORTION OF PROJECTS FUNDED BY GRANTS & CONTRIBUTIONS							
WABP-Rehab/Dining Hall	\$ 824,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 824,000
DMBP-Rehab/Dining Hall	12,000	-	-	-	-	-	12,000
DMBP-Rehab/Sun Home Lodge	-	200,952	-	-	-	-	200,952
DMBP-Rehab/Sun Home Lodge	-	12,000	-	-	-	-	12,000
Des Moines Beach Park Rehab-Picnic Shelter	-	55,000	-	-	-	-	55,000
Des Moines Beach Park Rehab-Restroom Building	-	55,000	55,000	55,000	55,000	55,000	275,000
Des Moines Beach Park Rehab-Restroom Building	-	287,400	-	-	-	-	287,400
Park Lifecycle Repair & Replacement Projects	-	66,513	117,100	61,650	-	-	245,263
Playground Repair and Replacement - Beach Park	-	-	100,000	-	-	-	100,000
Playground Repair and Replacement - Beach Park	-	-	75,000	-	-	-	75,000
Park & Playground Repair & Replacement - Parkside Park	-	-	-	-	-	-	-
Activity Center Expansion	-	360,889	-	-	-	-	360,889
Activity Center Expansion	-	-	-	-	500,000	-	500,000
SJU Park C-4 Soccer Field	-	-	-	-	3,019,250	-	3,019,250
South DM Park Acquisition	-	-	-	-	500,000	-	500,000
DMBP-Rehab/Auditorium	-	-	-	-	-	1,000,000	1,000,000
TOTAL AMOUNT FUNDED BY GRANTS							
	\$ 836,000	\$ 1,037,754	\$ 347,100	\$ 116,650	\$ 4,074,250	\$ 1,055,000	\$ 7,469,754
PORTION OF PROJECTS FUNDED BY FUND BALANCE							
Des Moines Beach Park Rehab-Auditorium	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Des Moines Beach Park Rehab-Dining Hall	128,063	-	-	-	-	-	128,063
Des Moines Beach Park Rehab-Picnic Shelter/Restroom Bldg	-	28,530	-	-	-	-	28,530
Keyless Entry Systems (CH/PWSC/PW Engineering)	83,272	-	-	-	-	-	83,272
City Hall Parking lot Rebuild	-	75,000	-	-	-	-	75,000
Marina District Banners and Civic Readerboards	16,000	-	-	-	-	-	16,000
Transfer to General Fund	194,078	-	-	-	-	-	194,078
Transfer to Transportation CIP Fund	-	104,612	-	-	-	-	104,612
Beach Park Pay Parking Stations	40,000	-	-	-	-	-	40,000
Beach Park Jan 09 Mudslide	-	-	-	-	-	-	-
TOTAL AMOUNT FUNDED BY FUND BALANCE							
	\$ 461,413	\$ 208,142	\$ -	\$ -	\$ -	\$ -	\$ 669,555

* Removed from CIP projects list per Council, 11/08/12. Restored for 2014-2019 CIP



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Transportation CIP Fund**

2014-2019 PROPOSED CIP

	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year Total
BEGINNING FUND BALANCE	\$ 4,230,801	\$ 496,234	\$ 269,037	\$ 186,040	\$ 254,526	\$ 220,066	\$ 4,230,801
LOCAL REVENUES							
Interest Earnings	\$ 7,700	\$ 7,100	\$ 1,900	\$ 1,700	\$ 2,600	\$ 3,000	\$ 24,000
Transfer in from Pacific Ridge Mitigation Fund	326,163	-	-	-	-	-	326,163
Transfer in from Transportation Impact Fee Fund	292,641	400,000	315,000	250,600	125,000	100,000	1,483,241
Transfer in from MCI Fund	250,000	250,000	300,000	300,000	300,000	300,000	1,700,000
Transfer in from LID Funds	3,569	3,419	3,269	-	-	-	10,256
Transfer in from General Fund	97,039	-	-	-	-	-	97,039
TOTAL LOCAL REVENUES	\$ 977,112	\$ 660,519	\$ 620,169	\$ 552,300	\$ 427,600	\$ 403,000	\$ 3,640,599
PROJECT REVENUES (SECURED)							
Transfer from Transportation Benefit District (TBD)	\$ 60,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60,000
Highline Water District	600,580	-	-	-	-	-	600,580
PSE Gas	44,938	-	-	-	-	-	44,938
Century Link (Qwest)	30,805	-	-	-	-	-	30,805
Comcast	134,240	-	-	-	-	-	134,240
POS D.A. FEES (Confirmed)	-	-	-	-	-	-	-
FHWA - STP (Confirmed)	2,800,000	-	-	-	-	-	2,800,000
Highline Water District	-	-	-	-	39,500	-	39,500
Century Link (Qwest)	38,674	-	-	-	-	-	38,674
Comcast	128,464	-	-	-	-	-	128,464
King County Metro	20,000	-	-	-	-	-	20,000
TIB (Confirmed)	280,502	-	-	-	-	-	280,502
BRAC (Confirmed)	2,339,241	-	-	-	-	-	2,339,241
King County Conservation Grant 2010 (Confirmed)	472,034	-	-	-	-	-	472,034
CMAAQ - Design	300,000	80,000	-	-	-	-	380,000
Transfer in from SWM CIP 451.815	242,700	-	-	-	-	-	242,700
ASE Program	110,000	110,000	110,000	110,000	110,000	110,000	660,000
Highway Safety Improvement Program	109,500	25,000	-	-	-	-	134,500
TOTAL SECURED PROJECT REVENUES	\$ 7,711,678	\$ 215,000	\$ 110,000	\$ 110,000	\$ 149,500	\$ 110,000	\$ 8,406,178



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Transportation CIP Fund**

2014-2019 PROPOSED CIP

		2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year Total
PROJECT REVENUES (UNSECURED)								
Federal STP (Unconfirmed)	S 216th St Impr - Segment 1a (29th to 24th)	-	-	-	-	-	1,000,000	\$ 2,500,000
TIB (Unconfirmed)	S 216th St Impr - Segment 1a (29th to 24th)	-	-	-	250,000	1,500,000	750,000	\$ 2,500,000
In-Lieu Fees	S 216th St Impr - Segment 3	-	250,000	350,000	275,000	225,000	200,000	1,300,000
TIB (Unconfirmed)	S 216th St Impr - Segment 3	-	100,000	765,000	2,705,000	-	-	3,570,000
CDBG (Unconfirmed)	S 216th St Impr - Segment 3	-	-	190,000	100,000	-	-	290,000
WSDOT Ped/Bike (Unconfirmed)	S 216th St Impr - Segment 3	-	-	350,000	150,000	-	-	500,000
Water District	S 216th St Impr - Segment 3	-	-	250,000	-	-	-	250,000
Century Link	S 216th St Impr - Segment 3	-	-	80,000	-	-	-	80,000
Comcast	S 216th St Impr - Segment 3	-	-	70,000	-	-	-	70,000
TIB (Unconfirmed)	16th Ave. S. - Segment 5A	-	-	-	-	-	-	-
In-Lieu Fees	16th Ave. S. - Segment 5A	-	127,600	48,750	300,000	350,000	-	650,000
CMAQ - Construction	Barnes Creek Trail/SR 509 ROW	-	-	2,300,000	385,650	-	-	562,000
TIB (Unconfirmed)	Midway Elementary - SRTS	439,683	261,737	-	950,000	-	-	3,250,000
HES Grant (Unconfirmed)	Marine View Dr. and S. 240th RAB	-	120,000	-	-	-	-	701,420
Landmark In-Lieu Fees	Marine View Dr. and S. 240th RAB	-	175,000	-	-	-	-	120,000
TIB (Unconfirmed)	Marine View Dr. and S. 240th RAB	99,059	810,121	102,329	-	-	-	175,000
CDBG (Unconfirmed)	S 224th Street Improvement Project	240,000	-	-	-	-	-	1,011,509
Pacific Ridge Mitigation Fee - Artemis (Unsecured)	S 224th Street Improvement Project	310,260	-	-	-	-	-	240,000
TOTAL UNSECURED PROJECT REVENUES		\$ 1,089,002	\$ 1,844,458	\$ 4,506,079	\$ 5,115,650	\$ 3,575,000	\$ 1,950,000	\$ 18,080,189
TOTAL PROJECT REVENUES								
		\$ 8,800,680	\$ 2,059,458	\$ 4,616,079	\$ 5,225,650	\$ 3,724,500	\$ 2,060,000	\$ 26,486,367
TOTAL REVENUES & FUND BALANCE								
		\$ 14,008,592	\$ 3,216,211	\$ 5,505,285	\$ 5,963,990	\$ 4,406,626	\$ 2,683,066	\$ 34,357,867



	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year Total
...	...	...	...	...	...	...	...

85



2014 - 2019 CAPITAL IMPROVEMENT PLAN

Transportation CIP Fund

2014-2019 PROPOSED CIP

	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year Total
PORTION OF PROJECTS FUNDED BY REMAINING FUND BALANCE							
Pavement Management Program	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,000
Annual Guardrail Program	35,000	-	-	35,000	-	-	70,000
Annual Sidewalk Program	25,000	25,000	25,000	25,000	25,000	25,000	150,000
Saltwater State Park Bridge Seismic Retrofit	347,065	-	-	-	-	-	347,065
24th Ave. S. Improvements	2,365,745	-	-	-	-	-	2,365,745
S 216th St Impr - Segment 1a (29th to 24th)	275,000	55,000	(200,000)	(70,000)	(988)	(16,858)	42,154
S 216th St Improvement - Segment 2 (18th to 24th)	(147,303)	-	-	-	-	-	(147,303)
DM Transportation Gateway	80,000	20,000	100,000	-	-	-	200,000
DM Transportation Gateway	177,966	-	-	-	-	-	177,966
S 216th St Improvement - Segment 3	-	-	-	-	-	-	-
Barnes Creek Trail/ SR 509 Right-of-Way Acquisition	24,918	24,800	24,682	24,564	24,445	24,327	147,736
Intelligent Transportation System	34,253	34,093	33,934	33,775	33,615	33,456	203,126
PWTF Loan - Pacific Hwy Construction	193,013	194,013	194,550	194,875	194,988	194,738	1,166,177
PWTF Loan-DM Transportation Gateway	75,000	-	-	-	-	-	75,000
2008 Bond Issue Debt Service	110,000	-	-	-	-	-	110,000
Marine View Dr. Crosswalk Improvements	-	43,491	-	-	-	-	43,491
Redondo Parking Study	-	16,319	300,000	-	-	-	369,765
Midway Elementary - 24th Ave Sidewalk Improvements	53,339	-	-	-	-	-	53,339
Marine View Dr. and S. 240th RAB	-	100,000	-	-	-	-	100,000
Comprehensive Transportation Plan	-	-	-	-	-	-	-
(Needs to be funded in Gen Fd)	-	-	-	-	-	-	-
TOTAL USE OF FUND BALANCE	\$ 3,678,996	\$ 512,716	\$ 478,166	\$ 243,214	\$ 277,060	\$ 260,663	\$ 5,450,815
PORTION OF PROJECTS FUNDED BY IN-LIEU FEES (Confirmed)							
16th Ave S Improvements - Segment 5A (Ashton, rec'd in 2007)	128,839	-	-	-	-	-	128,839
TOTAL USE OF IN-LIEU FEES	\$ 128,839	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 128,839
PORTION OF PROJECTS FUNDED BY PACIFIC RIDGE MITIGATION FEES							
S. 224th Street Improvements	\$ 326,163	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 326,163
TOTAL USE OF MITIGATION FEES	\$ 326,163	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 326,163



2014 - 2019 CAPITAL IMPROVEMENT PLAN Transportation CIP Fund

2014-2019 PROPOSED CIP

	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year Total
PORION OF PROJECTS FUNDED BY IMPACT FEES							
24th Ave. S. Improvements	\$ 152,641	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 152,641
S 216th St Impr - Segment 1a (29th to 24th)	50,000	150,000	250,000	150,000	100,000	100,000	800,000
S 216th St Improvement - Segment 3	90,000	150,000	60,000	80,000	-	-	380,000
S 216th St Improvement - Segment 4	-	-	-	-	-	-	-
16th Ave S Improvements - Segment 5A	-	-	5,000	20,600	25,000	-	50,600
Marine View Drive and S. 240th Street	-	100,000	-	-	-	-	100,000
TOTAL USE OF IMPACT FEES	\$ 292,641	\$ 400,000	\$ 315,000	\$ 250,600	\$ 125,000	\$ 100,000	\$ 1,483,241

PORION OF PROJECTS FUNDED BY ASE PROGRAM

Midway Elementary SRTS	\$ 198,000	\$ 85,000	\$ -	\$ -	\$ -	\$ -	\$ 283,000
MVD Crosswalk Improvements	80,000	-	-	-	-	-	80,000
Driver Feedback Signs	20,000	-	20,000	-	20,000	-	60,000
S. 268th St. Sidewalks	-	-	-	100,000	150,000	180,000	430,000
TOTAL USE OF ASE FUNDS	\$ 298,000	\$ 85,000	\$ 20,000	\$ 100,000	\$ 170,000	\$ 180,000	\$ 853,000

287

UNFUNDED PROJECTS

Pavement Management Program	\$ 1,212,961	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 8,212,961
Guardrail Program	-	35,000	35,000	-	35,000	35,000	140,000
Intelligent Transportation System	65,000	65,000	65,000	65,000	65,000	65,000	390,000
Link Light Rail Coordination and Planning	35,000	35,000	35,000	35,000	35,000	35,000	210,000
Downtown Circulation and Pedestrian Study	200,000	100,000	-	-	-	-	300,000
Des Moines Memorial Drive and S. 200th Street	85,000	65,000	245,000	-	-	-	395,000
S 216th Street - Segment 3 (11th to 18th)	-	120,000	1,420,000	2,750,000	-	-	4,290,000
Redondo Boardwalk Repairs	-	360,000	200,000	200,000	200,000	200,000	1,160,000
Neighborhood Traffic Calming Program	50,000	50,000	50,000	50,000	50,000	50,000	300,000
TOTAL UNFUNDED PROJECTS	\$ 1,647,961	\$ 2,230,000	\$ 3,450,000	\$ 4,500,000	\$ 1,785,000	\$ 1,785,000	\$ 15,397,961



2014 - 2019 CAPITAL IMPROVEMENT PLAN

MARINA

2014 - 2019 PROPOSED CIP									
	2014	2015	2016	2017	2018	2019	2014-2019 6 - YEAR TOTAL		
BEGINNING FUND BALANCE	\$ 143,206	\$ 24,205	\$ 55,005	\$ 75,505	\$ 96,505	\$ 118,005	\$	\$	143,206
LOCAL REVENUES									
Interest Earnings	\$ 1,000	\$ 800	\$ 500	\$ 1,000	\$ 1,500	\$ 2,100	\$	\$	6,900
Transfer from Depr & Imprv Fund - 2002 Bonds	-	30,000	20,000	20,000	20,000	20,000			110,000
Transfer from Marina Revenue Fund (Capital Contributions)	514,036	513,436	511,749	514,636	511,886	514,486			3,080,229
Transfer From Marina Revenue Fund (Debt Service)	\$ 515,036	\$ 544,236	\$ 532,249	\$ 535,636	\$ 533,386	\$ 536,586	\$	\$	3,197,129
TOTAL LOCAL REVENUES	\$ 515,036	\$ 544,236	\$ 532,249	\$ 535,636	\$ 533,386	\$ 536,586	\$	\$	3,197,129
TOTAL REVENUES & FUND BALANCE	\$ 658,242	\$ 568,441	\$ 587,254	\$ 611,141	\$ 629,891	\$ 654,591	\$	\$	3,340,335
PROJECT EXPENDITURES									
Small Improvements									
Security Camera Project	440.63.01	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Gate Opening System for M & N Docks									
Miscellaneous Marina									
Small Moorage Docks Reconfiguration	406.442	-	-	-	-	-	-	-	-
South Lot Restroom Project	406.444	-	-	-	-	-	-	-	-
Redondo Ramp Boarding Floats	406.447	-	-	-	-	-	-	-	-
Fishing Pier Renovations	406.448	-	-	-	-	-	-	-	-
New Breakwater	406.449	-	-	-	-	-	-	-	-
Timber Breakwater Removal	406.450	-	-	-	-	-	-	-	-
Port Security Grant Program Project	440.63.09	-	-	-	-	-	-	-	-
Activity Float Shelter	440.63.11	-	-	-	-	-	-	-	-
6th Avenue Stairway Gates		120,000	-	-	-	-	-	-	120,000
Site Management Project									
Transfer to Depr & Imprv Fund - 2008 Bonds									
TOTAL PROJECT EXPENDITURES	\$ 120,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	120,000
DEBT SERVICE EXPENSES									
Debt Service #1: 2002 Bond Issue (2012 Paid out of Fund 401)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service #2: 2008 Bond Issue	514,036	513,436	511,749	514,636	511,886	514,486			3,080,229
Bond Issuance Costs	-	-	-	-	-	-			-
TOTAL DEBT EXPENSES	\$ 514,036	\$ 513,436	\$ 511,749	\$ 514,636	\$ 511,886	\$ 514,486	\$	\$	3,080,229
TOTAL EXPENDITURES	\$ 634,036	\$ 513,436	\$ 511,749	\$ 514,636	\$ 511,886	\$ 514,486	\$	\$	3,200,229
ENDING FUND BALANCE	\$ 24,205	\$ 55,005	\$ 75,505	\$ 96,505	\$ 118,005	\$ 140,105	\$	\$	140,105
Reserved for Bond Proceeds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UNRESERVED FUND BALANCE	\$ 24,205	\$ 55,005	\$ 75,505	\$ 96,505	\$ 118,005	\$ 140,105	\$	\$	140,105



Small Improvements	
Security Camera Project	
Gate Opening System for M & N Docks	
Miscellaneous Marina	
Water Main Relocation	
Fishing Pier Renovations	
New Breakwater	
Small Moorage Docks Reconfiguration	
South Lot Restroom Project	
Redondo Ramp Boarding Floats	
Dock Electric Upgrades (Open Moorage)	
Port Security Grant Program Project	
Activity Float Shelter	
6th Avenue Stainway Gates	
Site Management Project	
Timber Breakwater Removal	
Debt Service Payments	
Debt Service #1: 2002 Bond Issue	
Debt Service #2: 2008 Bond Issue	
Transfer to Depr & Imprv Fund - 2008 Bonds	
TOTAL USE OF FUND BALANCE	

290



2014-2019 CAPITAL IMPROVEMENT PLAN Surface Water Management

2014 - 2019 PROPOSED CIP

	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year TOTAL
BEGINNING FUND BALANCE	\$ 1,111,567	\$ 578,322	\$ 622,924	\$ 787,094	\$ 247,025	\$ 271,018	\$ 1,111,567
LOCAL REVENUES							
Interest Income	\$ 3,000	\$ 2,500	\$ 3,000	\$ 5,300	\$ 5,200	\$ 3,900	\$ 22,900
Hook-up Fees	75,000	75,000	75,000	75,000	75,000	75,000	450,000
Transfer from SWM operations	486,455	742,102	759,170	776,631	794,493	812,766	4,371,617
TOTAL LOCAL REVENUES	\$ 564,455	\$ 819,602	\$ 837,170	\$ 856,931	\$ 874,693	\$ 891,666	\$ 4,844,517
PROJECT REVENUES							
Barnes Creek 223rd Culvert Replace - King Cons. Funds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lower DM Creek - King County Flood Control Funds	-	-	-	-	-	-	-
Lower Massey Creek - King County Flood Control Funds*	-	180,000	-	-	-	-	180,000
1st Avenue Pond Expansion - Normandy Park ILA*	-	-	-	-	29,800	204,750	234,550
Barnes Creek 223rd Culvert Replace - Hilline Water District	-	-	-	-	-	-	-
Barnes Creek KDR Culvert Repl - King Cons Funds	-	-	-	-	-	-	-
Redondo Hts Culvert Repl - Redondo Hts Assn.	-	-	-	-	-	-	-
Redondo Hts Culvert Repl - Lakehaven Utility Dist.	-	-	-	-	-	-	-
TOTAL PROJECT REVENUES	\$ -	\$ 180,000	\$ -	\$ -	\$ 29,800	\$ 204,750	\$ 414,550
TOTAL REVENUES & FUND BALANCE	\$ 1,676,022	\$ 1,577,924	\$ 1,460,094	\$ 1,644,025	\$ 1,151,518	\$ 1,367,434	\$ 6,370,634

*These grants and/or loans need to be applied for.

PROJECT EXPENDITURES	City Proj No.
Des Moines Creek Basin Projects	451.806
Lower Des Moines Creek Channel Modifications	451.806-01
Barnes Creek 223rd Culvert Replacement	451.820
Redondo Heights Culvert Replacement	451.818
216th Street (15th Ave to 18th Ave) Storm Drainage Repair	451.825
Detention Pond Safety Improvements	451.810
DMMD Pipeline S. 212th to S. 213th	451.812
216th Pl. Culvert Replacement	451.819
24th Avenue Pipeline Replacement/Upgrade	451.815
Lower Massey Creek Channel Modifications	451.821
Barnes Creek/KDM Rd. Culvert Repl.	451.804.00
Pipe Replacement Program	
North Hill NE 197th St Trunkline Upgrade	451.824
199th N Hill Trunk Line Upgrade	451.822
1st Avenue Pond Expansion	451.823
TOTAL PROJECT EXPENDITURES	



2014-2019 CAPITAL IMPROVEMENT PLAN **Surface Water Management**

2014 - 2019 PROPOSED CIP							2014 - 2019 6-Year TOTAL
	2014	2015	2016	2017	2018	2019	
OPERATING TRANSFERS							
Total Operating Transfers	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL EXPENDITURES	\$ 1,097,700	\$ 955,000	\$ 673,000	\$ 1,397,000	\$ 880,500	\$ 881,120	\$ 5,884,320
ENDING FUND BALANCE	\$ 578,322	\$ 622,924	\$ 787,094	\$ 247,025	\$ 271,018	\$ 486,314	\$ 486,314



2014-2019 CAPITAL IMPROVEMENT PLAN

Surface Water Management

2014 - 2019 PROPOSED CIP

	2014	2015	2016	2017	2018	2019	2014 - 2019 6-Year TOTAL
PORTION OF PROJECT FUNDED BY SWM							
Des Moines Creek Basin Projects	\$ 451.806	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Redondo Creek Culvert Replacement	451.817	-	-	-	-	-	-
Lower Des Moines Creek Channel Modifications	451.806-01	-	-	-	-	-	-
Redondo Heights Culvert Replacement	451.818	-	-	-	-	-	-
Barnes Creek 223rd Culvert Replacement	451.820	-	-	-	-	-	-
DMMD Pipeline S. 212th to S. 213th	356,000	-	-	-	-	-	356,000
216th Pl. Culvert Replacement	196,500	-	-	-	-	-	196,500
Detention Pond Safety Improvements	451.819	-	-	-	-	-	-
Lower Massey Creek Channel Modifications	451.821	775,000	-	-	-	-	985,000
Barnes Creek/KDM Rd. Culvert Repl.	451.804.00	-	345,000	990,000	-	-	1,427,500
24th Avenue Pipeline Replacement/Upgrade	451.815	-	-	-	-	-	242,700
Pipe Replacement Program			328,000	328,000	328,000	328,000	1,312,000
199th N Hill Trunk Line Upgrade	451.822	-	-	-	37,100	228,620	265,720
1st Avenue Pond Expansion	451.823	-	-	-	29,800	119,750	149,550
North Hill NE 197th St Trunkline Upgrade	451.824	-	-	79,000	455,800	-	534,800
216th Street (15th Ave to 18th Ave) Storm Drainage Repair	-	-	-	-	-	-	-
Detention Pond Safety Improvements	-	-	-	-	-	-	-
TOTAL FUNDED BY SWM	\$ 1,097,700	\$ 775,000	\$ 673,000	\$ 1,397,000	\$ 850,700	\$ 676,370	\$ 5,469,770



2014 - 2019 CAPITAL IMPROVEMENT PLAN **Transportation Impact Fees**

	2007	2008	2009 Act	2010 Act	2011 Act	2012 Act	2013 Est	2014	2015	2016	2017	2018	2019
BEGINNING FUND BALANCE	\$ 2,668	\$ 4,253	\$ 4,483	\$ 330,717	\$ 331,915	\$ 333,268	\$ 334,941	\$ 9,227	\$ 9,727	\$ 9,727	\$ 9,727	\$ 9,827	\$ 9,927
LOCAL REVENUES													
Impact Fees													
Impact Fees - Healthpoint		326,164											
Impact Fees - Pac Ridge		231	71	1,198	1,353	1,673	450	500	-	-	100	100	100
Interest Earnings	1,585		326,163										
Transfer from Transportation CIP Fund													
TOTAL LOCAL REVENUES	\$ 315,826	\$ 518,800	\$ 620,025	\$ 33,093	\$ 29,305	\$ 207,453	\$ 308,537	\$ 293,141	\$ 400,000	\$ 315,000	\$ 250,700	\$ 125,100	\$ 100,100
TOTAL REVENUES & FUND BALANCE	\$ 318,494	\$ 523,053	\$ 624,508	\$ 363,810	\$ 361,220	\$ 540,721	\$ 643,478	\$ 302,368	\$ 409,727	\$ 324,727	\$ 260,427	\$ 134,927	\$ 110,027
EXPENDITURE TRANSFERS													
Transfer to Transportation CIP Fund	\$ 314,241	\$ 518,569	\$ 293,791	\$ 31,895	\$ 27,952	\$ 205,780	\$ 634,251	\$ 292,641	\$ 400,000	\$ 315,000	\$ 250,600	\$ 125,000	\$ 100,000
TOTAL TRANSFERS	\$ 314,241	\$ 518,569	\$ 293,791	\$ 31,895	\$ 27,952	\$ 205,780	\$ 634,251	\$ 292,641	\$ 400,000	\$ 315,000	\$ 250,600	\$ 125,000	\$ 100,000
TOTAL EXPENDITURES	\$ 314,241	\$ 518,569	\$ 293,791	\$ 31,895	\$ 27,952	\$ 205,780	\$ 634,251	\$ 292,641	\$ 400,000	\$ 315,000	\$ 250,600	\$ 125,000	\$ 100,000
ENDING FUND BALANCE	\$ 4,253	\$ 4,484	\$ 330,717	\$ 331,915	\$ 333,268	\$ 334,941	\$ 9,227	\$ 9,727	\$ 9,727	\$ 9,727	\$ 9,827	\$ 9,927	\$ 10,027
RESERVED FUND BALANCE	\$ 4,253	\$ 4,484	\$ 330,717	\$ 331,915	\$ 333,268	\$ 334,941	\$ 9,227	\$ 9,727	\$ 9,727	\$ 9,727	\$ 9,827	\$ 9,927	\$ 10,027

