

AGENDA

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

May 1, 2014 – 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

Item 1: EMERGING ISSUES

Item 2: DES MOINES ELEMENTARY SCHOOL PRINCIPAL, RICK WISEN

Item 3: SCORE, PENNY BARTLEY

CONSENT AGENDA

Page 1 Item 1: RESOLUTION NO. 14-043 SETTING PUBLIC HEARING FOR DRAFT ORDINANCE NO. 14-043
Motion is to adopt Draft Resolution No. 14-043 setting a public hearing on May 22, 2014 to consider Draft Ordinance No. 14-043 relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01 and 18.95 of the Des Moines Municipal Code and repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591.

Page 83 Item 2: RESOLUTION NO. 14-035 SETTING PUBLIC HEARING FOR NEW TRANSIT COMMUNITY ZONE
Motion is to adopt Draft Resolution No. 14-035 setting a public hearing on June 5, 2014 to consider Draft Ordinance No. 14-035 adding a new chapter, T-C Transit Community Zone and making other amendments to Title 18, Zoning Code.

NEW BUSINESS

Page 131 Item 1: DRAFT ORDINANCE NO. 14-088, AUTHORITY FOR EMINENT DOMAIN FOR TRANSPORTATION PROJECT ON 216TH AND PACIFIC HIGHWAY
Staff Presentation: City Attorney Pat Bosmans and Special Projects Consultant Len Madsen

NEXT MEETING DATE

May 8, 2014 Regular City Council Meeting

ADJOURNMENT

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Resolution No. 14-043 Setting Public Hearing for Draft Ordinance No. 14-043.

FOR AGENDA OF: May 1, 2014

ATTACHMENTS:

1. Draft Resolution No. 14-043 Setting a Public Hearing Date for Draft Ordinance No. 14-043
2. Draft Ordinance No. 14-043 related to the cutting and removal of trees.

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: April 22, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is for City Council to consider Draft Resolution No. 14-043 which will set a public hearing date for the consideration of Draft Ordinance No. 14-043, relating to the cutting and removal of trees on private developed sites, private undeveloped sites, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

Suggested Motion

Motion 1: "I move to adopt Draft Resolution No. 14-043 setting a public hearing on May 22, 2014 to consider Draft Ordinance No. 14-043 relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, and 18.95 of the Des Moines Municipal Code and repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591."

Background

At the November 14th, 2013 Environment Committee, Administration provided an overview of how the Community Development Division interprets the Des Moines Municipal Code requirements related to requests by citizens and others to prune, top, or remove trees within the City of Des Moines. Below is a summary of the direction the Committee provided as it relates to the following categories of sites:

- **Trees on private developed sites** – No permit required, provided that the tree/s are not located within a designated critical area, shoreline environment, or required landscaping area.
- **Trees on private undeveloped sites** – Limited to removal of dead, diseased, or hazard trees, subject to approval of a land clearing, grading, and filling permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree. The Committee's position was that indiscriminant removal of trees would increase runoff potential and create an implied view protection.
- **Trees on city-owned property** – Limited to removal of dead, diseased or hazard trees, subject to approval of a land clearing, grading, and filling permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees on city right-of-way** - Subject to approval of a right-of-way use permit, provided that the tree/s are not located within a designated critical area, shoreline environment, or required landscaping area . Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees within environmentally critical areas, shoreline environments, and required landscaping (private/public properties)** – Subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits per Environmentally Critical Areas Ordinance (Chapter 16.10 DMMC, formerly Chapter 18.86), Shoreline Master Program (Chapter 16.20 DMMC, formerly Chapter 18.90), and Landscaping and Screening (Chapter 18.195 DMMC, formerly Chapter 18.41).

Discussion

Administration prepared Draft Ordinance No. 14-043 that amends sections of Titles 12, 14, 16, 17, and 18 DMMC to reflect the policy direction above, addresses areas of ambiguity, removes areas of contradiction, and provides greater overall clarity on how the City regulates the cutting and maintenance of trees in the City, including but not limited to the following:

- Adds specific terms and definitions related to tree cutting and tree pruning, and insure that these definitions are consistent throughout the Code.
- Further clarifies when a permit is not required per DMMC 14.20.180 (formerly 14.24.170) Exemptions and define the criteria (examples provided below):
 - Normal tree pruning and maintenance or removal of trees on private developed or partially developed lots, provided the tree is not located within an environmentally critical area, shoreline environment or required landscape buffer.
 - Normal tree pruning, maintenance or removal of trees on private undeveloped lots provided:
 - The tree is not located within an environmentally critical area, shoreline environment or required landscape buffer;
 - Tree pruning is limited to not more than 25% of a tree's total leaf area and the tree pruning conforms to the International Society of Arboriculture standards ; and

- Tree removal is limited to small evergreen trees six inches (6") or less diameter and small deciduous trees eight inches (8") or less in diameter as measured at 54 inches (4 ½ feet) above the ground.
- Residential lots (e.g., provide criteria that would trigger a permit such as critical area review).
- Further clarifies when a permit is required per Chapter 14.20 (formerly 14.24) DMMC and define criteria such as construction work and work in environmentally critical areas and shoreline environments.
- Establishes a minor grading/tree review application and associated fee.
- Establishes criteria for granting a tree permit such as hazardous, dead and diseased trees and tree removal to enable construction work to commence.
- Identifies seasonal restrictions that may apply.
- Establishes and modifies replacement ratios that may apply (currently defined per Title 17 Subdivision Code).
- Repeals DMMC 18.195.130 (formerly 18.41.110) relating to scenic views, which currently contradicts State Law.

Based on the ordinance that is ultimately adopted, staff will prepare a Public Assistance Memo (PAM) to clarify how the City interprets the code as it relates to the cutting and maintenance of trees.

- The PAM will clarify the intent of language in the Des Moines Municipal Code (DMMC) Titles 12, 14, 16, 17, and 18 DMMC related to the tree pruning or removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas. In addition, it will identify federal or state requirements that people should be aware of (i.e., Endangered Species Act, Bald Eagle Protection Act, Migratory Bird Treaty Act and DNR Forest Practices regulations) and provide links to Washington Department of Fish and Wildlife Priority Habitat and Species maps.
- The PAM is intended as a user-friendly hand-out that can be obtained at the front counter or on-line to help citizens, property owners, developers and others understand what is allowed, what is exempt and what is required. Samples of memos from other cities are attached.

Alternatives

The City Council may:

1. Adopt the proposed Draft Resolution.
2. Adopt the proposed Draft Resolution with a different hearing date.
3. Decline to adopt the Draft Resolution.

Financial Impact

Code amendments intended by Draft Ordinance No. 14-043 will provide more clarity related to the cutting of trees on private and public property. It will also help control indiscriminate cutting of trees, particularly in environmentally critical areas (i.e., steep slopes, landslide hazard areas) and shoreline zones there is greater potential for impact to the environment, loss or damage to property, or creation of a public safety hazard that can have negative financial implications.

Recommendation or Conclusion

Staff recommends that City Council adopt Draft Resolution No. 14-043.

CITY ATTORNEY'S FIRST DRAFT 04/23/2014

DRAFT RESOLUTION NO. 14-043

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 14-043 relating revising and updating City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591, 2013; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

WHEREAS, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (Chapter 12.05), Land Filling, Clearing and Grading Code (Chapter 14.20 DMMC), Environmentally Critical Areas Code (Chapter 16.10), Shoreline Master Program (Chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (Chapter 17.35), and Landscaping and Screening Requirements (Chapter 18.195 DMMC), and

WHEREAS, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and

WHEREAS, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

WHEREAS, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends portions of Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

Resolution No. ____
 Page 2 of ____

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

The matter of amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, 18.95, and other areas of Title 18, is set for a public hearing before the City Council on Thursday, May 22, 2014, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2014 and signed in authentication thereof this ____ day of ____, 2014.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

CITY ATTORNEY'S FIRST DRAFT 04/24/2014

DRAFT ORDINANCE NO. 14-043

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON revising and updating City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; amending chapters 12.05, 14.20, 16.01, 17.01, 17.35, 18.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

WHEREAS, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (Chapter 12.05), Land Filling, Clearing and Grading Code (Chapter 14.20 DMMC), Environmentally Critical Areas Code (Chapter 16.10), Shoreline Master Program (Chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (Chapter 17.35), and Landscaping and Screening Requirements (Chapter 18.195 DMMC), and

WHEREAS, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and

WHEREAS, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

WHEREAS, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and

WHEREAS, the changes proposed by this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued by the SEPA responsible official, and published on ___, 2014, in the Seattle Times, and the appropriate comment period expired on ___, 2014, and the appeal period concluded on ___, 2014, and

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WHEREAS, notice of the public hearing was given to the public in accordance with the law and a public hearing was held on the __ day of _____, 2014 and all persons wishing to be heard were heard, and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 15-day expedited review and comment period in accordance with State law, and

WHEREAS, the City Council finds that the amendments contained in this ordinance are appropriate and necessary for the protection of sensitive, unique, fragile and valuable features of the City's environment and protecting the public health, safety and welfare against loss or damage from the indiscriminant cutting of trees in the City; now therefore,

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

Sec. 1. DMMC 12.01.050 Definitions - Use of words and phrases and section 5 of Ordinance No. 1578 are each amended to read as follows.

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

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

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

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"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.

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

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

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

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

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

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

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

"Directive memorandum" means a letter from the City to a right-of-way use permittee, notifying the recipient of specific

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nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.

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

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

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

(c) Street lighting standards;

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

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

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

"Franchised utilities" means utilities that have City approval to use City right-of-way for the purpose of providing their services within the City, whether by written franchise granted by the City or otherwise.

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

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

"Land clearing" means the act of removing, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

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

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

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

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

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

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

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

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

"Paved street surface" means street surface that is either standard street surface or nonconforming paved street surface.

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

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

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

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

"Real property improvements" means:

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

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

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

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

"Sidewalk routes" means sidewalk routes shown on a map prepared by the Planning, Building and Public Works Director and adopted by the City Council by resolution or by ordinance pursuant to the Comprehensive Plan.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [dl1]: As defined in 17.01.050 as amended here

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

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

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

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

"Street use official" means the designated employees of the Planning, Building and Public Works Department responsible

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for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

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

"Tree Pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

"Tree Topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

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

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

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

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

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NEW SECTION. Sec. 2. Trees on City property and right-of-way.

Comment [DB2]: 12.05.205

(1) Removal of dead, diseased or hazard trees on city right-of-way is subject to approval of a right-of-way use permit.

(2) Removal of trees or tree pruning on city right-of-way is subject to approval of a right-of-way use permit.

(3) Removal or tree pruning within environmentally critical areas, shoreline environments, and required landscaping located on private or public properties are subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits established in the Environmentally Critical Area regulations (Chapter 16.10 DMMC), Shoreline Master Program (Chapter 16.20 DMMC), and Landscaping and Screening (Chapter 18.195 DMMC).

Sec. 3. DMMC 14.20.050 Definitions - Use of words and phrases and section 57 of Ordinance No. 1581, 2013 are each amended to read as follows.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Bench terrace" means an embankment or combination of an embankment and channel constructed across a slope which has a bench-like cross-section and whose purpose is to control erosion by diverting or storing surface water runoff instead of permitting it to flow uninterrupted down the slope.

"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.

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"Construction site" means a contiguous area owned and operated as one development unit upon which earth-disturbing activities are planned or underway.

"Developer" means a person engaged in constructing any street, utilities, commercial, industrial, or residential structures.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Drainage" means the removal of excess water from land either by surface or subsurface means.

"Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents including such processes as gravitational creep, detachment, and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" or "cut" means the physical manmade removal of earth material.

"Existing grade" means the vertical location of the existing ground surface before excavation or filling.

"Fill" means a deposit of earth or waste materials by artificial means.

"Grading" means any stripping, excavating, and filling, including hydraulic fill, stockpiling, or any combination thereof and includes the land in its excavated or filled condition.

"Ground cover" means land plants growing on the earth's surface and/or their remains and includes trees less than four inches in diameter measured at 24 inches above the ground level.

"Land clearing" means the act of removing, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

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"Partially developed lot" means a lot or parcel of land upon which a usable structure is located and which is of sufficient area so as to be capable of subdivision in accordance with the subdivision code.

"Plan" means a proposed method of achieving an end; including, but not limited to, specifications for design, implementation, and maintenance.

"Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

"Sedimentation" means the deposition of sediment.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [d13]: As defined in 17.01.050 as amended here

"Site alteration" means grading, excavating, filling, or other alterations of the earth's surface where material or manmade ground cover is destroyed and which may result in or contribute to erosion and sedimentation.

"Slope" means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

"Soil" means unconsolidated mineral and organic material on the immediate surface of the earth, overlying bedrock that serves as a natural medium for the growth of land plants.

"Surface runoff" means water flowing over the ground surface.

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"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree Pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

"Tree Topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

Sec. 4. DMMC 14.20.060 Permit - Required and section 58 of Ordinance No. 1581, 2013 are each amended to read as follows.

Except as otherwise exempted by DMMC 14.20.180, no grading, filling, or land clearing within the City shall be performed by any person, corporation, or other legal entity without first having obtained a land clearing, grading and filling permit from the code official pursuant to DMMC 14.20.070 through 14.20.170 and the following requirements:-

(1) A grading permit does not include the construction of retaining walls or other structures.

(2) Removal of dead, diseased or hazard trees on city-owned property is subject to approval of a land clearing, grading, and filling permit.

(3) Removal of dead, diseased or hazard trees on city right-of-way is subject to approval of a right-of-way use permit.

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(4) Removal of trees or tree pruning on city right-of-way is subject to approval of a right-of-way use permit, provided that the tree/s are not located within a environmentally critical area, shoreline environment, or required landscaping area.

(5) Removal of trees or tree pruning within environmentally critical areas, shoreline environments, and required landscaping located on private or public properties are subject to approval of a land clearing, grading, and filling permit and threshold/disturbance limits established in the Environmentally Critical Area regulations (Chapter 16.10 DMMC), Shoreline Master Program (Chapter 16.20 DMMC), and Landscaping and Screening (Chapter 18.195 DMMC).

Sec. 5. DMMC 14.20.150 Operating conditions and standards of performance and section 67 of Ordinance No. 1581, 2013 are each amended to read as follows.

Permits authorized under this chapter shall conform to the following provisions unless otherwise recommended or as approved by the City Manager or the City Manager's designee:

(1) Excavations. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than two horizontal to one vertical (50 percent) unless the applicant furnishes a soils report justifying a steeper slope.

(2) Fills. Unless otherwise recommended in the soils report and approved by the City Manager or the City Manager's designee, fills shall conform to the following provisions:

(a) The ground surface shall be prepared to receive fill by removing vegetation, top soil, and any other unsuitable materials (oversized rock, concrete slabs, tree stumps, brush, and old car bodies, etc.) and scarifying the ground to provide a bond with the fill material.

(b) Fill material shall not include organic, frozen or other deleterious materials. No rock or similar irreducible

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material greater than 12 inches (305 mm) in any dimension shall be included in fills.

(c) All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth.

(d) The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than two horizontal to one vertical (50 percent) shall be justified by soils reports or engineering data.

(3) Erosion/Sedimentation Control. All disturbed areas, including faces of cut and fill slopes, shall be prepared and maintained to control erosion/sedimentation in accordance with the specifications of the surface water design manual.

(4) Setbacks. The crests and toes of cut and fill slopes shall be set back from property boundaries by at least 25 feet to prevent damages resulting from surface runoff or erosion-sedimentation from the slopes. The top and the toes of cut and fill slopes shall be set back from structures by at least one-half the height of the slope plus 25 feet for adequacy of foundation support and to prevent damages resulting from surface runoff or erosion-sedimentation of the slopes.

(5) Excavations to Water-Producing Depth. All excavations must be made to a water-producing depth or grade to permit natural drainage. The excavations made to a water-producing depth shall be reclaimed in the following manner:

(a) Depth of the excavation must not be less than two feet measured below the low-water mark.

(b) All banks shall be sloped to the water line no steeper than 2:1.

(c) In no event shall the term "water-producing depth" be construed to allow stagnant or standing water to collect or remain in the excavations.

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(6) Bench Terrace. Benches at least 10 feet in width shall be back-sloped and shall be established at no more than 10-foot vertical intervals to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of one percent.

(7) Hazardous Conditions. Signs warning of hazardous conditions, if such exist, shall be affixed at clearly visible locations.

(8) Fencing. Where required by the City Manager or the City Manager's designee to protect life, limb, and property, fencing shall be installed with lockable gates which must be closed and locked when the site is not being attended. The fence must be no less than five feet in height and the fence material shall have no horizontal opening larger than two inches.

(9) Drainage. Provisions shall be made to prevent surface water or seepage from damaging the cut face of excavations or the sloping face of a fill and to carry surface waters that are or might be concentrated as a result of a fill or excavation to a natural watercourse or other means as approved by the City Manager or the City Manager's designee.

(10) Drainage Review. All development activities shall make provisions for drainage pursuant to the requirements of the surface water design manual.

(11) All operations, conditions, and standards of performance shall be subject to the limitations as per required permits.

(12) Environmentally Critical Areas. Any land clearing, grading, or filling activity in an environmentally critical area as defined in Title 16 DMMC is prohibited except for activity conducted in connection with a development exception approved in accordance with the requirements of chapter 18.86 DMMC.

(13) Replacement. Any tree identified to be retained that is removed, destroyed or damaged during land clearing, grading, filling or construction shall be replaced by the applicant with three trees on the subject property:

Comment [d14]: Text is from landscaping and screening code: 18.195.110 Tree retention (with ratio amended from 5 to 3 trees)

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(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.

(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

(c) Tree pruning and removal of trees is subject to the requirements of chapter 14.20 DMMC.

Sec. 6. DMMC 14.20.180 Exemptions and section 70 of Ordinance No. 1581, 2013 are each amended to read as follows.

Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities; provided, that the clearing and grading activity shall be subject to the minimum requirements specified in this chapter:

(a) The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the City or its contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general

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property and utility maintenance, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(d) Removal of dead or diseased ground cover or trees;

(e) A grading and filling activity less than a total of 50 cubic yards which does not obstruct a drainage course;

(f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

(g) Clearing less than 200 square feet;

(h) Cemetery graves;

(i) Refuse disposal sites controlled by other regulations;

(j) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(k) Removal of trees or routine tree pruning on private developed or partially developed lots in a residential zone, provided that:

(i) Removal of dead, diseased or hazard trees as determined by a certified arborist;

(ii) The tree is not part of a required landscaping area;

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(iii) Tree pruning or removal of trees located within environmentally critical areas shall be reviewed in accordance with the environmentally critical areas regulations codified in Chapter 16.10 DMMC; and

(iv) Tree pruning or removal of trees located within shoreline environments shall be reviewed in accordance with the shoreline master program codified in Chapter 16.20 DMMC.

(1) Removal of trees or routine tree pruning on private undeveloped lots, limited to the following:

(i) Removal of dead, diseased or hazard trees as determined by a certified arborist;

(ii) Removal of small deciduous trees that are less than eight inches (8") in diameter as measured at fifty-four inches (54") above the ground;

(iii) Removal of small evergreen trees that are less than six inches (6") in diameter as measured at fifty-four inches (54") above the ground;

(iv) Tree pruning of not more than 25 percent of a tree's total leaf area;

(v) Tree pruning conforms to the International Society of Arboriculture standards, to maintain a tree in a healthy and safe condition; and

(vi) Tree pruning or removal of trees located within environmentally critical areas shall be reviewed in accordance with the environmentally critical areas regulations codified in Chapter 16.10 DMMC; and

(vii) Tree pruning or removal of trees located within shoreline environments shall be reviewed in accordance with the shoreline master program codified in Chapter 16.20 DMMC.

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(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City. [Ord. 1581 § 70, 2013.]

Sec. 7. DMMC 16.01.050 Definitions and section 5 of Ordinance No. 1583, 2013 are each amended to read as follows.

As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Aquifer" means a consolidated or unconsolidated ground water-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.

"Area of shallow flooding" means an area designated as AO, or AH Zone on the flood insurance rate map (FIRM). AO Zones have base flood depths that range from one to three feet above the natural ground; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow; AH indicates ponding, and is shown with standard base flood elevations.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designated on flood insurance rate maps by the letters A or V.

"Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.

"Bluff" means a steep slope which abuts and rises from Puget Sound. Bluffs contain slopes predominantly in excess of 40

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percent, although portions may be less than 40 percent. Bluffs occur in the area north of South 222nd Street and south of South 232nd Street. The toe of the bluff is the beach of Puget Sound. The top of a bluff is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the slope is either the line of vegetation separating the unvegetated slope from the vegetated uplands plateau or, when the bluff is vegetated, the point where the bluff slope diminishes to less than 15 percent.

"Breakaway walls" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Buffer" means either: an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters; or an area adjacent to a stream or wetland which is an integral part of the stream or wetland ecosystem, providing shade; input of organic debris and coarse sediments; room for variation in stream or wetland boundaries; habitat for wildlife; impeding the volume and rate of runoff; reducing the amount of sediment, nutrients, and toxic materials entering the stream or wetland; and protection from harmful intrusion to protect the public from losses suffered when the functions and values of stream and wetland resources are degraded.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy, as well as any structure having a roof, but excluding all forms of vehicles even though immobilized. When a use is required to be within a building, or where special authority granted pursuant to this Title requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structure shall be solid from the ground to the roof line, and shall contain no

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openings except for windows and doors which are designed so that they may be closed.

"Building setback line" means a line beyond which the footprint or foundation of a building shall not extend.

"Clearing" means the destruction and removal of vegetation by burning, mechanical, or chemical methods.

"Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30, VE or V.

"Commercial and recreational shellfish areas" means areas that include all public and private tidelands or bedlands suitable for shellfish harvest, including shellfish protection districts established pursuant to chapter 90.72 RCW.

"Compensation" means the replacement, enhancement, or creation of an undevelopable environmentally critical area equivalent in functions, values, and size to those being altered or lost from development.

"Creation (establishment)" means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. "Establishment" results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

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"Critical aquifer recharge areas (CARAs)" mean those areas with a critical recharging effect on aquifers used for potable water, as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.

These areas include but are not limited to the following:

(a) Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

(b) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.

(c) Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to chapter 173-100 WAC.

(d) Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.

(e) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

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(f) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology.

"Critical areas" includes the following areas and ecosystems:

(a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. RCW 36.70A.030(5).

"Developable area" means the "site area" less the following areas:

(a) Areas within a project site that are required to be dedicated for public rights-of-way;

(b) Environmentally critical areas and their buffers to the extent they are required by the City to remain undeveloped;

(c) Areas required for storm water control facilities, including but not limited to retention/detention ponds/vaults, biofiltration swales and setbacks from such ponds and swales;

(d) Areas required by the City to be dedicated or reserved as on-site recreation areas;

(e) Other areas, excluding setbacks, required by the City to remain undeveloped.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, clearing, grading, paving, excavation, drilling operations or storage of

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equipment or materials located within the area of special flood hazard.

"Development activity" means any work, condition, or activity which requires a permit or approval under ~~chapter 2.22 DMMC or~~ Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Development site" means the entire lot, series of lots, or parcels on which a development is located or is proposed to be located, including all contiguous undeveloped lots or parcels which are under common ownership with the developed lots on or subsequent to June 30, 1990. This definition only applies to chapter 16.10 DMMC.

"Drainage facility" means the system of collecting, conveying, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including streams, pipelines, channels, ditches, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.

"Environmentally Critical Areas". See "Critical areas."

"Erosion hazard areas" means at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe,"

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"severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone.

"Exemption" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Fish and wildlife habitat conservation" means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. Fish and wildlife habitat conservation areas include:

(a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;

(b) State priority habitats and areas associated with state priority species;

(c) Habitats and species of local importance;

(d) Commercial and recreational shellfish areas;

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(e) Kelp and eelgrass beds identified by the Washington Department of Natural Resources;

(f) Herring and smelt spawning areas as outlined in chapter 220-110 WAC and the Puget Sound Environmental Atlas as presently constituted or as may be subsequently amended;

(g) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

(h) Waters of the state as defined in Title 222 WAC;

(i) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

(j) State natural area preserves and natural resource conservation areas as defined, established, and managed by the Washington State Department of Natural Resources;

(k) Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program; and

(l) Land useful or essential for preserving connections between habitat blocks and open spaces as determined by the City Manager or the City Manager's designee.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

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"Flood insurance study (FIS)" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate maps, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events are not suited to the siting of commercial, residential, or industrial development consistent with the public health or safety concerns.

(a) Erosion hazard;

(b) Landslide hazard;

(c) Seismic hazard; and

(d) Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

"Hazardous substance" means any solid, liquid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any characteristics or criteria of hazardous waste as described in WAC 173-303-090, 173-303-101, 173-303-102, or 173-303-103.

"Hazardous waste" means those solid wastes designated by 40 C.F.R. Part 261, and regulated as hazardous and/or mixed waste by the United States EPA, as described in WAC 173-303-040. "Hillsides" means geological features of the landscape having slopes of 15 percent and greater. To differentiate between levels of hillside protection and the application of development standards, the City categorizes hillsides into four groups: hillsides of at least 15 percent but less than 25 percent; hillsides of at least 25 percent but less than 40 percent; hillsides of 40 percent slope and greater; and hillsides which are ravine sidewalls or bluffs.

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"Land clearing" means the act of removing, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

"Landslide" means an episodic downslope movement of a mass of soil or rock that includes but is not limited to rockfalls, slumps, mudflows, and earthflows.

"Landslide hazard areas" are those areas of the City potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

(a) Areas of historic failures, such as:

(i) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

(ii) Those areas mapped by the Washington State Department of Ecology (Coastal Zone Atlas) or the Washington State Department of Natural Resources (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or

(iii) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;

(b) Any area with a combination of:

(i) Slopes greater than 15 percent;

(ii) Impermeable soils (usually silt and clay) frequently interbedded with granular permeable soils (usually sand and gravel); and

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(iii) Springs or ground water seepage;

(c) Any area which has shown movement during the Holocene epoch (from 10,000 years ago to present) or which is underlain by mass wastage debris of that age;

(d) Any area potentially unstable as a result of rapid stream incision, stream bank erosion, or undercutting by wave action;

(e) Any area designated as Class III landslide hazard area by the "Map Showing Relative Slope Stability in Part of West-Central King County, Washington, Map I-852-A, U.S. Geological Survey Miscellaneous Geologic Investigations" as presently constituted or as may be subsequently amended;

(f) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

(g) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

(h) Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

(i) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.

"Local administrator" means the City Manager or the City Manager's designee.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure

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in violation of the applicable nonelevation design requirements of this Title found at Section 5.2-1(2), (i.e., provided there are adequate flood ventilation openings).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean sea level" means the average height of the Puget Sound for all stages of the tide.

"Mitigation" means the use of any combination or all of the following actions:

(a) Avoiding impacts to environmentally critical areas by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environmentally critical area;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development proposal;

(e) Compensating for the impact by replacing or enhancing environmentally critical areas, or providing substitute resources; and

(f) Monitoring the impact and taking appropriate corrective measures.

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"Monitoring" means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic, and geologic elements of such systems, and assessing the performance of mitigation measures.

"Native vegetation" means plant species which are indigenous to the area in question.

"New construction" means structures for which the "start of construction" commenced on or after July 1, 1992.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"Nonconforming use" means a use which was lawfully established and maintained but which, because of the application of this Title to it, no longer conforms to the use regulations of the zone in which it is located as defined by this Title.

"Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an

"Open record appeal hearing," if no open record predecision hearing has been held on the project permit.

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"Ordinary high water mark" means the mark that will be found by examining the bed and banks of a stream or shoreline and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to topography and vegetation.

"Protection/maintenance (preservation)" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

"Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant environmentally critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

(a) A qualified professional for habitats must have a degree in biology and professional experience related to the subject species.

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(b) A qualified professional for wetlands must have a degree in biology, must have taken a wetlands delineation course approved by the Army Corps of Engineers, and must have professional experience.

(c) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(d) A "qualified professional for critical aquifer recharge areas" means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

"Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the wearing action of the stream. Ravine sidewalls contain slopes predominantly in excess of 40 percent, although portions may be less than 40 percent. The toe of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is where the slope diminishes to less than 15 percent. Minor natural or manmade breaks in the slope of ravine sidewalls shall not be considered as the top. Benches with slopes less than 15 percent and containing developed or developable areas pursuant to chapter 16.10 DMMC shall be considered as the top.

"Recreational vehicle" means a vehicle:

(a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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"Restoration" means the return of an environmentally critical area to a state in which its functions, values, and size approach or exceed its unaltered state as closely as possible.

"Restoration, wetlands" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

(a) "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

(b) "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

"Retaining wall" means any wall used to resist the lateral displacement of any material.

"Seismic hazard areas" means those areas subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is affected primarily by:

- (a) The magnitude of an earthquake;
- (b) The distance from the source of an earthquake;

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(c) The type of thickness of geologic materials at the surface; and

(d) The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density usually in association with a shallow ground water table. Known seismic hazard areas are mapped in the "Washington State Department of Natural Resources, Geologic Map GM-41, Liquefaction Susceptibility for the Des Moines and Renton 7.5-minute Quadrangles, Washington," and "Washington State Department of Natural Resources, Geologic Map GM-43, Liquefaction Susceptibility for the Auburn and Poverty Bay 7.5-minute Quadrangles, Washington."

"Shorelines of the state" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in chapter 90.58 RCW.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [d15]: As defined in 17.01.050 as amended here

"Slope" means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

vertical distance		x 100 = %
horizontal distance	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

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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°

"Special environmental study" means a technical report prepared by a qualified professional. Special environmental studies are intended to evaluate past and present environmental conditions of certain properties, potential environmental impacts associated with certain development proposals, and as appropriate, recommend mitigation measures that can be expected to lessen the severity of identified adverse environmental impacts. The content and scope of required special environmental studies shall be as specified by the Planning, Building and Public Works Director.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as

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garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State designated endangered, threatened, and sensitive species" means those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status. This section shall not apply to hair seals and sea lions that are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

"State priority habitats and areas associated with state priority species" means those areas considered priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

"Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or

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the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Stream channels or beds show clear evidence of the passage of water and include, but are not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction. Swales, which are shallow drainage conveyances with relatively gentle side slopes and generally with flow depths less than one foot, shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development. To differentiate between levels of stream and marine shoreline protection and the application of development standards, streams are classified according to the Washington State Department of Natural Resources Forest Practices Board water typing system specified in WAC 222-16-030 as follows:

(a) "Type S water" means all waters inventoried as "shorelines of the state," including periodically inundated areas of their associated wetlands, under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW;

(b) "Type F water" means segments of natural waters other than Type S waters, which contain fish or fish habitat, including waters diverted for use by a federal, state or tribal fish hatchery from the point of diversion for 1,500 feet or the entire tributary if the tributary is highly significant for protection of downstream water quality;

(c) "Type Np water" means all segments of natural waters that are not Type S or F waters. These are perennial nonfish habitat streams that are physically connected to Type S or F waters by an aboveground channel system, stream or wetland. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow;

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(d) "Type Ns water" means all segments of natural waters that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters.

"Storage tank" means a container for the storage of a gas or liquid.

"Stream corridor" means a perennial, intermittent, or ephemeral stream including its channel bottom, lower and upper banks, area beyond the top of the upper bank which influences the stream and is influenced by the presence of water, and the vegetation inhabiting this area. This area is known as the "riparian zone" which is an area transitional between aquatic and terrestrial (upland) ecosystems having distinct vegetation and soil characteristics. Riparian zones are most commonly recognized by bottomland, flood plain, and streambank vegetation. In developed watersheds, portions of the stream corridor may currently be in a partially culverted or channelized condition by artificial conveyance systems.

"Structure" means a walled and roofed building.

"Substantial improvement" means a repair, reconstruction, or improvement of a structure made during a three-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of a wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(c) The term does not, however, include either:

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(i) A project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or

(ii) An alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Surface Water Design Manual for the City of Des Moines" means the King County, Washington "Surface Water Design Manual," including all subsequent revisions, adopted by reference as the

"Surface Water Design Manual for the City of Des Moines," and is referred to in this Title as "Surface Water Design Manual."

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree Pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture, to maintain a tree in a healthy and safe condition.

"Tree Topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

"Upper bank" is that portion of the topographic cross-section of a stream which extends from the break in the general slope of the surrounding land to the normal high water line.

"Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.

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"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

"Water dependent" means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

"Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created for nonwetland areas created to mitigate conversion of wetlands. To differentiate between levels of wetland protection and the application of development standards, wetlands shall be rated according to the "Washington State Wetland Rating System for Western Washington" (Ecology Publication No. 04-06-025, August 2004) or as revised by the Department of Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(a) Category I. Category I wetlands represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain some ecological attributes that are impossible to replace within a human lifetime, or provide a very high level of functions. Category I wetlands are:

(i) Mature forested wetlands larger than one acre; or

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(ii) Wetlands that perform many functions well.

(b) Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but they still need a relatively high level of protection. Category II wetlands are:

(i) Wetlands identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;

(ii) Wetlands with a moderately high level of functions.

(c) Category III. Generally, wetlands in this category may have been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. Category III wetlands are wetlands with a moderate level of functions.

(d) Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

Sec. 8. DMMC 17.01.050 Definitions and section 5 of Ordinance No. 1585, 2013 are each amended to read as follow.

As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this chapter shall have the indicated meanings. All other words or phrases appropriate to the context of their uses shall be interpreted as defined in the Zoning Code.

"Alteration" means a change to any recorded plat, short plat or binding site plan, except as defined in "lot line adjustment" in this section.

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"Applicant" means a person who applies for any approval under this Title and who is an owner of the subject property or the authorized agent of the owner. "Applicant" includes any current owner who purchased property from a previous owner who submitted an application.

"Binding site plan" means a scale drawing or map which identifies and shows the areas and locations of all streets, roads, utilities, improvements, open spaces, easements, and any other significant development features and which binds future development to be in accordance with the drawing.

"Block" means a group of lots, tracts, or parcels of common origin or relationship within a boundary which is distinct and separated from other lots, tracts, or parcels by physical features such as public or private streets or topography.

"Comprehensive Plan" means the document as adopted in DMMC 18.05.060.

"County auditor" means the office or person as defined in chapter 36.22 RCW, as presently constituted or as may be subsequently amended, or the office or person assigned such duties under a county charter.

"County treasurer" means the office or person as defined in chapter 36.29 RCW, as presently constituted or as may be subsequently amended, or the office or person assigned such duties under a county charter.

"Dedication" means the deliberate appropriation of land by its owner for any general and public uses, reserving to himself/herself no other rights except those which are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by its owner by the presentment of a document of conveyance, or a final plat, short plat, binding site plan, or lot line adjustment, for filing or recording with the county auditor, showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of

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such plat or conveyance for filing by the appropriate governmental unit.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Easement" means a specific air, surface, submerged, or subsurface right, of perpetual duration for a legally described parcel of land, which is conveyed for use by someone other than the owner of the subject property, or to benefit some property other than the subject property.

"Final plat" means the final drawing or map of a subdivision, together with all dedications, covenants, certifications, and signatures prepared for filing for record with the county auditor and containing all elements and requirements set forth in chapter 58.17 RCW, as presently constituted or as may be subsequently amended, and in this Title.

"Improvements" means streets, with or without curb or gutter, sidewalks, pedestrian ways, water mains, sanitary and storm sewers, street trees, lighting, and other appropriate items.

"Lot" means a fractional part of divided lands having fixed boundaries, means of access, and sufficient area and dimension to meet minimum yard, area, and open space requirements of the Zoning Code for the zone in which the lot is located at the time such lot was created.

"Lot line adjustment" means:

(a) A division made for the purpose of alteration by adjusting boundary lines between platted or unplatted lots or both; or

(b) A consolidation of multiple lots into one single lot; provided, that the division or consolidation does not create any additional lot, tract, or parcel; and does not create any lot, tract, or parcel which contains insufficient area and dimension

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to meet minimum requirements for width and area of a building site as required by Title 18 DMMC.

"Material error" means an error in fact or an omission of substantive information in an application, or supplementary study, supplied to the City, which would constitute the basis for a decision.

"Parcel" means an existing lot, tract, or division of land.

"Pedestrian way" means a tract or right-of-way, dedicated to public use, for the purpose of facilitating pedestrian access to nearby streets and properties.

"Planning official" means the Director of the Planning, Building and Public Works Department or his/her designee.

"Preliminary plat" means a scale drawing or map of a proposed subdivision showing the general layout of streets, lots, blocks, restrictive covenants to be applicable to the subdivision, and other related information required by the City of a subdivision. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

"Registered land surveyor" means an individual licensed as a land surveyor pursuant to chapter 18.43 RCW (Professional Engineers Registration Act), as presently constituted or as may be subsequently amended.

"Right-of-way" means land dedicated to the public primarily for the movement of vehicles and pedestrians and providing for primary access to adjacent parcels. Secondly, it means that land which provides space for utility lines and appurtenances and similar components.

"Security" means a commitment of funds guaranteeing the payment of a previously specified amount of money if in the opinion of the administrator in charge, certain work is not performed satisfactorily or work results in damage to property or the environment. Security may be in the form of a cash, line

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of credit, bond, or a set-aside account previously approved by the City.

"Shoreline Master Program" means the document as adopted in chapter 16.20 DMMC.

"Short plat" means the final drawing or map of a short subdivision, together with all dedications and covenants, prepared for filing for record with the county auditor and containing all elements and requirements set forth in chapter 58.17 RCW.

"Short subdivision" means the division or redivision of land into nine or fewer lots for the purpose of sale, lease, or transfer of ownership.

"Significant trees" means healthy evergreen trees six inches DBH (diameter at breast height) or greater and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches DBH or greater.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [dl6]: As defined in 17.01.050 as amended here

"Street Development Standards" means the document adopted by chapter 12.15 DMMC.

"Subdivision" means the division or redivision of land into 10 or more lots or the redivision of a short subdivision into 10 or more lots within a period of five years from the filing of such short plat for the purpose of sale, lease, or transfer of ownership.

"Tract" means land reserved for special uses including but not limited to open space, surface water retention, utilities, or access. Tracts are neither counted as lots nor considered as building sites.

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"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Vacation" means the elimination of a recorded lot line, right-of-way, or easement.

"Vehicular access tract" means a privately owned tract providing vehicular and pedestrian access to parcels.

Sec. 9. DMMC 17.35.190 Natural features - General and section 114 of Ordinance No. 1585, 2013 are each amended to read as follow.

(1) General. The proposed subdivision shall demonstrate sensitivity to the natural features of the property including, but not limited to, topography, streams, lakes, wetlands, habitat, geologic features, and vegetation. Any division of land shall be designed to preserve and enhance as many of these valuable features as possible. In addition to the specific provisions of this chapter, the subdivision shall comply with all applicable provisions of Title 18 DMMC and other specific requirements regarding development restrictions due to natural features.

(2) Tracts Required. All wetlands, streams, and required buffers, pursuant to ~~Title 18 DMMC~~ chapter 16.20 DMMC, shall be located in separate tracts which limit development activity. The area dedicated under this section shall become the property of the City, which shall thereafter assume all maintenance and other ownership responsibilities.

(3) Lot Area. The area of the open space tracts shall not be included in the computation of lot area for any lot area.

Sec. 10. DMMC 17.35.210 Natural features - Significant vegetation and section 116 of Ordinance No. 1585, 2013 are each amended to read as follow.

(1) Buffers. Significant trees or other natural vegetation located along the boundary of a subdivision shall be

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retained if the City determines that retention will provide beneficial buffering for or from abutting properties or rights-of-way. Vegetation which is retained shall be protected by establishing open space easements or tracts. Removal of significant trees, is subject to approval of a land clearing, grading and filling permit pursuant to the provisions of Chapter 14.20 DMMC.

(2) Rights-of-Way and Tracts. Following preliminary subdivision approval, the applicant shall be allowed, pursuant to the provisions of Title 14 DMMC, to clear all vegetation which the Planning, Building and Public Works Director determines is necessary to install required improvements within rights-of-way and access or utility tracts shown on the approved preliminary subdivision.

(3) Lots. Removal of vegetation in the remainder of the subdivision shall occur on a lot-by-lot basis. No vegetation removal shall occur on any lot until and unless a complete building permit application has been submitted and a land grading, clearing, and filling permit has been issued for that lot in compliance with chapter 14.20 DMMC. On each lot, all significant trees as defined in DMMC 17.01.050, shall be retained except:

(a) Those trees which are located in areas where structures or improvements are proposed or areas which, in the judgment of the planning official, must be cleared to allow construction of proposed structures or improvements; and

(b) Those trees which, in the judgment of the ~~planning official~~ Planning, Building and Public Works Director, would constitute a danger to public safety, pursuant to the provisions of Chapter 14.20 DMMC; and

(c) No more than one tree for each 2,400 square feet of lot area shall be required to be preserved on any lot. On lots which contain more than three significant trees, the planning official shall indicate which of the trees shall be retained. In making this decision, the planning official shall give preference to retaining large healthy trees or trees which are of an unusual species.

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(4) Replacement. Any tree identified to be retained that is destroyed or damaged during construction shall be replaced by the applicant with five trees on the subject property or within a street planting strip near the subject property. Replacement trees shall be a minimum size of eight feet in height for evergreen trees and two inches in caliper for deciduous and shall be approved by the planning official. These street trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact location for and type of street trees shall be determined by the planning official.

Sec. 11. DMMC 18.01.050 Definitions and section 5 of Ordinance No. 1591, 2013 are each amended to read as follow.

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As used in this Title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

"Accessory" means a use, a building or structure, part of a building or other structure, which is subordinate to and the use of which is incidental to that of the main building, structure, or use on the same lot, including a private garage. If an accessory building is attached to the main building by a common wall or roof, such accessory building shall be considered a part of the main building.

"Accessory living quarters (ALQ)" means complete independent living facilities including provisions for living, sleeping, cooking, and sanitation within a detached structure or within part of the primary dwelling unit.

"Adult bathhouse" means a commercial bathhouse which excludes any person by virtue of minimum age from all or any portion of the premises.

"Adult cabaret" means a commercial establishment which presents go-go dancers, strippers, male or female impersonators, or similar entertainers, and which excludes any person by virtue of minimum age from all or any portion of the premises.

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"Adult entertainment facilities" means adult cabarets, adult retail uses, adult massage parlors, adult sauna parlors, adult bathhouses, and adult motion picture theaters, which are further more specifically defined below.

"Adult family home" means a regular family abode of a person or persons who are providing personal care, room, and board to more than one but not more than four adults who are not related by blood or marriage to the person or persons providing the services; except that a maximum of six adults may be permitted if the Department of Social and Health Services determines that the home is of adequate size and that the home and the provider are capable of meeting standards and qualifications as provided for in chapter 70.128 RCW as presently constituted or as may be subsequently amended or recodified. For the purpose of this section, an "adult" is a person who has attained the age of 18 years.

"Adult massage parlor" means a commercial establishment in which massage or other touching of the human body is provided for a fee and which excludes any person by virtue of minimum age from all or any portion of the premises in which such service is provided.

"Adult motion picture theater" means an enclosed building used for presenting motion picture films or video tapes or any other visual media distinguished or characterized by an emphasis on, matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this zoning code, for observation by patrons therein.

"Adult oriented merchandise" means any goods, products, commodities, or other wares, including, but not limited to, videos, CDs, DVDs, magazines, books, pamphlets, posters, cards, periodicals or nonclothing novelties, which depict, describe or simulate specified anatomical areas or specified sexual activities.

"Adult retail use" means a retail establishment which, for money or any other form of consideration, either:

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(1) Has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, and/or provide for viewing or use, off the premises, any adult oriented merchandise; or

(2) Provides, as its substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer, and/or provide for viewing or use, off the premises, any adult oriented merchandise.

"Adult sauna parlor" means a commercial sauna parlor which excludes any person by virtue of minimum age from all or any portion of the premises.

"Antenna system" means the mast and all attached antennas of only a commonly used and commercially available type, excluding parabolic antennas such as microwave dishes, which are used to transmit or receive any portion of the radio spectrum.

"Apartment" means a room, or a suite of two or more rooms, in a multiple dwelling or in any other building not a single-family dwelling or a duplex dwelling occupied or suitable for occupancy as a dwelling unit for one family.

"Apartment house" means a building, or a portion of a building, designed for occupancy by three or more families living separately from each other and containing three or more dwelling units.

"Aquifer" means a consolidated or unconsolidated ground water-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.

"Artificial grade" means a manmade grade created by means of earthen terraces, berms, fills, or the like, specifically for the purpose of gaining a height advantage or disguising the true height of a structure.

"Automobile, boat, and trailer sales area" means an open area, other than a street, used for the display, sale, or rental of new or used automobiles, boats, or trailers, and where no repair work is done except minor incidental repair of

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automobiles, boats, or trailers to be displayed, sold, or rented on the premises.

"Automobile house trailer" means a vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation, including a trailer coach, camper, mobile home, or any self-propelled vehicle having a body designed for or converted to the same use as a house trailer.

"Automobile service station" means an occupancy which provides for:

(1) The servicing of motor vehicles and operations incidental thereto limited to the retail sale of petroleum products and automotive accessories; automobile washing by hand; waxing and polishing of automobiles; tire changing and repairing (excluding recapping); battery service, charging, and replacement, excluding repair and rebuilding; radiator cleaning and flushing, excluding steam cleaning and repair; and installation of accessories.

(2) The following operations if conducted within a building: lubrication of motor vehicles; brake servicing limited to servicing and replacement of brake cylinders, lines, and brake shoes; wheel balancing; the testing, adjustment, and replacement or servicing of carburetors, coils, condensers, distributor caps, fan belts, filters, generators, points, rotors, sparkplugs, voltage regulators, water and fuel pumps, water hoses, and wiring.

"Board" means the City Council.

"Buffer" means either: an area adjacent to hillsides which provides the margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic, and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters; or an area adjacent to a stream or wetland which is an integral part of the stream or wetland ecosystem, providing shade; input of organic debris and coarse sediments; room for variation in stream or wetland boundaries; habitat for wildlife; impeding the volume and rate

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of runoff; reducing the amount of sediment, nutrients, and toxic materials entering the stream or wetland; and protection from harmful intrusion to protect the public from losses suffered when the functions and values of stream and wetland resources are degraded.

"Building height" means the vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the height of the highest gable of a pitch or hip roof.

"Cemetery" means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.

"Church" means an establishment, the principal purpose of which is religious worship and for which the principal building or other structure contains the sanctuary or principal place of worship, and including accessory uses in the main building or in separate buildings or structures, including Sunday school rooms and religious education classrooms, assembly rooms, kitchen, library room or reading room, recreation hall, a one-family dwelling unit and residences on site for nuns and clergy, but excluding facilities for training of religious orders.

"Closed record appeal" shall have the meaning given such term in DMMC 18.20.240.

"Commercial parking lot" means a building site, exclusive of public rights-of-way, or building dedicated to the parking of more than 10 passenger vehicles, serving patrons, occupants, and/or employees of a permitted use(s) not located on the site of the parking facility.

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"Commercial recreational area" means an area operated for profit and devoted to facilities and equipment for recreational purposes, including swimming pools, tennis courts, playgrounds, and other similar uses whether the use of such area is limited to private membership or whether open to the public upon the payment of a fee.

"Compensation" means the replacement, enhancement, or creation of an undevelopable environmentally critical area equivalent in functions, values, and size to those being altered or lost from development.

"Conditional use" means a use permitted in one or more zones as defined by this Title but which use because of characteristics peculiar to it, or because of size, technological processes, or type of equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zone or zones, and to assure that such use shall not be inimical to the public interest.

"Conditional use permit" means the documented evidence of authority granted by the Board of Adjustment to locate a conditional use at a particular location.

"Conforming building" means:

(1) In the Residential Zones, a building which is considered to be a residential building by the building code, and other buildings designed to accommodate uses permitted in these zones and which buildings also conform to the requirements of this Title in the matter of use, height, yards, and area coverage, and which do not contain more than the number of dwelling units prescribed for the zone in which such buildings are located.

(2) In the Commercial Zones, a building which is considered under the building code as a building designed to accommodate uses permitted in the Commercial Zones.

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"Conforming use" means an activity the nature and type of which is permitted in the zone in which the property on which it is established is located.

"Corner lot" means a lot situated at the intersection of two or more streets, the street frontages of which lot form an angle not greater than 128 degrees, and not less than 45 degrees.

"Court" means any portion of the interior of a lot or building site which is fully or partially surrounded by buildings or other structures and which is not a required yard or open space.

"Dangerous waste" means those wastes designated in WAC 173-303-070 through 173-303-103 as dangerous wastes. "Dangerous waste" also is any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such a quantity or concentration as to pose a substantial hazard or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties or are corrosive, explosive, flammable, or may generate pressure through decomposition or other means. Moderate risk waste is not a dangerous waste.

"Date of decision" means the date the final decision or determination is rendered or issued, unless specified otherwise by law.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17, or 18 DMMC.

"Dwelling" means a building designed exclusively for residential purposes, including one-family, duplex, townhouse, and multiple dwellings, which is constructed in accordance with Title 14 DMMC, City Buildings and Construction Code, as presently constituted or as may be subsequently amended, but not including hotels or motel units having no kitchens.

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"Dwelling unit" means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen facilities for use solely by one family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit. A bachelor apartment constitutes a dwelling unit within the meaning of this Title.

"Duplex" means a building designed exclusively for occupancy by two families living independently of each other, and containing two dwelling units. Duplexes may contain units that are not at ground level.

"Elementary school" means any institution of learning giving general academic instruction in the several branches of learning and study required by the education code of the state to be taught in the public and parochial schools.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.

"Essential public facilities" means public facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

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"Extremely hazardous waste" means those wastes identified in WAC 173-303-070 through 173-303-103 as extremely hazardous wastes. Extremely hazardous waste is also disposal of hazardous waste at any facility in such quantities that would pose a significant danger to man or the environment or any waste that persists in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of man or wildlife or is highly toxic to man or wildlife.

"Family day care provider" means a licensed day care provider who regularly provides day care for not more than 12 children in the provider's home in the family living quarters.

"First permitted" means the most restricted zone in which a particular use is indicated as a permissible use.

"Floor area" means a total floor area within the walls of all buildings on a lot or building site, except for the spaces therein devoted to vents, shafts and light courts and except for the area devoted exclusively to loading and unloading facilities and to parking of motor vehicles.

"Front yard" means an area extending across the full width of the lot and lying between the lot front line and a line drawn parallel thereto, and at a distance therefrom equal to the required front yard depth as prescribed in each zone. Front yards shall be measured by a line at right angles to the lot front line, or by the radial line or radial line extended in the case of a curved lot front line.

"Grade, artificial grade" means a manmade grade created by means of earthen terraces, berms, fills, or the like, specifically for the purpose of gaining a height advantage or disguising the true height of a structure.

"Grade, highest sidewalk" means the highest elevation of the sidewalk parallel to the building frontage.

"Grade, mean average sidewalk" means the mathematical average of the highest and lowest elevations of the sidewalk

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parallel to the building frontage. Mean average sidewalk grade is a horizontal plane at a specific elevation.

"Grade, median sidewalk" means the average elevation of a sidewalk, abutting a commercial street, as designed by the City, along the public street line; except that for the west side of Marine View Drive South, median sidewalk grade shall be defined as the average elevation of the alley extending mid-block between 7th Avenue South and Marine View Drive South. For properties lying between Marine View Drive South and 8th Avenue South, sidewalk grade shall be established at Marine View Drive grade elevations.

"Group dwelling" means more than two separate buildings, each containing one or more dwelling units.

"Hazardous substance" means any solid, liquid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any characteristics or criteria of hazardous waste as described in WAC 173-303-090, 173-303-101, 173-303-102, or 173-303-103.

"Hazardous waste" means any dangerous waste or extremely hazardous waste. Moderate risk waste is not a hazardous waste.

"High school" means any institution of learning giving general academic instruction in the several branches of learning and study required by the education code of the state to be taught in the public and parochial schools.

"Highest sidewalk grade" means the highest elevation of the sidewalk parallel to the building frontage.

"Historic Properties Survey: City of Des Moines" means the Historic Properties Survey: City of Des Moines as prepared on October 14, 1994, for the City. A copy of this survey is maintained on file in the office of the City Clerk and in the office of the Planning, Building and Public Works Director and is available for public inspection.

"Hospital" means an institution specializing in giving clinical, temporary, and emergency services of a medical or

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surgical nature to human patients and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice, as distinguished from treatment of mental and nervous disorders and alcoholics, but not excluding surgical and post-surgical treatment of mental cases.

"Hotel" means a building in which there are six or more guest rooms where lodging with or without meals is provided for compensation, and where no provision is made for cooking in any individual room or suite, and in which building may be included one apartment for use of the resident manager, but shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed or detained under legal restraint.

"Interior lot" means a lot other than a corner lot or a reverse corner lot.

"Internal lot" means a lot within a planned unit development or townhouse development for the purpose of separate ownership of dwellings or for undivided ownership of common areas and facilities. An internal lot will also be a corner lot, interior lot, key lot, reverse corner lot, through lot, or transitional lot.

"Key lot" means the first lot to the rear of a reverse corner lot and whether or not separated by an alley. Land Use Intensity. The following definitions of "land use intensity" serve as the basis for establishing wetland buffers and development standards as codified in chapter 16.10 DMMC.

(1) "High intensity land use" means land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium- and high-density residential (more than one home per five acres), multifamily residential, and commercial and industrial land uses. The majority of land uses in Des Moines are considered "high intensity land use."

(2) "Moderate intensity land use" means land uses which are associated with moderate levels of human disturbance

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or substantial habitat impacts including, but not limited to, active recreation.

(3) "Low intensity land use" means land uses which are associated with low levels of human disturbance or low habitat impacts, including, but not limited to, passive recreation and open space land uses.

"Lighter uses" means uses involving performance standards having less detrimental effect upon surrounding properties and uses in the same or other zones than do uses first permitted in the next succeeding zone in terms of nuisance, hazard, generation of traffic and volume of traffic, both passenger and freight, and which uses make less demand upon public services such as electricity, gas, sewers, and streets. Where residential uses are involved, the term "lighter uses" means less permitted population density, possibly greater required yards, open spaces, and floor area within dwellings than is permitted or required in the next succeeding Residential Zone.

"Lodging house" means a dwelling unit within which not more than five guest rooms are devoted to accommodating not more than 10 persons other than members of the family, but wherein meals for guests shall be neither provided nor permitted. A lodging house containing guest rooms numbering six or more shall be considered a hotel.

"Lot area" means the total horizontal area within the boundary lines of a lot; provided, that the following areas are not included within the lot area and are not used to compute lot area or the area available for the satisfaction of any required yard:

(1) The area of a vehicular surface access easement or private street; and

(2) The area seaward of the ordinary high water mark from Puget Sound; and

(3) The area of any lake or pond, natural or artificial.

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"Lot depth" means the horizontal length of a straight line drawn from the midpoint of the lot front line and at right angles to such line to its intersection with a line parallel to the lot front line and passing through the midpoint of the lot rear line. In the case of a lot having a curved front line, the lot front line, for purposes of this section shall be deemed to be a line tangent to the curve and parallel to a straight line connecting the points of intersection of the lot side lines of the lot with the lot front line.

"Lot width" means the horizontal distance between the lot side lines measured at right angles to the line comprising the depth of the lot at a point midway between the lot front line and the lot rear line.

"Main building" means the principal building or other structure on a lot or building site designed or used to accommodate the primary use to which the premises are devoted. Where a permissible use involves more than one building or structure designed or used for the primary purpose, as in the case of group houses, each such permissible building or other structure on a lot or building site as defined by this Title shall be construed as comprising a main building or structure.

"Median sidewalk grade" means the average elevation of a sidewalk, abutting a commercial street, as designed by the City, along the public street line; except that for the west side of Marine View Drive South, median sidewalk grade shall be defined as the average elevation of the alley extending mid-block between 7th Avenue South and Marine View Drive South. For properties lying between Marine View Drive South and 8th Avenue South, sidewalk grade shall be established at Marine View Drive grade elevations.

"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.

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"Middle schools" means any institution of learning giving general academic instruction in the several branches of learning and study required by the education code of the state to be taught in the public and parochial schools.

"Mitigation" means the use of any combination or all of the following actions:

- (1) Avoiding impacts to environmentally critical areas by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environmentally critical area;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development proposal;
- (5) Compensating for the impact by replacing or enhancing environmentally critical areas, or providing substitute resources; and
- (6) Monitoring the impact and taking appropriate corrective measures.

"Mixed use" means one or more dwelling units and one or more enclosed commercial, business, or retail uses in a building in a Commercial or Residential Zone.

"Mobile home park" means any area or tract of land used or designed to accommodate two or more automobile house trailers.

"Moderate risk waste" means those wastes defined in WAC 173-303-040 (55).

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"Motel" means a group of attached or detached buildings containing individual sleeping units where a majority of such units open individually and directly to the outside, and where a garage is attached to or a parking space is conveniently located to each unit, all for the temporary use by automobile tourists or transients, and the word shall include tourist courts, motor courts, automobile courts, automobile camps, and motor lodges. A unit in a motel having kitchen facilities shall constitute a dwelling unit and shall be subject to all of the provisions and requirements of this Title governing dwelling units for the zone in which the establishment is located, but never less than the requirements of the heaviest multiple-dwelling zone.

"Multiple dwelling" means a building designed exclusively for occupancy by three or more families living independently of each other, and containing three or more dwelling units.

"Nonconforming building" means a building, or portion thereof, which was lawfully erected or altered and maintained but which, because of the application of this Title to it, no longer conforms to the regulations of the zone in which it is located as defined by this Title.

"Nonconforming use" means a use which was lawfully established and maintained but which, because of the application of this Title to it, no longer conforms to the use regulations of the zone in which it is located as defined by this Title.

"Nursing home" means facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist.

"One-family dwelling" means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

"Party of record" means any person, group, association, or corporation that files an appeal, a person granted party

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status through intervention, the City department making the decision or determination, and the person who files an application for a land use action that is subject to appeal.

"Pigs, potbellied and miniature" means a type of swine commonly known as the North American, Vietnamese, Chinese, or Asian potbellied pig (*Sus scrofa bittatus*) that is no more than 22 inches in height at the shoulder and no more than 150 pounds in weight.

"Principal use" means the primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory.

"Private boathouse" means an accessory building, or portion of building, which provides shelter and enclosure for a boat or boats owned and operated only by the occupants of the premises.

"Private parking area" means an open area, other than a street, alley, or other public property, limited to the parking of automobiles of occupants or employees of a dwelling, hotel, motel, apartment hotel, apartment house, boarding house, or lodging house to which these facilities are appurtenant.

"Private solid waste container" means a solid waste container that is either privately owned or privately used and maintained for the purpose of waste reduction or providing health and sanitation support for a private facility or organization.

"Professional offices" means offices maintained and used as a place of business conducted by persons engaged in the healing arts for human beings, such as doctors and dentists (but wherein no overnight care for patients is given), and by engineers, attorneys, realtors, architects, accountants, and other persons providing services utilizing training in and knowledge of the mental discipline as distinguished from training in occupations requiring mere skill or manual dexterity or the handling of commodities.

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"Public hearing" means a hearing, conducted by either the Hearing Examiner or the City Council, that creates a record through testimony and the submission of evidence and information under procedures prescribed by law. An open record public hearing held prior to a decision on a proposed land use action is to be known as an "open record pre-decision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record pre-decision hearing has been held on the land use action.

"Public parking area" means an open area other than a street, alley, or private parking area as defined in this Title, whether privately or publicly owned, which area is used for the parking of more than four automobiles.

"Public solid waste container" means a solid waste container placed for the purpose of providing a receptacle for public use to prevent littering, promote health and sanitation of the general public, and/or promote waste reduction on publicly owned and operated facilities, properties, or rights-of-way, when such facilities or properties are generally open to the public and used for public purposes. Without limitation, such public facilities shall include schools, parks, marinas, public buildings, and the like, but shall not include public facilities that are not generally open to the public.

"Public trailer camp" means any area or tract of land used or designed to accommodate two or more automobile house trailers.

"Public utility" means a private business organization such as a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas, and transportation for persons and freight.

"Public utility distribution" means the method or mode by which a private business organization or governmental agency performing some public service, such as, but not limited to,

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water supply, electric power, gas, sewer, or transportation, delivers or spreads those services over an area and to individual customers.

"Public utility facilities" means a building or complex that facilitates an action or process associated with a public utility which can be a private business or governmental agency performing some public service, such as, but not limited to, water supply, electric power, gas, sewer, or transportation.

"Rear line of the required front yard" means a line parallel to the lot front line and at a distance therefrom equal to the depth of the required front yard, and extending across the full width of the lot.

"Reclassification of property" means a change in zone boundaries upon the zoning map, which map is part of this Title when adopted in the manner prescribed by law.

"Required open space" means a portion of the area of a lot or building site, other than required yards, which area is required by this Title, as set forth in the different zones contained in this Title, to be maintained between buildings, between wings of a building, and between buildings and any portion of a property boundary line not contiguous to a required front or side yard. Such open spaces, as in the case of required yards, are required to be free and clear of buildings and structures and to remain open and unobstructed from the ground to the sky.

"Restoration" means the return of an environmentally critical area to a state in which its functions, values, and size approach or exceed its unaltered state as closely as possible.

"Retirement housing" means a building or complex of buildings, exclusively designed for and occupied by households having at least one person 62 years of age or older, which provides common facilities such as but not limited to dining and recreation. Some or all of the dwellings may contain kitchens.

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"Reverse corner lot" means a corner lot the side street line of which is substantially a continuation of the lot front line of the lot upon which the rear of the corner lot abuts.

"Sanitarium" means a health station or retreat or other place where resident patients are kept, and which specializes in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and licensed by state agencies under provisions of law to provide facilities and services in surgery, obstetrics, and general medical practice as distinguished from treatment of mental and nervous disorders and alcoholics, but not excluding surgical and postsurgical treatment of mental cases.

"School" means any institution of learning giving general academic instruction in the several branches of learning and study required by the education code of the state to be taught in the public and parochial schools.

"Shorelines of the state" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in chapter 90.58 RCW.

"Side yard" means an open area measured from the lot side line toward the center of the lot and extending from the rear line of the required front yard, or from the lot front line if there is no required front yard, toward the lot rear line to a point measuring two-thirds of the depth of the lot, except that on the side street side of corner lots and reverse corner lots the required side yard shall extend to the rear line of the lot. The width of the side yard shall be measured horizontally from, and be parallel to, the lot side line from which it is measured.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

Comment [dl7]: As defined in 17.01.050 as amended here

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"Slope" means an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

$$\frac{\text{vertical distance}}{\text{horizontal distance}} \times 100 = \% \text{ slope}$$

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

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(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" means any of the following:

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality;

(3) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts, whether clothed or unclothed, of oneself or of one person by another; or

(4) Excretory functions as part of or in connection with any of the activities set forth in this section.

"Stable" means a detached building in which horses or other beasts of burden owned by the occupants of the premises are kept, and in which no such animals are kept for hire, remuneration, or sale.

"Structural alterations" means any change in the supporting members of a building or structure, such as foundations, bearing walls, columns, beams, floor or roof joists, girders or rafters, or changes in the exterior dimensions of the building or structure, or increase in floor space.

"Substantial change" means modification of the scope, use, or other attribute of a pending land use action that results in, or may result in, significant differences in the type or degree of impact(s), as determined by the Planning, Building and Public Works Director.

"Through lot" means a lot having frontage on two streets, including a lot at the intersection of two streets when the street sides of such lot form an internal angle of less than 45 degrees. Corner lots and reverse corner lots as defined in this section are not through lots.

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"Townhouse development" means two or more lots approved through the subdivision or short subdivision process for townhouse dwellings.

"Townhouse dwelling" means one dwelling unit on an internal lot within a townhouse development designed exclusively for occupancy by one family. A townhouse dwelling is located at an internal lot line and attached to one or more other townhouse dwellings. The first floor of a townhouse dwelling is at or near ground level. A townhouse dwelling occupies the building area from ground level to the roof with no townhouse dwelling located above or below another townhouse dwelling.

"Trailer court" means any area or tract of land used or designed to accommodate two or more automobile house trailers.

"Trailer park" means any area or tract of land used or designed to accommodate two or more automobile house trailers.

"Transitional lot" means a residentially zoned lot a side line of which forms a common boundary with contiguous property zoned for either a higher density residential use or commercial or industrial uses.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

"Unlisted uses" means uses which are not specifically named as permitted in any zone contained within this Title.

"Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.

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"Variance" means an adjustment in the application of the specific regulations of this Title to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

"Vehicle" as used in this Title, means all instrumentalities capable of movement by means of circular wheels, skids, or runners of any kind, along roadways or paths or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, buses, trucks, cars and vans, all forms of trailers or mobile homes of any size whether capable of supplying their own motive power or not, without regard to whether the primary purpose of which instrumentality is or is not the conveyance of persons or objects, and specifically including all such automobiles, buses, trucks, cars, vans, trailers, and mobile homes even though they may be at any time immobilized in any way and for any period of time of whatever duration.

"Zone" means an area accurately defined as to boundaries and location on an official map and within which area only certain types of land uses are permitted, and within which other types of land uses are excluded, as set forth in this Title.

Sec. 12. DMMC 18.195.020 Application and section 413 of Ordinance No. 1591, 2013 is repealed.

(1) General Applicability. Landscaping required pursuant to this chapter shall be installed throughout the entire building site in accordance with an approved site plan, prior to issuance of the certificate of occupancy or business license for any of the following development activities:

- (a) Construction of a new building or structure;

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(b) Expansion of an existing building or structure where such expansion contains 20 percent or more of the floor area of the existing building or structure;

(c) Creation or expansion of a parking area or other paved surface; and

(d) Creation or expansion of an outdoor use, activity, or storage area.

(2) Exceptions. The provisions of this chapter shall not apply in the following circumstances:

(a) Single-family residential development activities shall not be subject to the provisions of this chapter except as may be specifically required by any section.

(b) Where the Planning, Building and Public Works Department determines that existing structures are situated so as to preclude installation of required landscaping, such required landscaping shall be waived for the area affected by such structures.

(c) Where compliance with the provisions of chapter 18.210 DMMC, loading areas and off-street parking requirements for existing buildings or structures, conflicts with the requirements of this chapter, the required landscaping shall be waived, or modified in accordance with DMMC 18.195.420.

(d) The irrigation requirements of DMMC 18.195.080 shall apply only to construction of a new building or structure or expansion of an existing building or structure.

(3) Nothing in this chapter shall be construed to relieve the applicant of open space, buffer, setback, and other such development constraints defined by the zoning code, conditional use permit concomitant rezoning agreement, subdivision code, planned unit development, shorelines master program, and terms of approvals associated therewith.

(4) Plan Requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an

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appropriate engineering or architectural scale which shows the following:

- (a) Boundaries and dimensions of the site;
- (b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;
- (c) Proposed topography at a maximum of five-foot contours;
- (d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;
- (e) Details of any proposed architectural barriers;
- (f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;
- (g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;
- (h) Percentage of landscaping for total site and net square footage of parcel;
- (i) Proposed landscaping including location, species, and size at time of planting;
- (j) Existing vegetation in general, and identifying all evergreen trees six inches in diameter ~~DBH (diameter at breast height)~~ or greater as measured at fifty-four inches (54") above the ground and all deciduous trees eight inches in diameter ~~DBH or greater~~ as measured at fifty-four inches (54") above the ground;
- (k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water

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pressure in pounds per square inch at the pump and sprinkler heads, and timer system.

Sec. 13. DMMC 18.195.110 Tree retention and section 422 of Ordinance No. 1591, 2013 is repealed.

(1) All existing healthy evergreen trees six inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches in diameter DBH or greater as measured at fifty-four inches (54") above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

(2) All clearing and grading shall take place outside the drip line of those trees to be retained; provided, that the Planning, Building and Public Works Department may approve hand clearing within the drip line if it can be demonstrated that such grading can occur without damaging the tree. If the roots are damaged, the Planning, Building and Public Works Department may require restoration measures such as the application of phosphate or potash.

(3) Any tree identified to be retained that is destroyed or damaged during construction shall be replaced by the applicant with five trees on the subject property or within a street planting strip near the subject property. Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality. These trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

Sec. 14. DMMC 18.95.130 and section 424 of Ordinance No. 1591, 2013 is repealed.

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~~18.195.130 Scenic view preservation.
 Landscaping shall be designed, installed, and thereafter
 maintained in such a manner which preserves scenic views and
 vistas of neighborhood and upland properties. Under no
 circumstances shall species of trees be planted which by virtue
 of their height and/or breadth at maturity impinge upon the
 views of other properties.~~

Sec. 15. DMMC ____ and section ____ of Ordinance No. ____ as amended by section ____ of Ordinance No. ____ are each amended to read as follows:

Sec. 16. Savings clause. Ordinance No. ____, which is repealed [or amended] by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

NEW SECTION. Sec. 17. 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.

NEW SECTION. Sec. 18. Effective date. This Ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

NEW SECTION. Sec. 19. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2014 and signed in authentication thereof this ____ day of ____, 2014.

Ordinance No. ____
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M A Y O R _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Resolution No. 14-035 Setting Public Hearing for New Transit Community Zone

FOR AGENDA OF: May 1, 2014

ATTACHMENTS:

1. Draft Resolution No. 14-035 Setting a Public Hearing Date for Draft Ordinance No. 14-035
2. Draft Ordinance No. 14-035 Adding a New Chapter entitled "T-C Transit Community Zone" and Making Other Amendments to Title 18, *Zoning Code*.

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: April 24, 2014

CLEARANCES:

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

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

Purpose and Recommendation

The purpose of this Agenda Item is for City Council to consider Draft Resolution No. 14-035 which will set a public hearing date for the consideration of Draft Ordinance No. 14-035, relating to the City's Zoning Code and development regulations for the area along Pacific Highway South in the vicinity of South 240th Street, Highline Community and the planned Federal Way Link Extension station, adding a new chapter entitled "T-C Transit Community Zone" to Title 18 DMMC, adopting a new zoning map, amending DMMC 18.05.080, 18.10.050, 18.52.005, 18.52.010B, 18.210.090, 18.250.060, and 18.250.070, and codifying a new chapter in Title 18 DMMC.

Suggested Motion

Motion 1: "I move to adopt Draft Resolution No. 14-035 setting a public hearing on June 5, 2014 to consider Draft Ordinance No. 14-035 adding a new chapter, T-C Transit Community Zone and making other amendments to Title 18, Zoning Code."

Background

The Pacific Highway South Corridor is a key commercial area where significant private and public investment have been, are being, and will be made in the near future that support the City of Des Moines goals of fostering economic development, creating jobs, and increasing revenues. This commercial corridor includes Midway (Kent-Des Moines Road to South 272nd Street).

Midway is influenced by planning and development efforts underway by Sound Transit, King County Metro, Highline Community College (HCC), the Cities of Des Moines, SeaTac, Kent and Federal Way, the Washington State Department of Transportation, Healthpoint, Sea Mar, and Growing Transit Communities. As such, Des Moines has an opportunity to influence decisions that will be made in the near future by having the planning, policy and regulatory framework in place that best represents the City's vision as to how it wants this area to develop to support the City economically and support the following significant transportation improvements in these areas:

- Sound Transit's Federal Way Link Extension
- Metro's RapidRide
- WSDOT's SR509/I-5 Freight Mobility Project
- Metro's HCC Transit Center at HCC

The proposed development regulations and changes build upon the 18 months of work already completed with the community during the '*Envision Midway*' planning project with the City of Kent that was funded through a state grant. '*Envision Midway*' was formed by the Cities of Kent and Des Moines to work collectively to address inconsistent land use patterns along our shared "zig-zag border" and consider land use changes in anticipation of significant transportation improvements along SR-99 through Des Moines' Pacific Ridge, South Des Moines, and Woodmont neighborhoods and the Midway area in Kent. With the input from residents, property and business owners and other stakeholders, draft subarea plans, design guidelines, and coordinated development regulations for Kent and Des Moines were developed to undergo further refinement by our respective cities. The City of Kent completed their planning with the adoption of the Midway Subarea Plan, Design Guidelines and development regulations (Ordinance No. 4009, adopted December 13, 2011 and codified in Kent Municipal Code 15.04 and 15.05 with the formation of new Midway Transit Community 1 and 2, and Midway Commercial/Residential Districts).

In November 2009, Des Moines adopted the following Comprehensive Plan policies and strategies related to the extension of light rail to Des Moines and the need to further plan for the Midway area:

Land Use Element:

Strategy 2-04-11 Negotiate with Sound Transit and the Cities of Kent, SeaTac and Federal Way on the extension of light rail through Des Moines.

Strategy 2-04-12 Prepare a subarea plan/s, prepare zoning amendments and prepare design guidelines for the light rail station areas to be located within the South Des Moines and Woodmont Neighborhoods, considering the joint planning with the City of Kent on the Midway area.

Other City policies and strategies affecting the Midway Area are included in the Pacific Ridge, Transportation, and Parks, Recreation and Open Space Elements of the Comprehensive Plan, the 2013 Council-adopted Intergovernmental Policy paper and the Federal Way Link Extension (FWLE) City Council-approved Draft EIS Scoping letter dated July 3, 2013.

On June 7, 2012, City Council directed staff to develop a subarea plan for the Midway area. Although this work was intended to commence in January 2013, Council priorities focused on changes to the Pacific Ridge zone, the sign code, and parking code. In the fall of 2013, the Finance & Economic Development Committee concluded that the Pacific Highway South Corridor was the most important and time-sensitive City planning effort after the state-required 2014 Comprehensive Plan update and staff support of large scale development projects. Based on the Committee's recommendation, the City Council, at its January 9, 2014 meeting, directed staff to reinstitute the work to develop the Midway Subarea Plan working under the policy direction of the Finance & Economic Development Committee.

Discussion

The Pacific Highway South planning effort builds upon the work completed during the *Envision Midway* project working closely with staff from Sound Transit, the City of Kent, HCC, property and business owners, and residents adjacent to the corridor. The goal is to transform the South 240th Street/HCC area from a lower density, auto-oriented strip development to a mixed use employment/activity center that capitalizes on the opportunities provided by HCC and the multi-million dollar public transportation investments that will be made in this corridor over the next decade in order to foster economic development, increase revenues and job opportunities, and provide more housing choices.

The City held an open house at Highline Community College on March 26, 2014 to seek community input. Written comments and input from the open house were generally supportive of staff's preliminary planning work reflected in the proposed Draft Ordinance. Staff will continue to coordinate with stakeholders to finalize the subarea plan for the Midway area that includes: improving development regulations; creating overlay zones around future and potential light rail station areas; developing informative but not overly restrictive design guidelines; capital improvement plans; and funding strategies.

Staff is thinking of corridor planning comprehensively, but intends to immediately propose regulations in support of specific projects that have the ability to achieve the full economic potential of their properties while advancing the City's development vision of the corridor, using these changes to inform further corridor planning. Staff anticipates this planning work will be completed by the fall of 2014, which coincides with the anticipated publication of the Federal Way Link Extension Draft EIS.

The Draft Ordinance anticipates that the planning area *may* be extended west of Pacific Highway South and further south along Pacific Highway South *in the future* after the City *assesses* the opportunity to expand the commercial and multi-family uses and create more economic development potential around light rail station areas.

Alternatives

The City Council may:

1. Adopt the proposed Draft Resolution.
2. Adopt the proposed Draft Resolution with a different hearing date.
3. Decline to adopt the Draft Resolution.

Financial Impact

Planning for the Midway Area is being built upon the recent efforts for Pacific Ridge and will help foster a strong economic environment for the City by creating new jobs, a stronger tax base, and tax revenues for the City of Des Moines. Some potential projects will benefit from the proposed modifications. It will also help the Cities of Des Moines and Kent, HCC, Sound Transit and King County METRO strategically plan for capital improvements and investments in conjunction with growth and development, and will position the City competitively for grant funding.

Recommendation or Conclusion

Staff recommends that City Council adopt Draft Resolution No. 14-035.

CITY ATTORNEY'S FIRST DRAFT 04/24/2014

DRAFT RESOLUTION NO. 14-035

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 14-035 relating to the City's Zoning Code and development regulations for the area along Pacific Highway South in the vicinity of S 240th Street, Highline Community and the planned Federal Way Link Extension station, adding a new chapter entitled "T-C Transit Community Zone" to Title 18 DMMC, adopting a new zoning map, amending DMMC 18.05.080, 18.10.050, 18.52.005, 18.52.010B, 18.210.090, 18.250.060, and 18.250.070, and codifying a new chapter in Title 18 DMMC.

WHEREAS, the City Council supports the redevelopment of the Pacific Highway South area in the vicinity of the planned Federal Way Link Extension station near Highline Community College as transit oriented, and

WHEREAS, many Highway Commercial zoned properties are not improved to support transit oriented development, and

WHEREAS, on January 9, 2014 the City Council directed City staff to prepare an ordinance for its consideration which creates more appropriate development regulations for this commercial area along Pacific Highway South under the direction of the Finance & Economic Development Committee, and

WHEREAS, the Finance & Economic Development Committee met in January, February, and April 2014 to provide direction on proposed changes to the City's development regulations, and

WHEREAS, the City Council is considering adding a new chapter entitled "T-C Transit Community Zone" to Title 18 DMMC and amending other chapters of Title 18, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends portions of Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

T-C Public Hearing_v2_042414

Resolution No. ____
 Page 2 of ____

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

The matter of adding a new chapter entitled "T-C Transit Community Zone" and making other amendments to Title 18, *Zoning Code*, is set for a public hearing before the City Council on Thursday, June 5, 2014, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2014 and signed in authentication thereof this ____ day of ____, 2014.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

4/24/14 3:45 PM

CITY ATTORNEY'S FIRST DRAFT 04/24/2014

DRAFT ORDINANCE NO. 14-035

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the City's Zoning Code and development regulations for the area along Pacific Highway South in the vicinity of S 240th Street, Highline Community and the planned Federal Way Link Extension station, adding a new chapter entitled "T-C Transit Community Zone" to Title 18 DMMC, adopting a new zoning map, amending DMMC 18.05.080, 18.10.050, 18.52.005, 18.52.010B, 18.210.090, 18.250.060, and 18.250.070, and codifying a new chapter in Title 18 DMMC.

WHEREAS, Des Moines Comprehensive Plan Strategy 2-04-12 directs the City to prepare subarea area plans, zoning amendments and design guidelines for this area considering joint planning with the City of Kent on the Midway area, and

WHEREAS, Transportation and Land Use Goal 3-03-01 requires the design and construction of a transportation system to serve the land use patterns established for the Midway area, and

WHEREAS, Transportation Public Transit Goal 3-03-04 encourages the expansion of public transit services including Link Light Rail, and

WHEREAS, Transportation Parking Goal 3-03-06 directs that parking strategies be developed that support economic activity, transportation, circulation, and for existing and future uses around Highline Community College, and

WHEREAS, Transportation Funding Goal 3-03-07 (7) supports the Sound Transit light rail (LRT) station in the Pacific Ridge, Midway and Woodmont areas on Pacific Highway South, (10) directs the City to work with Sound Transit on station area planning for the Midway station, and (11) directs the City to coordinate with the City of Kent for the Midway subarea, and

WHEREAS, Parks, Recreation and Open Space Strategy 6-02-04 identifies the Pacific Highway Business Districts in Midway Transit Community Zone_v5_042414

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as an opportunity for interconnections between economic and recreational expansion and for the establishment of other recreational facilities for Des Moines citizens, and

WHEREAS, the City Council supports the redevelopment of the Pacific Highway South area in the vicinity of the planned Federal Way Link Extension station near Highline Community College as transit oriented, and

WHEREAS, many Highway Commercial zoned properties are not improved to support transit oriented development, and

WHEREAS, the City Council directed City staff to prepare an ordinance for its consideration which creates more appropriate development regulations for this commercial area along Pacific Highway South, and

WHEREAS, the current Highway Commercial zoning was designed to capitalize on the 33,000 cars per day which use Pacific Highway South, but fails to anticipate the extension of Link Light Rail to this area in the next ten years, and

WHEREAS, the Planning, Building and Public Works Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental documents and fulfilled the SEPA requirements established by chapter 197-11 WAC and chapter 165.04 DMMC pursuant to WAC 197-11-600 and DMMC 16.04.108, and

WHEREAS, pursuant to DMMC 18.20.080A, amendment of the Zoning Code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

WHEREAS, pursuant to DMMC 18.20.210 amendments to the Zoning Code (Title 18 DMMC) require the City Council to conduct a public hearing to receive public comment regarding this proposal, and

WHEREAS, DMMC 18.30.100(3) requires that the date of the public hearing to consider amendments to Title 18 DMMC be set by motion of the City Council, and

Ordinance No. ____
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WHEREAS, the City Council set the date for the public hearing by Draft Resolution No. 14-035, fixing the public hearing for _____, 2014 as required, and

WHEREAS, the textual code amendments proposed in this Draft Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, notice of the public hearing was issued on _____ in accordance with the DMMC, and

WHEREAS, a public hearing was held on _____ where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this Draft Ordinance are appropriate and necessary; now therefore,

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

A new chapter shall be added to Title 18 DMMC to read as follows in sections 1 through 11 of this Ordinance:

NEW SECTION. **Sec. 1. Title.** This chapter shall be entitled "T-C Transit Community Zone".

NEW SECTION. **Sec. 2. Application.** This chapter shall apply to all areas zoned T-C Transit Community.

NEW SECTION. **Sec. 3. Purpose.** The T-C Transit Community Zone is intended to encourage a mixture of residential, commercial, and employment opportunities within identified light rail and transit station areas. The zone allows for a more intense and efficient use of land at increased densities for the mutual support of public investments and private development, while acknowledging the existing businesses along the State Route 99 corridor that serve a broader, regional clientele. Uses and development are regulated to create a moderately dense built-up environment, oriented to pedestrians,

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and ensuring a density and intensity that is transit supportive. The development standards of the zone also are designed to encourage a safe and pleasant pedestrian environment near transit stations by encouraging areas with shops, activities, and amenities such as benches, kiosks, and outdoor cafes.

NEW SECTION. **Sec. 4. Authority.** This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63 and 36.70A RCW and other applicable laws.

NEW SECTION. **Sec. 5. Environmental performance standards and general limitations.** Every permitted use within the T-C Transit Community Zone shall be subject to the following standards and limitations:

(1) All uses shall be primarily contained within an enclosed structure except the following:

- (a) Outdoor seating and dining;
- (b) Signs;
- (c) Loading areas;
- (d) Incidental outdoor display areas for merchandise sold on site as approved through the design review process; and
- (e) Play/recreation areas.

(2) If a building site has a boundary line which is a common property line with residential property, then on such common line a wall or view-obscuring fence or hedge not less than six feet in height shall be installed and maintained for screening purposes and controlling access.

(3) High capacity transit facilities shall be developed in accordance with section 9 to standards intended to achieve good design, provide a distinctive and safe community focal point, integrate and accommodate multiple transportation modes, and provide adequate buffers between different types of land uses.

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NEW SECTION. Sec. 6. Dimensional standards.

(1) Lot area. Every lot shall have a minimum area of 7,500 square feet.

(2) Lot width. Every lot shall have a minimum width of 75 feet.

(3) Front yard. No front yard setback is required.

(4) Side yard. A 10-foot minimum setback is required from single family zoned property.

(5) Rear yard. Every lot shall have a rear yard of not less than 10 feet when abutting single family zoned properties, except as otherwise permitted in section 6(11) of this Ordinance. No rear yard setback is required when abutting I-C zoned properties.

(6) Measurement of building height. Building height shall be measured from mean sidewalk grade on Pacific Highway South.

(7) Minimum building height.

(a) Except for buildings containing only a full-service restaurant, and other instances specifically authorized by the City Manager or the City Manager's designee in writing, no building shall be less than the height specified below:

(i) No minimum building height for commercial projects and 55 feet for residential or mixed use projects.

(ii) For the purposes of this subsection, minimum building height shall not include decorative towers or appurtenances, roof slopes out of character with the building's architecture, or other contrivances provided solely for achievement of the required minimum building height. In calculating minimum building height, the City Manager or the City Manager's designee shall include regular architectural features enclosing functional, occupiable building areas.

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(8) Maximum building height. Buildings and structures may be built to 75 feet, except that buildings abutting the I-C zone may be built to 100 feet.

(9) Building height limitation adjacent to single-family. When an abutting property is zoned single-family residential, building height shall be limited as follows:

(a) Every lot shall have a rear yard setback of not less than 10 feet when abutting single family zoned properties, except as otherwise permitted in section 6(11) of this Ordinance.

(b) Within 20 feet of the abutting single-family residential zone, maximum building height shall be 35 feet.

(c) During the design review and environmental review, the City Manager or the City Manager's designee may impose other conditions of approval in order to mitigate potential height, bulk, and scale impacts upon adjacent single-family residents not sufficiently mitigated by existing regulations.

(10) Height allowance for enhanced design of distinctive rooflines. A portion of a building may exceed the maximum building height; provided that the following provisions are met:

(a) The purpose of the additional height for the building is to provide a roofline that is of distinctive form through the use of design elements such as pitched roofs, sloped roofs, vertical offsets or other similar roof features that achieve the goals of the design guidelines in section 7 of this Ordinance.

(b) The maximum building height established in sections 6(8) and 6(9) of this Ordinance shall only be increased by a maximum of 10 percent.

(c) Architectural features associated with the distinctive roofline shall be used to emphasize significant architectural elements of the building such as the main entrance

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of the building or the building's orientation to a corner, or to provide for pitched or sloped roofs for the building.

(d) Height allowed for distinctive rooflines under this section shall not be used to determine the building height for the purposes of establishing the maximum gross floor area under section 7(3).

(e) The building area or amount of building structure extending above the maximum height established in section 6(9) of this Ordinance shall be limited to 30 percent of the building roof deck area. When multiple building rooflines exist at different building levels or stories, the 30 percent requirement shall only apply to the area of the roof deck of the tallest portion of a building.

(11) Adjustment of required yards. The required rear yard area shall be reduced to a minimum of 5 feet provided that:

(a) A development site or potential project area is planned or may be planned for multiple buildings together as one development or in different development phases either under common ownership or separate ownership; and

(b) Building on a site or potential project area are served by a private, joint-use access or street which separates the rear yard area of one development site or project area from another development site or project area; and

(c) A physical separation of not less than 30 feet is provided between buildings which shall include the space or distance located within any such shared, joint-use access or street together with the yard areas adjoining and abutting buildings and said shared streets.

NEW SECTION. **Sec. 7. General building design requirements.** All development proposals shall demonstrate substantial compliance, as determined by the City Manager or the City Manager's designee, with the following design guidelines.

(1) General design guidelines.

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(a) Building design shall be compatible with the site and with adjoining buildings. Building modulation and other design techniques to add architectural interest and minimize building mass shall be used. Variety in detail, form, and siting shall be used to provide visual interest.

(b) Building components such as windows, doors, eaves, and parapets shall be in proportion to each other.

(c) Colors shall be harmonious, with intense colors used only for accent.

(d) Mechanical equipment shall be integrated into building design or screened from on-site and off-site views.

(e) Exterior lighting fixtures and standards shall be part of the architectural concept and harmonious with building design.

(2) Minimum floor-to-ceiling height for dwellings. Dwellings shall have a minimum floor-to-ceiling height of eight feet, six inches.

(3) Maximum gross floor area.

(a) The maximum gross floor area for buildings within Transit Community Zone shall be determined by multiplying the lot area of the site by the floor area ratio (FAR) number established in the following table:

Building Height	T-C FAR
35 Feet or Less	2.8
35 - 50	3.5

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Building Height	T-C FAR
50 - 60	4
60 - 70	4.5
70 - 80	5
80 - 90	5.5
90 - 100	6.5

(b) Gross floor area shall include the total square footage of the enclosed building; provided, that:

(i) For properties located adjacent to Pacific Highway South, the area of parking garages constructed below the adjacent sidewalk grade on Pacific Highway South shall not be included in the calculation of gross floor area.

(ii) For all other properties in the Transit Community Zone, the area of parking garages constructed below the lowest sidewalk grade adjacent to the property line shall not be included in the calculation of gross floor area.

(4) Encroachments. Within the Transit Community Zone, structural encroachments into the right-of-way, such as cornices, signs, eaves, sills, awnings, bay windows, balconies, facade treatment, marquees, etc., shall conform to the provisions set forth by Title 12 DMMC, the International Building Code, and the following provisions:

(a) Structural encroachments into the right-of-way shall be capable of being removed without impact upon the structural integrity of the primary building;

(b) Structural encroachments into the right-of-way shall not result in additional building floor area than would otherwise be allowed;

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(c) Except for awnings, signs, and marquees, the maximum horizontal encroachment into the right-of-way shall be two feet;

(d) The maximum horizontal encroachment in the right-of-way by signs shall be four feet;

(e) The maximum horizontal encroachment in the right-of-way by awnings and marquees shall be six feet;

(f) The minimum horizontal distance between the structural encroachment and the curbline shall be two feet;

(g) Except for awnings over the public sidewalk which may be continuous, the maximum length of each balcony, bay window, or similar feature that encroaches the right-of-way shall be 12 feet;

(h) Structural encroachments into the right-of-way shall maintain adequate distance away from utility, transportation, or other facilities as determined by the City Manager or the City Manager's designee in consultation with the Planning, Building and Public Works Director;

(i) The applicant shall demonstrate proof of public liability insurance and consent to a public place indemnity agreement;

(j) Owners of structural encroachments into the right-of-way must clear the public right-of-way when ordered to do so by City authorities for reasons of public health or safety; and

(k) In reviewing a proposed structural encroachment into the public right-of-way, the City Manager or the City Manager's designee may include conditions as may be

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reasonably needed to ensure that the structure is consistent with the purpose of the T-C Zone, and to minimize the likelihood of adverse impacts. The City Manager or the City Manager's designee shall deny the request if it is determined that adverse impacts cannot be mitigated satisfactorily.

NEW SECTION. Sec. 8. Required right-of-way improvements.

In the T-C Transit Community Zone, all new construction, additions, or alterations which exceed 50 percent of the value of the existing structure or, in the case of a series of addition or alteration projects, when in a five-year period the cumulative value of additions or alterations exceeds 50 percent of the value of the structure at the time such additions or alterations are commenced, shall include construction of curb, gutters, and sidewalks in accordance with the City's Street Development Standards.

NEW SECTION. Sec. 9. Design standards for high capacity transit facilities. *(Reserved for future use)*

Sec. 10. DMMC 18.52.005 and section 131 of Ordinance No. 1591 is amended to read as follows:

18.52.05 Permitted uses.

(1) Uses within the zones identified in DMMC 18.05.080 shall be permitted, not permitted or allowed by conditional use permit or unclassified use permit as is set forth in DMMC 18.52.010A Residential Use Chart and 18.52.010B Commercial Use Chart below. Uses shall also be subject to the specific provisions of the chapter applicable to that zoning classification and applicable provisions of this Title.

(2) The City Manager may approve additional uses not explicitly set forth in DMMC 18.52.010A Residential Use Chart and 18.52.010B Commercial Use Chart below, provided that such additional uses are consistent with and meet the intent of the specific provisions of the chapter applicable to that zoning classification, the Comprehensive Plan and applicable provisions of the Title.

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Sec. 11. DMMC 18.52.010B —and Section 133 of Ordinance No. 1591 is amended to read as follows:

18.52.010B. Commercial use chart.

TABLE 18.52-010B COMMERCIAL ZONE PRIMARY USES								
Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Accessory buildings and uses (as described in the applicable zone)	P	P	P	P	P	P	P	P
Admin, support services	P/L[3]		P	P/L[16]	P/L[22]		P	P
Adult family homes				P	P		P	P
Adult entertainment facilities							P/L[46] [P/L[46]]	
Adult theaters						P/L[35]	P/L[46] [P/L[46]]	
Amusement and recreational services				P/L[16]	P/L[22]			
Amusement parks	CUP	CUP	CUP	CUP		CUP	CUP	CUP
Animal or veterinary services			P	P	P	P	P	P
Antenna system (one)	P/L[6]							
Animal grooming	P/L[3]		P	P	P		P	P
Antenna systems (not accessory)	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Apparel and accessories stores	P/L[1]		P	P	P	P	P	P
Arrangement of passenger transportation	P/L[3]			P	P		P	P
Art galleries	P			P	P		P	P
Art, glassware manufacturing			P	P	P			
Art, ornamental ware				P	P			
Arts, entertainment, and recreation facilities				P/L[16]	P/L[22]		P	P
Auction houses or stores				P	P	P/L[41]	P	
Automobile, body, paint, interior and/or glass repair				P/L[18]	P/L[25]		P/L[48]	
Automobile, detail shop				P/L[18]	P/L[25]		P/L[48]	
Automobile, maintenance and repair				P/L[18]	P/L[25]	P	P/L[48]	
Automobile, parking	P/L[5]		P	P/L[16] [20]	P/L[22]	P	P	P/L[53]
Automobile, sales						P	P/L[43]	
Automobile, service stations				P/L[18]	P/L[25]	P/L[36]	P/L[48]	
Automobile, trailer sales						P	P	
Automotive equipment, rental and leasing				P	P	P	P	
Bakeries, manufacturing and retail sales	P/L[1]		P			P		P/L[54]
Ballparks	CUP	CUP	CUP	CUP	CUP	CUP	CUP	
Banks				P	P		P	P
Barber, beauty and hairstyling shops	P/L[3]			P	P		P	P
Bed and breakfast facilities				P	P		P	P
Boats, building and repairing (less than 48 feet)						P	P	
Boats, repair/ sale						P	P	

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TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Boat moorage	P/L[3]					P/L[42]		
Botanical and zoological gardens				P	P		P	
Bookbinding			P			P		P
Boosting stations	UUP	UUP	UUP	UUP		UUP	UUP	UUP
Boxing and wrestling arenas	CUP	CUP	CUP	CUP		CUP	CUP	CUP
Building materials and garden equipment supply	P/L[1]		P	P	P	P/L[28]	P	
Business offices	P/L[3]		P	P/L[16]	P/L[22]		P	P
Car washes				P/L[18]	P/L[25]	P		
Carpentry and cabinet shops	P/L[1] [2]		P	P	P	P	P	
Casino hotels and motels				P	P		P	P
Cemeteries	CUP	CUP	CUP	CUP		CUP	CUP	
Ceramics, manufacture						P/L[29]		
Columbariums, crematories, mausoleums with permitted cemeteries	CUP	CUP	CUP	CUP		CUP	CUP	
Commercial and industrial machinery and equipment, rental and leasing			P			P	P	
Community care facilities				P	P		P	P
Community gardens				P	P			
Community housing services				P/L[5663]	P/L[5663]			
Confectionery, manufacture			P			P		P/L[55]
Contractors, general	P/L[3]		P/L[14]			P	P	P
Convention facilities			P	P	P	P		P
Correctional institutions			P					
Couriers and messengers	P/L[3]		P				P	P
Data processing, business and record storage	P/L[3]		P	P	P	P	P	P
Day care centers and mini day care providers	CUP	CUP	CUP	CUP	CUP		CUP	CUP
Death care services	P/L[3]		P	P	P	P/L[42]	P	
Distribution Centers, home deliveries			P			P		
Drive-in or drive-through facilities	P			P/L[18]	P/L[25]		P	
Dry cleaning and laundering services	P/L[3]		P	P	P	P	P	P
Educational services		P	P/L[7]	P	P/L[27]	P/L[37]	P	P
Electric power generation, biomass			P/L[12]					
Electrical appliances and supplies, retail sales, wholesale trade and repairs						P		
Equipment rental and leasing			P	P/L[16]	P/L[22]	P	P	
Fairgrounds and rodeos	CUP	CUP	CUP	CUP		CUP	CUP	
Family day care providers					P/L[5667]		P/L[5667]	P/L[67]
Financial and insurance services			P	P	P		P	P
Fish hatcheries and preserves					P			
Fix-it shops			P	P	P	P	P	
Food, frozen or cold storage lockers			P	P	P	P		
Food stores	P/L[1]		P	P	P		P	P
Footwear and leather goods repair	P		P	P	P	P	P	P
Foreign trade			P/L[13]					

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TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Fraternities, fraternal organizations/societies		P	P/L[7]	P	P		P	P
Fuel dealers, other							P	
Furniture, home furnishings and equipment, sales	P/L[1] [2]		P	P	P	P	P	P
Furniture, repair	P/L[2] [3]		P	P	P	P	P	P
Gambling, amusement, and recreation industries			P/L[7]	P/L[16]	P/L[22]		P	P
Garages, public						P/L[30]		
General merchandise stores	P/L[1]		P/L[9]	P/L[15]	P/L[21]		P	P
Glass, edging, beveling, silvering			P			P/L[31]		
Glass, stained glass studios	P					P		
Golf courses, with accessory driving ranges, club houses and pitch & putt				P	P	CUP	P	
Golf driving ranges	CUP	CUP	CUP	CUP		CUP	CUP	
Hardware Store	P/L[1]		P	P		P	P	P
Health care and social services			P/L[5668]	P/L[5668]	P		P/L[5668]	P/L[66]
Heating oil dealers							P	
Horticultural and landscaping, services			P	P	P			
Horticultural nurseries	UUP	UUP	UUP	UUP		P	UUP	
Hospitals (except mental and alcoholic)				P	P	P	P	P
Hospitals (mental and alcoholic)	CUP	CUP	CUP	CUP		CUP	CUP	CUP
Hotels				P	P	P/L[40]	P/L[47]	P
Information establishments						P	P	P
Internet, service providers			P				P	P
Job printing, newspapers, lithography, and publishing						P		P
Kennels, commercial			P	P	P		P	P/L[56]
Labor camps (transient)	CUP	CUP	CUP	CUP		CUP	CUP	
Laboratories			P	P	P	CUP	P	P
Laboratories (incl. medical, dental, or photographic)			P/L	P	P	P	P	P
Laundry, industrial			P				P	
Legal services	P/L[3]		P	P	P	P	P	P
Libraries (public)	P			P	P		P	P
Light Manufacturing, Fabrication, and Assembly			P/L[8]					
Limousine/Taxi service							P	
Machine shop			P			P/L[32]		
Management of companies and enterprises	P/L[3]		P	P	P		P	P
Manufactured home sales							P	
Marijuana Producer/Processor, Recreational			P/L[66] 5 4]	P/L[66]		P/L[66] 5 4]		P/L[66]
Marijuana Retailer, Recreational				P/L[66] 5 4]		P/L[66] 5 4]		P/L[66]
Marinas					P/L[24]			
Mixed use	UUP	UUP	UUP	UUP	P/L[26]	UUP	P/L[50]	P/L[57]
Motels				P	P	P/L[40]	P/L[47]	
Motion picture services	P/L[3]			P	P		P	P
Museums	P		P/L[7]	P	P		P	P

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TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Nursing homes (PR-R-Nursing care facility; IC-Nursing and Residential Care Facility)				P	P		P	
Offices, business and professional						P	P	P
Open air theaters	CUP	CUP	CUP	CUP		CUP	CUP	
Parcel service delivery	P/L[3]		P			P	P/L[51]	
Parole or probation offices			P	P	P		P	
Pawnshop			P	P	P	P	P	
Personal and business services	P/L[3]		P/L[7]	P/L[16]	P/L[22]		P	P
Pet boarding			P	P	P		P	P/L[58]
Pet shop	P/L[1]			P	P	P/L[33]	P	P
Photocopying and duplicating services	P/L[1][3]		P	P	P		P	P
Photo finishing	P/L[1]		P	P	P	P	P	P
Planned unit development	P							
Postal service	P		P	P	P		P	
Professional, scientific, technical services	P/L[3]		P	P	P		P	P
Professional offices, medical, dental	P/L[3]		P	P	P		P	P
Public administration facilities	P		P	P/L[17]	P/L[26][27]		P/L[49]	P/L[59]
Public facilities	P		P/L[10]	P	P/L[26]		P	P
Public utility facilities	P/L[4]		P/L[10]	P/L[17]	P	P/L[34]	P/L[52]	P/L[60]
Publishing, telecommunications, internet service providers, data processing services	P/L[3]		P	P	P	P	P	P
Race tracks, drag strips, motorcycles hills and Go-Kart tracks	CUP	CUP	CUP	CUP		CUP	CUP	
Real estate renting and leasing	P/L[3]		P	P	P	P	P	P
Recreational facilities - commercial	CUP	CUP	CUP	CUP	CUP	P	CUP	
Recreational vehicles, sales and storage						P	P	
Religious grant writing, civic and professional organizations	P/L[3]	P	P/L[7]	P	P	P	P	P
Repair services	P/L[2][3]		P/L[7]	P/L[16][18]	P/L[22][25]		P	
Repossession services	P/L[3]		P	P	P			
Restaurants	P		P/L[9]	P	P	P	P	P
Retail services and trade	P/L[1]		P/L[7]	P/L[15][19]	P/L[21]	P	P/L[43]	P
Retirement housing		P		P	P		P	P
Reupholster	P		P	P/L[19]	P	P	P	P
Saws and filing shops			P			P		
Sewage treatment plants	UUP	UUP	UUP	UUP		UUP	UUP	
Signs, manufacturing						P		
Self-storage/ mini-warehouse leasing			P				P/L[44]	
Services to buildings and dwellings	P/L[3]		P	P	P		P	
Services, miscellaneous	P/L[3]		P/L[7]	P/L[16][18]	P/L[22]		P/L[45][48]	P/L[61]
Spectator sports	CUP		CUP	P	P		P	
Stadiums	CUP	CUP	CUP	CUP		CUP	CUP	
Supermarkets	P/L[1]		P	P	P		P	P

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TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Taverns and cocktail lounges	P/L[1]		P	P	P	P/L[38]	P	P
Telecommunication facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Telephone exchanges						P		
Tire sales and service	P/L[3]						P	
Theaters				P	P	P/L[35]	P	P/L[63]
Towing operations						UUP		
Transportation and wholesale trade			P/L[11]					
Water transportation					CUP			
Welding repair	P/L[2][3][5-69]		P	P/L[16][4-69]	P/L[6-69]	P	P	
Wholesale business			P			P		P/L[64]
Wholesale trade and distribution of groceries				CUP				
Notes: ■ Limitations that correspond to the bracketed numbers [] are set forth below. ■ Uses and developments are also subject to the specific standards for each zone. ■ Conditional and Unclassified Use Permit requirements may be found in DMMC chapter 18.140.								

Neighborhood Commercial Zone

Every use locating in the N-C Zone is subject to the standards of chapter 18.90 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B.

1. On-Premises Retail Enterprise Dispensing Food or Commodities. This regulation applies to all parts of Table 18.52.010B that have a [1]. Not including automobiles, boats, trailers, and heavy-duty equipment and which may involve only incidental and limited fabrication or assembly of commodities.

2. Repair, Incidental. This regulation applies to all parts of Table 18.52.010B that have a [2]. Any repairing done on the premises shall be incidental only and limited to custom repairing of the types of merchandise sold on the premises at retail; the floor area devoted to such repairing shall not exceed 20 percent of the total floor area occupied by the particular enterprise of which it is a part, except that the limitations of this paragraph shall not apply to shoe, radio, television, or other small household appliance repair service.

3. Business Offices, Professional Services or Personal Services to the Individual. This regulation applies to all parts of Table 18.52.010B that have a [3].

Business offices and any type of use rendering professional services or personal services to the individual shall be permitted; provided:

(a) The service does not involve keeping the person receiving the service overnight on the premises;

(b) The service does not include selling alcoholic beverages for on-premises consumption unless accessory to restaurant;

(c) The service does not involve in whole or in part the providing of recreation, recreational facilities, or entertainment other than moorage for private pleasure craft; and

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(d) The professional service does not include kennels or small animal hospitals or clinics.

4. Public Utility Installation. This regulation applies to all parts of Table 18.52.010B that have a [4]. Public utility installation shall be permitted in the N-C Zone when relating directly to local distribution of services including switching and transmission stations, but not including warehouses, service yards, or the like unless otherwise permitted by this Title.

5. Public Off-Street Parking Facilities (Publicly or Privately Owned and Operated). This regulation applies to all parts of Table 18.52.010B that have a [5].

Any area so used shall not be used for a vehicle, trailer, or boat sales area or for the accessory storage of such vehicles.

6. One Antenna System (Which Exceeds the Maximum Building Height Specified for the Commercial Zone). This regulation applies to all parts of Table 18.52.010B that have a [6].

(a) Does not exceed 15 feet in height above the building height limitation for the applicable zone;

(b) Is set back at least the vertical height of the antenna system measured from the center point of the base of the mast horizontally to the nearest property line;

(c) Has a maximum horizontal cross-sectional area for that part of the mast which is above building height limitation for the zone such that an imaginary four-inch diameter circle would encompass all points of the horizontal cross-section;

(d) Has a maximum allowable three-dimensional space intrusion of 1,200 cubic feet for single ground plane antennas with a single driven element, and 200 cubic feet for beams, quads, and other multi-element antennas; provided, that these limitations on three-dimensional space intrusion shall not be applicable to single long-wire antennas, single whip antennas, and single coaxial antennas. In this paragraph, "three-dimensional space intrusion" means the space within an imaginary rectangular prism which contains all extremities of an antenna;

(e) Does not encroach into any required setback for the zone; a guy wire and anchor point for an antenna system is prohibited in any required setback or within three feet of the side or rear property lines; provided, if any alley abuts a rear property line, a guy wire and anchor point may extend to the rear property line;

(f) Provided, that a variation from the above limitations not to exceed 10 percent may be granted by City administrative officials; such variation shall be granted when it will not significantly increase the hazard factor, the aesthetic impact, or the economic consequences of such antenna system; and

(g) Further provided, that all antenna systems exceeding the above limitations and legally in place on November 5, 1978, the effective date of the ordinance codified in this subsection (6), shall have one year within which to satisfy the requirements for and receive a conditional use permit which authorizes the continued placement of such antenna system.

Institutional Campus Zone

Every use locating in the I-C Zone is subject to the standards of chapter 18.95 DMMC.

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Business Park Zone

Every use locating in the B-P Zone is subject to the standards of chapter 18.105 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B.

7. Services. This regulation applies to all parts of Table 18.52.010B that have a [7].

Services in the B-P Zone are limited to the following:

- (a) Administrative support services (561);
- (b) Professional, scientific, and technical services (54);
- (c) Management of companies and enterprises (55);
- (d) Health care services (621); provided, that this use is prohibited north of South 200th Street;
- (e) Repair services (8112, 8113 and 8114);
- (f) Personal services (812);
- (g) Recreation services (711310, 712110, 712120, 712190, 713940, and 713990); provided, that these uses are prohibited north of South 200th Street;
- (h) Real estate institutions and rental services (53);
- (i) Publishing, telecommunications, Internet service providers, and data processing services (51);
- (j) Educational services (6114, 6115, 6116 and 6117); and
- (k) Religious, business and professional associations (813); provided, that these uses are prohibited north of South 216th Street.

8. Light Manufacturing, Fabrication, and Assembly. This regulation applies to all parts of Table 18.52.010B that have an [8].

Light manufacturing, fabrication, and assembly of the following and closely related products is limited to the following:

- (a) Food products (3114, 3117, 3118, 3119, and 3121);
- (b) Apparel manufacturing (315);
- (c) Wood products manufacturing (3219);
- (d) Furniture and related products manufacturing (337);
- (e) Pharmaceutical and medicine manufacturing (3254);
- (f) Computer and electronic product manufacturing (334);
- (g) Electrical equipment and components manufacturing (335);
- (h) Fabricated metal products manufacturing (3321, 3322, 3323, 3325, 3326, and 3327);
- (i) Medical equipment and supplies manufacturing (3391);
- (j) Printing and related support activities (323);
- (k) Stone, clay, glass, ceramics, pottery, china manufacturing (3271 and 3272); and
- (l) Toys, jewelry, and other miscellaneous manufacturing (3399).

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9. Retail Trade. This regulation applies to all parts of Table 18.52.010B that have a [9].

Retail trade in the B-P Zone is limited to the following:

- (a) Restaurants (722);
- (b) Building material and garden equipment and supplies dealers (444);
- (c) General merchandise stores (452 and 445); provided, that these uses are prohibited north of South 200th Street;
- (d) Furniture and home furnishing stores (442); and
- (e) Electronic and appliance stores (443).

10. Public Facilities. This regulation applies to all parts of Table 18.52.010B that have a [10]. Public Facilities in the B-P Zone are limited to the following:

- (a) Public parks (no NAICS code);
- (b) Public administration (92); and
- (c) Public utilities (221121, 221122, and 221210).

11. Transportation and Wholesale Trade. This regulation applies to all parts of Table 18.52.010B that have an [11].

Transportation and wholesale trade is limited to the following:

- (a) Wholesale trade (42); provided, that 4235 is prohibited;
- (b) Motor freight transportation (484);
- (c) Support activities for freight transportation (4884, 4885, and 4889); and
- (d) Courier and postal services (492 and 493).

12. Electric Power Generation, Biomass. This regulation applies to all parts of Table 18.52.010B that have a [12].

Electric Power Generation, Biomass (221119), is prohibited south of South 216th Street and north of South 208th Street.

13. Foreign Trade. This regulation applies to all parts of Table 18.52.010B that have a [13]. Operation of foreign trade zones is limited to the permitted uses allowed in the B-P Zone.

14. Contractors. This regulation applies to all parts of Table 18.52.010B that have a [14].

Contractors in the B-P Zone shall be limited to building and special trade.

Community Commercial Zone

Every use locating in the C-C Zone is subject to the standards of chapter 18.110 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B.

15. Retail Trade (with ancillary wholesale trade). This regulation applies to all parts of Table 18.52.010B that have a [15].

Retail trade, with ancillary wholesale trade in the C-C Zone is limited to the following:

- (a) Building materials, hardware, and garden supply, except mobile home dealers (52);

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- (b) General merchandise stores (53);
- (c) Food stores (54);
- (d) Gasoline service stations, and other alternative motor vehicle fuels (5541);
- (e) Apparel and accessory stores (56);
- (f) Home furniture, furnishings, and equipment stores (57);
- (g) Eating and drinking places (58); and
- (h) Miscellaneous retail (59), except fuel dealers (598).

16. Services. This regulation applies to all parts of Table 18.52.010B that have a [16]. Services in the C-C Zone are limited to the following:

- (a) Hotels and motels (701);
- (b) Personal and business services, with ancillary wholesale trade (72-73), except the following:
 - (i) Industrial launderers (7218);
 - (ii) Billboard advertising (7312);
 - (iii) Heavy construction equipment rental and leasing (7353);
 - (iv) Industrial truck rental and leasing (7359); and
 - (v) Oil extraction equipment rental and leasing (7359).
- (c) Automobile parking (7521) limited to properties that are municipally owned or operated or controlled by a City-sanctioned business neighborhood association; and provided, that facilities for parking are constructed and maintained to meet minimum required parking improvements specified in chapter 18.210 DMMC within three years of the commencement of such use.
- (d) General automotive repair shops (7538);
- (e) Car washes (7542);
- (f) Miscellaneous repair services (76), except the following:
 - (i) Tank and boiler cleaning service (7699); and
 - (ii) Tank truck cleaning service (7699).
- (g) Motion picture services (78);
- (h) Amusement and recreation services (79), except the following:
 - (i) Adult entertainment facilities and adult motion picture theaters (no SIC); and
 - (ii) Racing, including track operation (7948).
- (i) Health services (80);
- (j) Legal services (81);
- (k) Educational services (82);
- (l) Social services (83);

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- (m) Museums, art galleries, and botanical and zoological gardens (84);
- (n) Membership organizations (86);
- (o) Engineering, accounting, research, management, and related services (87); and
- (p) Services, not elsewhere classified (89).

17. Public Administration Facilities. This regulation applies to all parts of Table 18.52.010B that have a [17].

Public administration facilities (91-97) are permitted in the C-C Zone with the exception of correctional institutions (9223).

18. Automobile Repair, Carwashes, Automobile Service Stations, and Uses with Drive-Through Facilities. This regulation applies to all parts of Table 18.52.010B that have a [18].

Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards in the C-C Zone:

(a) Automobile repair and the installation of automobile parts and accessories shall be primarily contained within an enclosed structure;

(b) Unless specifically authorized by the Planning, Building and Public Works Director, vehicular access shall be limited to one driveway per street frontage;

(c) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(d) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance; and

(e) Vehicle storage shall be limited to those vehicles contracted for repair or service.

19. On-Site Retail. This regulation applies to all parts of Table 18.52.010B that have a [19].

All products which are manufactured, processed, or treated on the premises must also be sold at retail to the general public on-site.

20. Public Automobile Parking. This regulation applies to all parts of Table 18.52.010B that have a [20].

Public automobile parking (7521) shall not be permitted in the C-C Zone.

Downtown Commercial Zone

Every use locating in the D-C Zone is subject to the standards of chapter 18.115 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B

21. Retail Trade (with ancillary wholesale trade). This regulation applies to all parts of Table 18.52.010B that have a [21].

Retail trade, with ancillary wholesale trade in the D-C Zone is limited to the following:

- (a) Building materials, hardware, and garden supply, except mobile home dealers (52);
- (b) General merchandise stores (53);
- (c) Food stores (54);
- (d) Gasoline service stations, and other alternative motor vehicle fuels (5541);

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- (e) Apparel and accessory stores (56);
- (f) Home furniture, furnishings, and equipment stores (57);
- (g) Eating and drinking places (58); and
- (h) Miscellaneous retail (59), except fuel dealers (598).

22. Services. This regulation applies to all parts of Table 18.52.010B that have a [22].

Services in the D-C Zone are limited to the following:

- (a) Hotels and motels (701);
- (b) Personal and business services, with ancillary wholesale trade (72-73), except the following:

- (i) Industrial launderers (7218);
- (ii) Billboard advertising (7312);
- (iii) Heavy construction equipment rental and leasing (7353);
- (iv) Industrial truck rental and leasing (7359); and
- (v) Oil extraction equipment rental and leasing (7359).

(c) Automobile parking (7521) limited to properties that are municipally owned or operated or controlled by a City-sanctioned business neighborhood association; and provided, that facilities for parking are constructed and maintained to meet minimum required parking improvements specified in chapter 18.210 DMMC within three years of the commencement of such use.

- (d) General automotive repair shops (7538);
- (e) Car washes (7542);
- (f) Miscellaneous repair services (76), except the following:
 - (i) Tank and boiler cleaning service (7699); and
 - (ii) Tank truck cleaning service (7699).
- (g) Motion picture services (78);
- (h) Amusement and recreation services (79), except the following:

(i) Adult entertainment facilities and adult motion picture theaters (no SIC); and

- (ii) Racing, including track operation (7948).

- (i) Health services (80);
- (j) Legal services (81);
- (k) Educational services (82);
- (l) Social services (83);
- (m) Museums, art galleries, and botanical and zoological gardens (84);
- (n) Membership organizations (86);

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- (o) Engineering, accounting, research, management, and related services (87); and
- (p) Services, not elsewhere classified (89).

23. Public Administration Facilities. This regulation applies to all parts of Table 18.52.010B that have a [23]. Public administration facilities (91-97) are permitted in the D-C Zone with the exception of correctional institutions (9223).

24. Boat Storage. This regulation applies to all parts of Table 18.52.010B that have a [24].

Boat storage and repair shall be permitted only as an accessory use on property principally permitted for marina use and shall conform to the following additional limitations and standards:

- (a) The size and location of all boat storage facilities shall be consistent with the Council-adopted marina master plan;
- (b) All out-of-water boat repair shall be within a fully secured and fenced area not accessible by the general public;
- (c) All boat repair work shall have containment areas and employ disposal methods for pollutants and toxic substances consistent with Puget Sound Clean Air Agency and NPDES standards;
- (d) Only those boats and similar vessels that will be immediately and actively under repair shall be moved to or placed within a designated boat repair facility.

25. Automobile Repair, Carwashes, Automobile Service Stations, and Uses with Drive-Through Facilities. This regulation applies to all parts of Table 18.52.010B that have a [25].

Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards in the D-C Zone:

- (a) Automobile repair and the installation of automobile parts and accessories shall be wholly performed within an enclosed structure approved by the building official for such occupancy;
- (b) Each automotive and service repair facility shall be limited to a maximum of one service bay for each 7,500 square feet of land area per business site;
- (c) Service bays shall be fully utilized to store and park vehicles contracted for repair or service;
- (d) The number of vehicles stored or parked outside for repair or service shall not be greater than the minimum number of required parking stalls serving the auto repair facility pursuant to chapter 18.210 DMMC;
- (e) No outside parking or storage of employee vehicles, customer vehicles, or vehicles contracted for service shall occur in any area that is not designated and approved by the City as an on-site parking stall;
- (f) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines; and
- (g) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance.

26. Mixed Use. This regulation applies to all parts of Table 18.52.010B that have a [26]. Mixed use development in the D-C Zone shall conform to the following limitations and standards:

- (a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:
 - (i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided;

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(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area for retail trade or personal and business services uses; and

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

(b) The City Manager or designee is authorized to consider and approve up to a 20 percent reduction of the bulk requirements specified in subsection (26)(a) of this section when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the City Manager or designee determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of City pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

(c) Mixed use developments shall comply with all the requirements of chapter 18.155 DMMC, except for private recreational requirements established by DMMC 18.155.050(2).

(d) A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited.

27. Educational Services, Colleges and Professional Schools. This regulation applies to all parts of Table 18.52.010B that have a [27].

Educational services (82) are permitted in the D-C Zone; however, colleges, universities, junior colleges, and professional schools (822) require an Unclassified Use Permit (UUP). See chapter 18.140 DMMC.

Highway Commercial Zone

Every use locating in the H-C Zone is subject to the standards of chapter 18.125 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B.

28. Building Materials Stores and Yards, Retail Only. This regulation applies to all parts of Table 18.52.010B that have a [28].

Building materials stores and yards (retail only) are permitted in the H-C Zone; provided, that any required wall on a property line common with residential property shall be not less than eight feet in height.

29. Ceramic Products. This regulation applies to all parts of Table 18.52.010B that have a [29].

The manufacture of ceramic products, including figurines (but not including bricks, drain, building, or conduit tile), shall be permitted in the H-C Zone using only previously pulverized clay and batch kilns as distinguished from shuttle, tunnel, or beehive kilns, and such batch kilns shall not exceed a total capacity of 130 cubic feet.

30. Garages, Public. This regulation applies to all parts of Table 18.52.010B that have a [30].

Public garages, including repair, when entirely in an enclosed building.

31. Glass Edging, Beveling, and Silvering. This regulation applies to all parts of Table 18.52.010B that have a [31].

Glass edging, beveling, and silvering shall be permitted in the H-C Zone in connection with the sales of mirrors and glass-decorated furniture.

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32. Machine Shop. This regulation applies to all parts of Table 18.52.010B that have a [32]. No automatic screw machines or punch press over five tons.

33. Pet Shops. This regulation applies to all parts of Table 18.52.010B that have a [33].

Pet shops shall be permitted in the H-C Zone if entirely within a building.

34. Public Utility Installations. This regulation applies to all parts of Table 18.52.010B that have a [34]. Public utility installations shall be permitted in the H-C Zone if relating directly to the distribution of services.

35. Adult Motion Picture Theaters. This regulation applies to all parts of Table 18.52.010B that have a [35]. Adult motion picture theaters are prohibited within 500 feet of the property lines of churches, schools, preschool through high school, public facilities, adult entertainment facilities, or other adult motion picture theaters.

36. Automobile Service Stations. This regulation applies to all parts of Table 18.52.010B that have a [36]. Buildings, structures, and the leading edge of pump islands shall not be closer than 20 feet to any street property line, except that service station canopies and marquees may project 10 feet into the required setback.

37. Educational Services. This regulation applies to all parts of Table 18.52.010B that have a [37]. Education services in the H-C Zone are limited to business or commercial schools.

38. Cocktail Lounges. This regulation applies to all parts of Table 18.52.010B that have a [38]. Cocktail lounges shall be permitted in the H-C Zone when located within a restaurant.

39. Death Care Services. This regulation applies to all parts of Table 18.52.010B that have a [39]. Death care services in the H-C Zone shall be limited to mortuaries.

40. Hotels/Motels. This regulation applies to all parts of Table 18.52.010B that have a [40]. Hotels and motels in the H-C Zone shall not include apartment hotels.

41. Auction House. This regulation applies to all parts of Table 18.52.010B that have a [41]. Auction houses or stores in the H-C Zone shall not include vehicles or livestock.

42. Boat Moorage. This regulation applies to all parts of Table 18.52.010B that have a [42]. Boat Moorage in the H-C Zone shall be permitted for private pleasure craft.

Pacific Ridge Commercial Zone

Every use locating in the PR-C Zone is subject to the standards of chapter 18.135 DMMC. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B.

43. Retail Trade, Used Car Dealers. This regulation applies to all parts of Table 18.52.010B that have a [43]. Retail trade (44-45) is permitted in the PR-C Zone, but no more than two exclusive used car dealers (441120) shall be allowed.

44. Real Estate Rental and Leasing. This regulation applies to all parts of Table 18.52.010B that have a [44].

Mini-warehouses and self storage units (53113) may not front on Pacific Highway South.

45. Administrative and Support Services. This regulation applies to all parts of Table 18.52.010B that have a [45]. Limited to NAICS codes 561110 (administrative) and 561210 (support services).

46. Arts, Entertainment, and Recreation. This regulation applies to all parts of Table 18.52.010B that have a [46]. Adult entertainment facilities and adult motion picture theaters are prohibited north of South 216th Street and within 500 feet of the property lines of churches, common schools, day care centers, public facilities, or other adult entertainment facilities or adult motion picture theaters.

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47. Accommodation and Food Services. This regulation applies to all parts of Table 18.52.010B that have a [47].

Accommodation and food services (72) in the PR-C Zone is limited to the following:

(a) Hotels (except casino hotels) and motels (72111), except that these must contain a minimum of 75 guest rooms;

(b) Casino hotels (721120); and

(c) Food services (722310 - 7223515); however, mobile food services (722330) are also regulated by chapter 5.57 DMMC.

48. Automobile Repair, Automobile Service Stations, and Similar Uses. This regulation applies to all parts of Table 18.52.010B that have a [48]. General automotive repair (811111), automotive exhaust system repair (811112), automotive transmission repair (811113), automotive body, paint, and interior repair and maintenance (811121), automotive glass replacement shops (811122), automotive oil change and lubrication shops (811191), and similar uses shall be allowed in the PR-C Zone; provided, that all of the following requirements shall be met:

(a) Repair and the installation of automobile parts and accessories shall be primarily contained within an enclosed structure;

(b) Any business owner proposing to use a building or structure that the proposed use is located or proposed to be located within shall demonstrate to the City of Des Moines, South King Fire and Rescue, and Puget Sound Clean Air Agency that quantities, storage, and transport of hazardous materials are properly managed, work areas provide adequate containment to avoid pollution runoff, and facilities are equipped with proper pretreatment devices to avoid discharge of pollutants to the air or public drainage systems;

(c) Unless specifically authorized by the City Manager or the City Manager's designee, views into automobile service bays from Pacific Highway shall be diminished by building orientation, screening, or other means;

(d) Vehicular access shall be consistent with the City's street development and construction standards;

(e) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(f) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residential properties as designated by the Des Moines Comprehensive Plan; and

(g) Vehicle storage shall be limited to those vehicles contracted for repair or service.

49. Public Administration. This regulation applies to all parts of Table 18.52.010B that have a [49]. Public administration (92) uses shall be permitted in the PR-C Zone, except correctional institutions (92214).

50. Mixed Use. This regulation applies to all parts of Table 18.52.010B that have a [50]. Mixed use shall be permitted in the PR-C Zone, except:

(a) In that part of PR-C fronting on Pacific Highway South and/or South 216th Street, dwellings may be located on the ground floor; provided, that they are accessed from the rear of the property; and provided, that the commercial uses in that portion of the building must front and be accessed from Pacific Highway South or South 216th Street;

(b) When a project fronting Pacific Highway South or South 216th Street contains more than one building, those buildings not fronting on Pacific Highway South or South 216th Street may be single purpose multifamily residential buildings; and

(c) No residential use is permitted north of South 216th Street.

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51. Parcel Service Delivery. This regulation applies to all parts of Table 18.52.010B that have a [51]. Parcel service delivery in the PR-C Zone shall be limited to the postal service (491110).

52. Public Utility Facilities. This regulation applies to all parts of Table 18.52.010B that have a [52]. Public utility facilities and appurtenances shall be permitted in the PR-C Zone when necessary for the distribution of utility services to final customers within the immediate area.

Transit Commercial Zone

Every use locating in the T-C Zone is subject to the standards of DMMC 18.125. The paragraphs listed below contain specific limitations and correspond with the bracketed [] footnote numbers from Table 18.52.010B

53. Automobile, Parking. This regulation applies to all parts of Table 18.52.010B that have a [53]. Paid and stand alone surface parking shall not be permitted in the T-C Zone after June 30, 2024.

54. Bakeries, manufacturing and retail sales. This regulation applies to all parts of Table 18.52.010B that have a [54]. Bakeries shall be permitted in the T-C zone provided:

- (a) At least 25% of the gross floor area is dedicated to retail sales; and
- (b) All storage, display, and manufacturing occur within enclosed buildings.

55. Confectionery, manufacture. This regulation applies to all parts of Table 18.52.010B that have a [55]. Confectionaries shall be permitted in the T-C zone provided:

- (a) At least 25% of the gross floor area is dedicated to retail sales; and
- (b) All storage, display, and manufacturing occur within enclosed buildings.

56. Kennels, commercial. This regulation applies to all parts of Table 18.52.010B that have a [56]. Kennels shall be allowed in the T-C Zone when accessory to a permitted use.

57. Mixed use. This regulation applies to all parts of Table 18.52.010B that have a [57]. Mixed use development shall conform to the following limitations and standards in the T-C Zone:

(a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:

(i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided;

(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area for retail trade or personal and business services uses; and

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

(b) The City Manager or the City Manager's designee is authorized to consider and approve up to a 20 percent reduction of the bulk requirements specified in subsection (9)(a) of this section when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the city manager or designee determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of city pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

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(c) Mixed use developments shall comply with all the requirements of chapter 18.45 DMMC, except for private recreational requirements established by DMMC 18.45.020(2).

(d) A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited.

58. Pet boarding. This regulation applies to all parts of Table 18.52.010B that have a [58]. Pet Boarding shall be allowed in the T-C Zone when accessory to a permitted use.

59. Public Administration Facilities. This regulation applies to all parts of Table 18.52.010B that have a [59]. Public administration (92) uses shall be permitted in the T-C Zone, except correctional institutions (92214).

60. Public Utility Installations. This regulation applies to all parts of Table 18.52.010B that have a [60]. Public utility installations shall be permitted in the T-C Zone if relating directly to the distribution of services.

61. Services, Miscellaneous. This regulation applies to all parts of Table 18.52.010B that have a [61]. Limited to NAICS codes 561110 (administrative) and 561210 (support services).

62. Taverns and Cocktail Lounges. This regulation applies to all parts of Table 18.52.010B that have a [62]. Cocktail lounges shall be permitted in the T-C Zone when located within a restaurant.

63. Theaters. This regulation applies to all parts of Table 18.52.010B that have a [63]. Adult motion picture theaters are prohibited within the T-C Zone.

64. Wholesale business. This regulation applies to all parts of Table 18.52.010B that have a [64]. Wholesale business shall be permitted in the T-C Zone when accessory to a permitted retail use.

All Zones

57-65. Adult Entertainment Facilities. This regulation applies to all parts of Table 18.52.010B that have a [53-65]. Adult entertainment facilities are subject to the additional standards of chapter 18.16 DMMC and chapter 5.48 DMMC.

58-66. Recreational Marijuana. This regulation applies to all parts of Table 18.52.010B that have a [56-64]. State licensed marijuana producers, processors, and retailers may locate in the City of Des Moines pursuant to chapter 18.250 DMMC.

59-67. Family Day Care Providers. This regulation applies to all parts of Table 18.52.010B that have a [57-65]. A family day care provider home facility is a permitted use in all zones, subject to the conditions in chapter 18.180 DMMC.

60-68. Social Service Facilities. This regulation applies to all parts of Table 18.52.010B that have a [60-66]. Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(b) Unless specifically authorized by the City Manager or designee, passenger loading and unloading areas shall be provided on site.

(c)

61-69. Welding Repair. This regulation applies to all parts of Table 18.52.010B that have a [61-69]. Welding repair shall only be permitted in an enclosed structure.

Sec. 12. DMMC 18.10.050 and section 1 of Ordinance No. 179 as amended by section 1 of Ordinance No. 1235 as amended by section 8 of Ordinance No. 1237 as amended by section 1 of Ordinance No. 1261 as amended by section 1 of Ordinance No. 1267

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as amended by section 1 of Ordinance No. 1289 as amended by section 1 of Ordinance No. 1372 as amended by section 5 of Ordinance No. 1397 as amended by section 1 of Ordinance No. 1420 as amended by section 2 of Ordinance No. 1431 as amended by section 2 of Ordinance No. 1520 as amended by section 3 of Ordinance No. 1546 as amended by Section 13 of Ordinance No. 1576 as amended by Section 35 of Ordinance No. 1591 are each amended to read as follows:

18.10.050 Adoption of official zoning map.

The map filed in the City Clerk's office and marked Exhibit "A" to Ordinance No. ____ and adopted ~~September 12, 2013~~ September 12, 2014, constitutes the zoning map for the City. The map referenced herein supersedes all previously adopted maps. If the designations of the map are found to be in conflict with other land use designations, the map is deemed to control.

Sec. 13. DMMC 18.05.080 and section 22 of Ordinance No. 1591 are amended to read as follows:

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;

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(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;

(iv) RM-900 Residential:
Multifamily 900;

(v) RM-900A Residential:
Multifamily 900A;

(vi) RM-900B Restricted Service
Zone;

(vii) PR-R Pacific Ridge
Residential.

(2) Commercial Zones.

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- (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-C Pacific Ridge Commercial; and
- (j) T-C Transit Community.

Sec. 14. DMMC 18.210.090 and section 513 of Ordinance No. 1591 are amended to read as follows:

18.210.090. Required number of off-street parking spaces. The minimum number of off-street parking spaces required of each use shall be provided as follows:

(1) Appliance (retail), bakeries, cabinet shops, dry-cleaning, furniture stores, heating services: one parking space per 400 square feet of gross floor area.

(2) Auto and boat sales, new and used: one space per 1,000 square feet of floor space of showroom and service facilities; but in no case shall there be less than six spaces provided.

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(3) Day care centers and mini-day care programs: one space for each 10 children or one for each staff member, whichever is greater, and one passenger loading and unloading space for each 20 children.

(4) Hardware and building supplies: one space per 400 square feet of gross floor area.

(5) Industrial and Manufacturing Activities.

(a) Freight terminals and wholesale facilities: one parking space per two employees on a maximum work shift, or one per 1,000 square feet of gross floor area; use whichever is greater.

(b) Manufacturing, including but not limited to the following, except that no retail operations are included: research and testing laboratories, creameries, bottling establishments, bakeries, upholstery shops, printing and engraving shops: two parking spaces for each three employees on a maximum work shift, or one space per 700 square feet of gross floor area; use whichever is greater.

(c) Uncovered storage area: one parking space for each 2,000 square feet of area.

(d) Warehouse and storage: two parking spaces for each three employees or one space for each 1,500 square feet of gross floor area; use whichever is greater.

(6) Laundry, self-service: one parking space per 250 square feet of gross floor area.

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(7) Medical Facilities.

(a) Convalescent, rest homes, retirement homes, nursing and health institutions: one parking space for each two employees, plus one space for each four beds.

(b) Hospitals: one parking space for each three beds, plus one parking space for each staff doctor, plus one parking space for each three employees.

(8) Motels, motor hotels, and hotels: one parking space per hotel room plus two parking spaces for a resident manager or employees. In Pacific Ridge, this is reduced to 0.9 parking spaces per hotel room when no airport shuttle is provided and to 0.75 parking spaces per hotel room when airport shuttle is provided.

(9) Motor vehicle, small engine, and boat repair and services: one parking space for each 600 square feet of gross floor area.

(10) Offices, including professional and business, banks, and related activities: one space per 350 square feet of gross floor area.

(11) Offices not providing customer services on the premises: one space for each 800 square feet of gross floor area.

(12) Personal Services.

(a) C-C Zone: one parking space per 300 square feet of gross floor area.

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(b) D-C and PR Zones: one parking space per 350 square feet of gross floor area.

(c) H-C Zone: one parking space per 200 square feet of gross floor area.

(d) T-C Zone: one parking space per 350 square feet of gross floor area.

(13) Pleasure craft moorage: one parking space for each two moorage stalls.

(14) Public Assembly and Recreation.

(a) Assembly halls, auditoriums, stadiums, sports arenas, and community clubs: one parking space for every three persons based on occupancy load.

(b) Churches: one parking space per five seats in the principal place of assembly for worship, including balconies and choir loft.

Where fixed seats consist of pews or benches, the seating capacity is computed upon not less than 20 lineal inches of pew or bench length per seat. If there are no fixed seats, then one parking space for each 40 square feet of gross floor area in such principal place of assembly or worship shall be provided.

(c) Libraries and museums: one parking space per 250 square feet of gross floor area.

(d) Parks: as determined by the City Council.

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(e) Theaters: one parking space for each three seats.

(15) Residences.

(a) Single-family: two parking spaces per dwelling unit.

(b) Duplex and townhouse: two parking spaces per dwelling unit and one parking space for every five dwellings for use as visitor parking. A minimum of one visitor parking space shall be provided.

(c) Multifamily.

(i) Two parking spaces per dwelling.

(ii) One guest parking space shall be provided per each 10 dwellings.

(iii) For one-bedroom dwellings within the PR Zone: one and one-half parking spaces per dwelling.

(d) Multifamily (as part of a mixed use development) in the T-C Zone.

(i) For a studio dwelling: one parking space.

(ii) For one-bedroom dwellings: one parking space.

(iii) For 2 bedroom or more dwellings: 1.75 parking spaces.

(iv) One guest parking space shall be provided per each 10 dwellings.

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(16) Restaurants, including drive-in restaurants, night clubs, taverns, and lounges: one parking space for each 125 square feet of gross floor area, except that none shall be required for establishments under 2,000 square feet located in the D-C and PR Zones.

(17) Retail, Other.

(a) C-C Zone: one parking space per 300 square feet of gross floor area.

(b) D-C and PR Zones: one parking space per 350 square feet of gross floor area.

(c) H-C Zone: one parking space per 250 square feet of gross floor area, except there are a minimum of six spaces.

(d) T-C Zone: one parking space per 400 square feet of gross floor area, except there shall be a minimum of six spaces.

(18) Uses Not Specified. The parking requirements for a use not provided for in this section is determined in the manner set forth in DMMC 18.05.110, and such determination is based upon the requirements for the most comparable use specified in this section.

(19) Fractional Spaces. When units of measurement determining the number of required parking spaces result in requirements of a fractional space, a fraction one-half or more shall require one parking space.

(20) Maximum Number of Off-Street Spaces. Within the Pacific Ridge area, the number of off-

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street spaces provided shall not exceed 150 percent of the minimum number of spaces specified by this section.

Sec. 15. DMMC 18.250.060 and Section 650 of Ordinance No. 1591 is amended to read as follows:

18.250.060. 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 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), Transit Community (T-C), and Community Commercial (C-C) Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

Sec. 16. DMMC 18.250.070 and section 651 of Ordinance No. 1591 is amended to read as follows:

18.250.070 Recreational marijuana regulations for retailers. State-licensed marijuana retailers may locate in the City 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.

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(2) Persons may conduct business within the City as a state-licensed marijuana retailer if located within the Transit Community (T-C), 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 nonconforming retail uses have been established in any location or Zone other than those referenced in ~~subsection (2) of this section~~ section 18(2) of this Ordinance.

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

NEW SECTION. **Sec. 17. Codification.** Sections 1 through 11 of this Ordinance shall be codified as a new chapter in Title 18 DMMC entitled "T-C Transit Community Zone".

NEW SECTION. **Sec. 18. 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.

NEW SECTION. **Sec. 19. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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PASSED BY the City Council of the City of Des Moines this
____ day of _____, 2014 and signed in authentication
thereof this ____ day of _____, 2014.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

DRAFT
Exhibit A
Zoning

-  Residential
-  R-1 Single Residential: Single-Dwelling Units
-  R-1R Residential: Single Residential
-  R3-10000 Residential: Single Family 15,000
-  R3-4000 Residential: Single Family 4,000
-  R3-8000 Residential: Single Family 8,000
-  R3-12000 Residential: Single Family 12,000
-  R3-40000 Residential: Attached Townhouses & Duplex
-  R3-100000 Residential: Multi-Family 100,000
-  R3-1000 Residential: Multi-Family 1,000
-  R3-5000A Residential: Multi-Family 500
-  R3-5000B Residential: Multi-Family 500
-  R3-5000C Residential: Multi-Family 500
-  R3-5000D Residential: Multi-Family 500
-  Commercial
-  C-1 Neighborhood Commercial
-  C-2 Community Business
-  C-3 Commercial
-  C-4 Downtown Commercial
-  C-5 General Commercial
-  B-1 Business Park
-  N-C Highway Commercial
-  I-1 Institutional Campus
-  U-1 Urban University
-  Public: Ridge
-  P-H-1 Public: Ridge Residential
-  P-H-2 Public: Ridge Commercial
-  P-H-3 Public: Ridge Industrial
-  P-H-4 Public: Ridge Office
-  P-H-5 Public: Ridge Professional
-  P-H-6 Public: Ridge University
-  P-H-7 Public: Ridge Other
-  P-H-8 Public: Ridge Other
-  P-H-9 Public: Ridge Other
-  P-H-10 Public: Ridge Other
-  P-H-11 Public: Ridge Other
-  P-H-12 Public: Ridge Other
-  P-H-13 Public: Ridge Other
-  P-H-14 Public: Ridge Other
-  P-H-15 Public: Ridge Other
-  P-H-16 Public: Ridge Other
-  P-H-17 Public: Ridge Other
-  P-H-18 Public: Ridge Other
-  P-H-19 Public: Ridge Other
-  P-H-20 Public: Ridge Other

Description	Ordinance	Effective Date
Adoption of digital zoning map	1370	May 5, 1999
Repealing of 2.04s	1337	May 13, 1998
Business Park (BUP) zone	1261	June 25, 2000
Pacific Ridge zone	1267	July 25, 1999
Repealing of business annexation	1210	September 3, 2001
Adoption of GIS maps	1089	October 13, 2001
Mitchell/Cedar zone	1072	January 11, 2000
Repealing of zone	1067	March 2, 2007
Conservation Park	9420	December 5, 2007
Greenfield zone	9071	June 26, 2008
See what zone	8530	October 13, 2011
Barlow zone	8546	July 26, 2012
Addition of C ₂ zone	7653	March 28, 2014
Pacific Ridge zone	1516	September 12, 2013

IN MAKING THIS MAP, THE CITY MAKES NO WARRANTY OF ANY KIND, expressed or implied, including without limitation, any warranties as to its fitness for a particular purpose or use. To the fullest extent permitted by law, the City shall not be liable for any damages to persons or property, whether direct, indirect, special or consequential, arising from the distribution or use of this map, including without limitation claims for damages based upon inaccuracies or erroneous information presented on this document. The user should not rely upon this document as a complete, current or accurate depiction of existing City zoning, definitions, or other regulations. IN USING THIS DOCUMENT, THE USER ASSUMES ALL RISK OF INJURY OR DAMAGE THAT MIGHT FLOW THEREFROM.



21630 11th Ave S, Suite D
Des Moines, WA 98198-6398
PHONE: (206) 870-7576 * FAX: (206) 870-6544
WEB: <http://www.desmoineswa.gov>

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Bun Hwa, Inc Condemnation;
Transportation Gateway Project

FOR AGENDA OF: May 1, 2014

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 24, 2014

ATTACHMENTS:

1. Draft Ordinance No. 14-088
2. Approved Right-of-Way Plans
3. Vicinity Map
4. King County Department of Assessment
picture of property
5. January 17, 2014 Letter to Property Owner
6. April 11, 2014 Letter to Property Owner
7. Draft Petition in Condemnation
8. CIP Project Worksheet

CLEARANCES:

☒ Legal RB

☐ Finance N/A

☒ Planning, Building & Public Works DJB

APPROVED BY CITY MANAGER
FOR SUBMITTAL [Signature]

Purpose and Recommendation

The purpose of this item is to authorize the City Attorney to begin condemnation proceedings to acquire right-of-way on tax parcel 0922049232 located on the NW corner of S. 216th Street and Pacific Highway S. This acquisition is consistent with the approved Right-of-Way Plans for the Transportation Gateway Project, S. 216th Street Improvement, Segment 1-A, between 24th Avenue S. and Pacific Highway S.

Suggested Motion

Motion: To pass Draft Ordinance No. 14-088, directing the City Attorney to prosecute the eminent domain action in King County Superior Court in a manner provided by law to condemn, take, damage, and appropriate the real property necessary to carry out the provisions of Draft Ordinance No. 14-088, to a second reading for enactment on May 22, 2014.

Background

On February 14, 2013 the City Council approved the Right-of-Way Plan for S. 216th Street, Segment 1-A of the Transportation Gateway Project (Attachment 2, 5 pps.). The Transportation Gateway Project is a 20 million dollar street widening project centered along South 216th Street, and 24th Avenue South. Collectively the project consists of 3 segments in the City's Capital Improvement Plan:

1. S. 216 Street Segment 1-A, between 29th Avenue S. and 24th Ave. S; (the segment of the Project that is the subject of this Agenda Item and Draft Ordinance);
2. S. 216 Street Segment 2, including 24th Avenue S. to 18th Avenue S. with a new traffic signal at 20th Avenue S. (substantially completed); and
3. 24th Avenue S. between S. 208th Street and S. 216 Street (currently under construction).

These improvements are elements of the adopted City of Des Moines Comprehensive Plan.

All segments include roadway transitions to match existing streets. (See Attachment 3, the vicinity map for Segment 1-A, and Attachment 4, a picture of the property from the King county Department of Assessments)

The widening of South 216 Street at Pacific Highway requires that the City condemn part of the property on the northwest corner of South 216 Street and Pacific Highway (the “gas station property”) to complete the third segment of this Project. The take on the gas station property is generally described as follows:

South Side of Property

Approximately 16 foot ROW Strip Take

- Roadway and Sidewalk Improvements
- U-Turn Accommodation

Approximately 10 foot X 20 foot Easement

- Franchise Utility Easement for below/above ground facilities

South-East Corner of Property

Approximately 20 foot ROW Strip Take (Parallel to Existing Diagonal ROW)

- Roadway and Sidewalk Improvements
- ADA Sidewalk and Signalized Intersection Improvements
- Urban Design Elements

On the Transportation Gateway project, the City has purchased or acquired necessary easements from 22 parcels of property. To-date on the Transportation Gateway project, the gas station property is the only parcel requiring the use of the City’s condemnation authority. The City’s has attempted to acquire this property without the use of its condemnation authority as outlined below.

The City, through ROW Group, a real estate and relocation service, has had 31 contacts with Gagandeep Bains, the authorized representative of Bun Hwa, Inc., the property owner, and his attorney Tom Gallagher in an effort to come to agreement regarding the purchase of the property.

The letter of January 17, 2014 (Attachment 5) sets out a written offer to purchase right-of-way needed for the Transportation Gateway Project.

The “Final Offer Letter” of April 11, 2014 (Attachment 6) affirmed the good faith offer of \$98,300.00, acknowledged that the parties were at an impasse and gave the property owner until April 18, 2014 to respond to the City’s offer. To-date no response has been received. In that letter we also advised the property owner that the “...this letter is to serve notice that the City of Des Moines may exercise its right to acquire the property through eminent domain procedures and all files will be turned over to the City Attorney’s office.”

The City Attorney is now prepared to proceed to bring a cause of action in King County Superior Court upon concurrence of this action with the Council. (See Attachment 7, Draft Petition for Condemnation.)

Discussion: The gas station parcel is necessary to complete the third segment of the Transportation Gateway Project. The City has followed the adopted right-of-way procedures, as required on Federally Funded Transportation Projects.

Alternatives: Absent resolution of this matter without court intervention, there is no alternative other than to bring this condemnation action.

Financial Impact: There is adequate funding in the Transportation CIP fund for the acquisition of the gas station property. Refer to Attachment 8 for a copy of the CIP project worksheet.

Recommendation or Conclusion: The staff recommends that the City Council give the City Attorney authority to pursue this action in eminent domain in the King County Superior Court to acquire property necessary for the completion of the Transportation Gateway Project.

CITY ATTORNEY'S FIRST DRAFT 04/24/2014

ORDINANCE NO. 14-088

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the acquisition by eminent domain of certain property in the City of Des Moines; describing the public convenience, use and necessity of such property; providing for the condemnation, appropriation, and taking of such land, including the mode of payment of cost of acquisition; and directing the City Attorney to prosecute such action in King County Superior Court.

WHEREAS, there exists in the City of Des Moines certain properties legally described in section 1 of this Ordinance, and

WHEREAS, the City Council of the City of Des Moines intends to acquire by the payment of "fair market value" the following properties to continue construction of the Transportation Gateway Project located on 216th Street, Des Moines, Washington ("Property"), and

WHEREAS, the City Council finds that acquisition of the properties described in section 1 "Legal description" below is critical to construct the street widening for the S. 216th Street Improvement, Segment 1A, a third arterial segment in the City's capital improvement program, collectively referred to as the Transportation Gateway Project, and it is in the public interest to acquire such properties for public health, safety, welfare and transportation needs, and

WHEREAS, pursuant to chapter 8.12 RCW the City is empowered to condemn land and property for transportation purposes (RCW 8.12.030), and

WHEREAS, proper notice of shall be provided pursuant to RCW 8.25.290 prior to the final Council action, and

WHEREAS, based on the foregoing, the City Council finds that the only alternative available for acquisition of the following properties or portions thereof may be by eminent domain; now therefore,

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

Ordinance No. ____
Page 2 of 3

Sec. 1. Legal description. The real properties that are the subject of this Ordinance are legally described in Exhibit A - Right of Way Acquisition attached hereto. (See also Exhibit A - Utility Easement.)

Sec. 2. Public use necessity. The public convenience, use, and necessity demand the acquisition of the real property described in section 1 herein for the widening of S. 216th Street as part of the Transportation Gateway Project Segment 1A and for use by the public for transportation purposes. Said improvements have been designed to implement the City of Des Moines Comprehensive Plan, adopted 2009, as amended.

Sec. 3. Condemnation of property. All lands, rights, privileges, and other property lying within the limits of the real property described in section 1 herein are hereby condemned, appropriated, taken and damaged for the purposes described in section 2 herein, only after just compensation has been made, or paid into the court for the owner thereof in a manner provided by law.

Sec. 4. Costs of acquisition. The costs of the acquisition provided for by this ordinance shall be paid by the City of Des Moines, or such other funds of the City of Des Moines as may be provided by law.

Sec. 5. Authority of City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to condemn, take, damage, and appropriate the real property necessary to carry out the provisions of this Ordinance. In conducting such condemnation proceedings, the City Attorney is hereby authorized to enter into stipulations for the purpose of minimizing damages.

Sec. 6. 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.

Ordinance No. _____
 Page 3 of 3

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

PASSED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2014 and signed in authentication thereof this ____ day of May, 2014.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

Published:

EXHIBIT A
PARCEL NUMBER 092204-9232
RIGHT OF WAY ACQUISITION

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A", LYING SOUTHERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", ALSO BEING ON THE NORTH MARGIN OF SOUTH 216TH STREET;

THENCE NORTH 06° 04' 58" EAST ALONG THE WEST LINE OF SAID PARCEL "A", 14.27 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 80° 25' 34" EAST, 16.67 FEET TO A LINE THAT IS 59.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 42.18 FEET;

THENCE NORTH 01° 44' 09" EAST, 3.50 FEET TO A LINE THAT IS 63.00 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 9.50 FEET;

THENCE NORTH 48° 18' 18" EAST, 39.27 FEET TO THE EAST LINE OF SAID PARCEL "A", ALSO BEING ON THE WESTERLY MARGIN OF STATE ROAD NO 1, AND THE TERMINUS OF SAID LINE DESCRIPTION;

CONTAINING 1,951 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER STEWART TITLE COMPANY ORDER NO. 01148-12284, DATED NOV. 29, 2012)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF 216TH SOUTH AND THE WESTERLY LINE OF STATE ROAD NO. 1;

THENCE NORTHERLY ALONG SAID WESTERLY LINE, 200 FEET;

THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION, 100 FEET;

THENCE SOUTH PARALLEL TO SAID WESTERLY LINE, 200 FEET;

THENCE EAST 100 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 754947 FOR 216TH STREET;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 8801250312;

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Page 1 of 2
KPG
 TACOMA · SEATTLE

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF DES MOINES BY DEED RECORDED UNDER RECORDING NO. 9610080753;

ALSO EXCEPT THAT PORTION THEREOF CONDEMNED BY THE CITY OF SEATAC PURSUANT TO DECREE OF APPROPRIATION ENTERED IN KING COUNTY SUPERIOR COURT CAUSE NO. 04-2-17989-1 KNT AND RECORDED UNDER RECORDING NO. 20050719001576.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, SOUTH 216TH STREET – SEGMENT 1A, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.

Michael N. Bowen
12/11/13

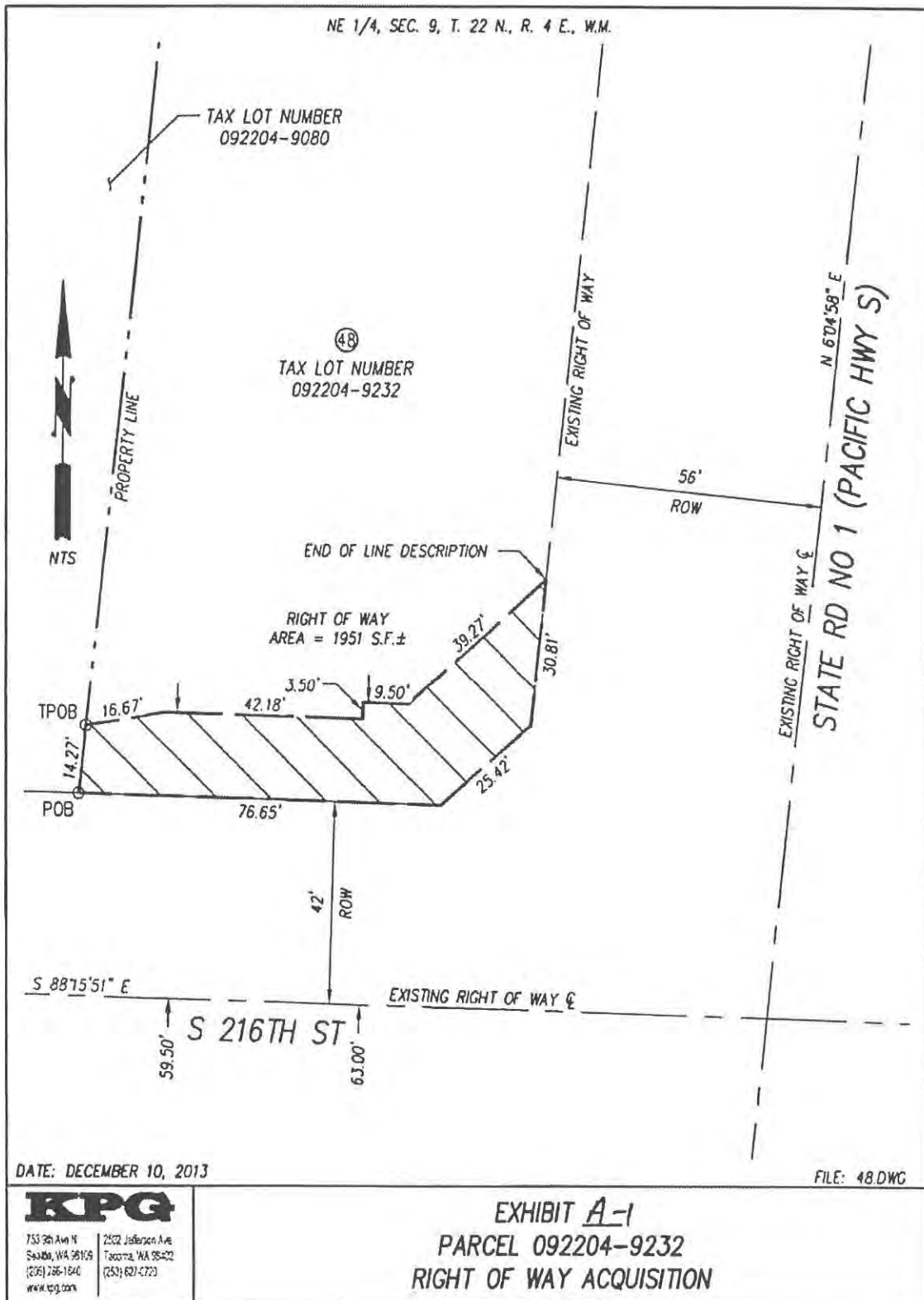


EXHIBIT A
PARCEL NUMBER 092204-9232
UTILITY EASEMENT

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A", DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", ALSO BEING ON THE NORTH MARGIN OF SOUTH 216TH STREET;

THENCE NORTH 06° 04' 58" EAST ALONG THE WEST LINE OF SAID PARCEL "A", 14.27 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 80° 25' 34" EAST, 16.67 FEET TO A LINE THAT IS 59.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 3.96 FEET;

THENCE NORTH 06° 04' 58" EAST, 10.03 FEET TO A LINE THAT IS 69.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE NORTH 88° 15' 51" WEST ALONG SAID PARALLEL LINE, 5.71 FEET;

THENCE SOUTH 80° 25' 34" WEST, 14.86 FEET TO SAID WEST LINE OF PARCEL "A";

THENCE SOUTH 06° 04' 58" WEST ALONG SAID WEST LINE, 10.39 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 206 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER STEWART TITLE COMPANY ORDER NO. 01148-12284, DATED NOV. 29, 2012)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF 216TH SOUTH AND THE WESTERLY LINE OF STATE ROAD NO. 1;
 THENCE NORTHERLY ALONG SAID WESTERLY LINE, 200 FEET;
 THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION, 100 FEET;
 THENCE SOUTH PARALLEL TO SAID WESTERLY LINE, 200 FEET;
 THENCE EAST 100 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 754947 FOR 216TH STREET;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 8801250312;

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Page 1 of 2
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Exhibit A - Utility Easement

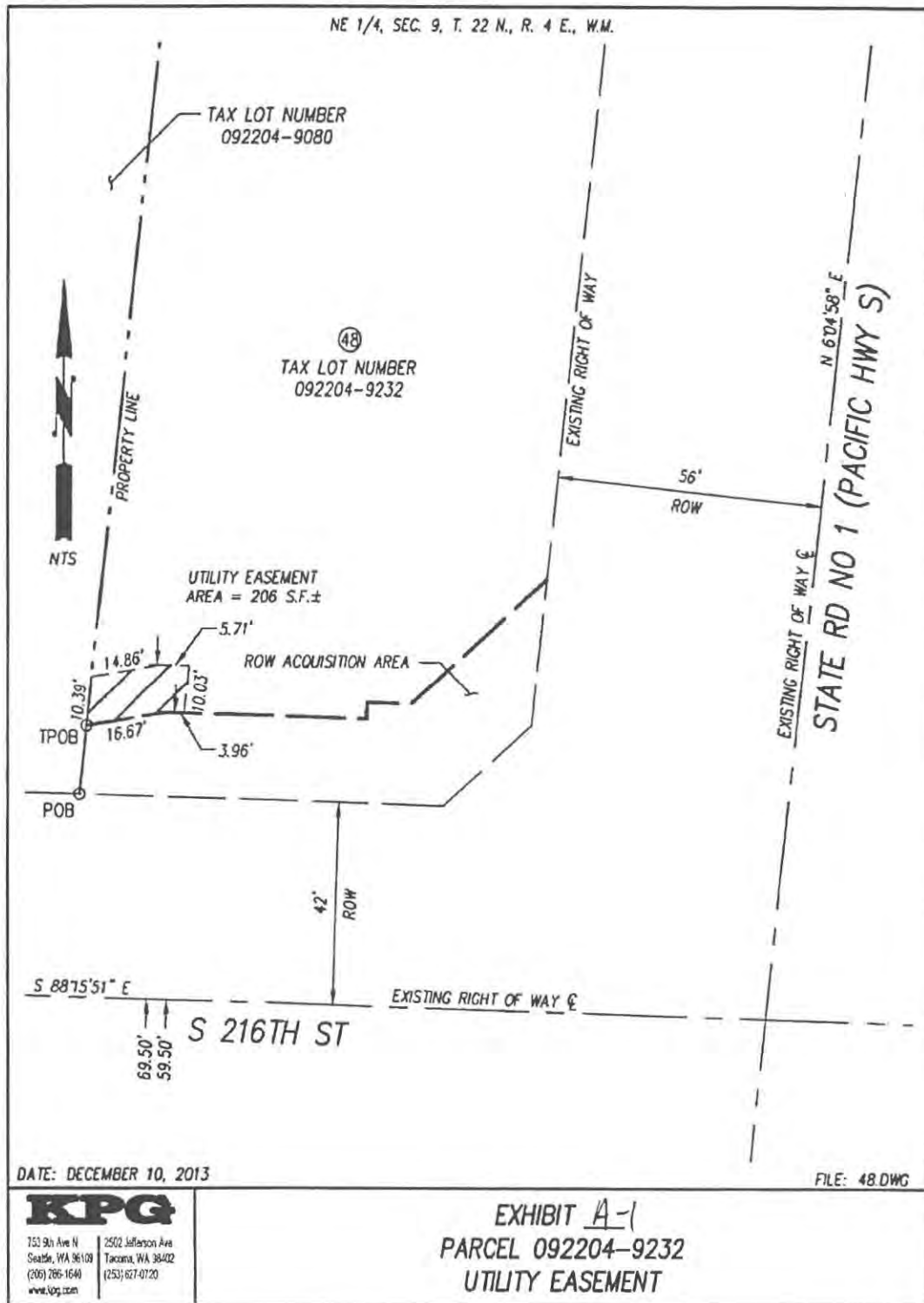
ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF DES MOINES BY DEED RECORDED UNDER RECORDING NO. 9610080753;

ALSO EXCEPT THAT PORTION THEREOF CONDEMNED BY THE CITY OF SEATAC PURSUANT TO DECREE OF APPROPRIATION ENTERED IN KING COUNTY SUPERIOR COURT CAUSE NO. 04-2-17989-1 KNT AND RECORDED UNDER RECORDING NO. 20050719001576.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, SOUTH 216TH STREET – SEGMENT 1A, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.

A circular surveyor's seal is partially visible behind a handwritten signature. The signature reads "Michael A. Bowie" and is dated "12/11/13".



A. J. BARTLETT'S MATHS' BOOKS - DES MONDES GAZETTE'S SPECIAL Doublet's Catalogue 2019-2020 p. 725. AV

Daniel J. Brewer, P.E., P.T.O.E.



PROJECT LOCATION

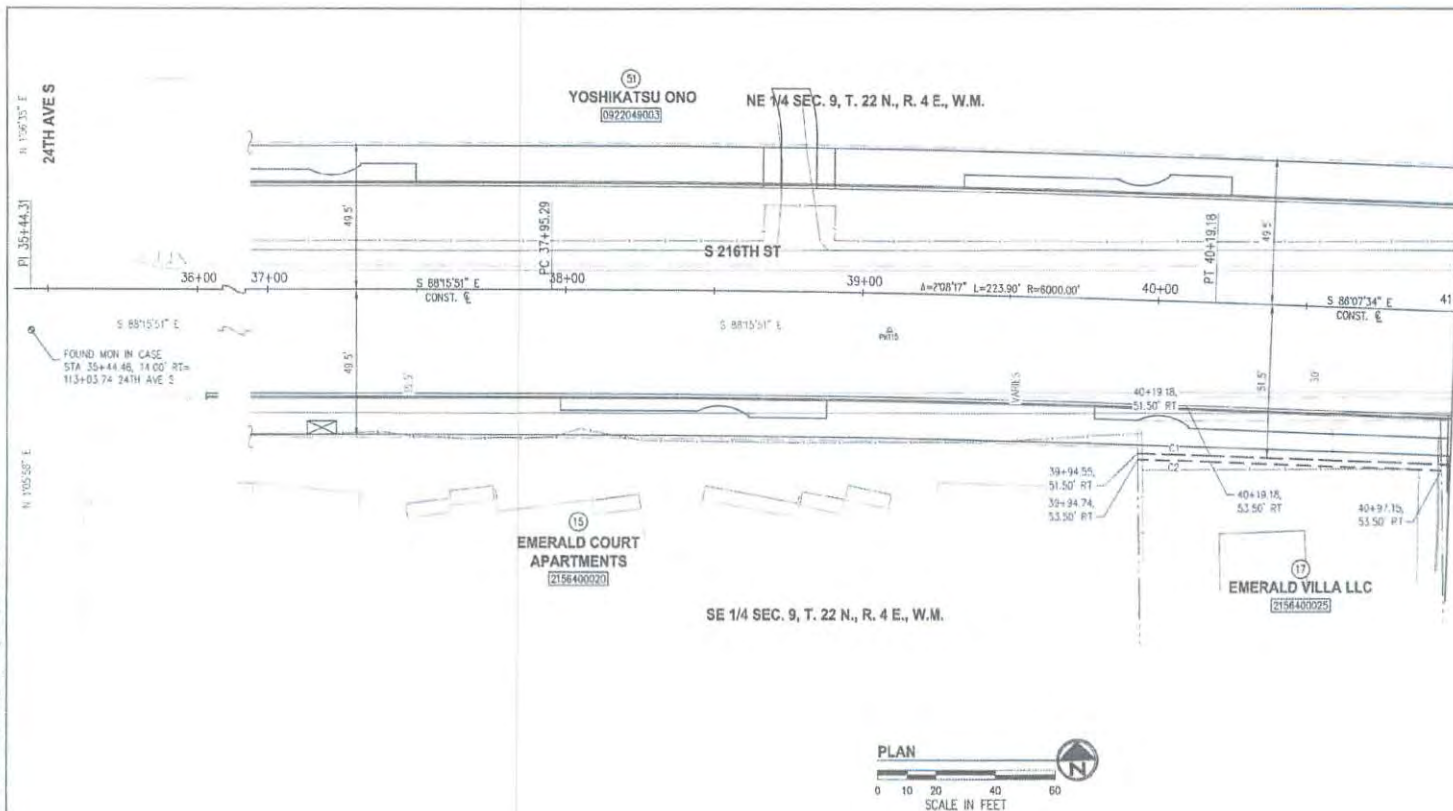
 2-26-2015
DANIEL J. BREWER, P.E., P.T.O.E. DATE
ACTING PUBLIC WORKS DIRECTOR

APPROVED BY THE DES MOINES CITY
COUNCIL IN OPEN PUBLIC MEETING ON
FEBRUARY 14TH, 2013

FOR
ACQUISITION

COPY

K:\PROJECTS\DES MOINES\DESIGN\Drawings\Transportation\216th St\216th St 1A.dwg 2/25/2014 11:31 AM



LEGEND	
	EXISTING RIGHT OF WAY CENTERLINE
	EXISTING RIGHT OF WAY
	EXISTING PROPERTY LINE
	EXISTING SLOPE AND UTILITY EASEMENT
	PROPOSED RIGHT OF WAY
	PROPOSED SLOPE EASEMENT (PERMANENT)
	PROPOSED SLOPE EASEMENT (TEMPORARY)
	PROPOSED UTILITY EASEMENT
	PROPOSED WALL EASEMENT
	EXISTING RIGHT OF WAY WIDTH

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	9°07'29"	11218.50'	24.42'
C2	0°14'03"	5946.50'	24.23'

NO.	NAME	PARCEL NO.	RIGHT OF WAY	PERM SLOPE EASEMENT	TEMP SLOPE EASEMENT	UTILITY EASEMENT	TEMPORARY CONSTRUCTION LICENSE
(17)	EMERALD VILLA LLC	2156400025	1,291	204	0	0	Y

NOTE: AREAS ARE IN SQUARE FEET AND ARE SHOWN AS TOTALS PER PARCEL.

NO.	DATE	BY	APP'D	REVISION

Approved By		DESIGN 216th St, R0001.dwg	
		FILE NAME	
		DESIGNED BY	
		DATE	
		PROJECT MANAGER	
		DATE	
		PROJECT ENGINEER	
		DATE	

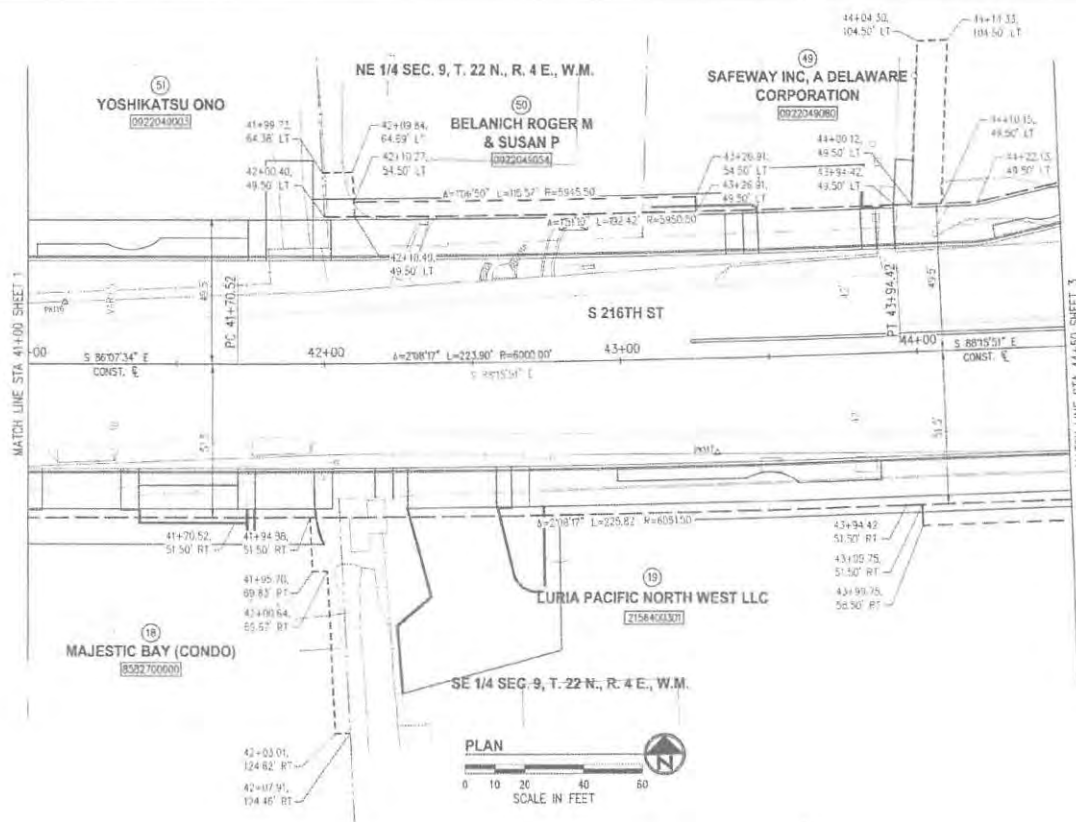


FOR ACQUISITION



CITY OF DES MOINES
TRANSPORTATION GATEWAY PROJECT
SOUTH 216TH STREET - SEGMENT 1A

RIGHT OF WAY PLAN	
STA 36+00 TO STA 41+00	
KPG PROJECT No. 09008	SHT 1 OF 4



NO.	NAME	PARCEL NO.	RIGHT OF WAY	PERM. SLOPE EASEMENT	TEMP. SLOPE EASEMENT	WALL EASEMENT	UTILITY EASEMENT	TEMPORARY CONSTRUCTION LICENSE
18	MAJESTIC BAY (CONDO)	8582700000	1,786	0	0	0	457	Y
19	LURIA PACIFIC NORTH WEST LLC	2156400301	3,569	420	0	0	221	Y
49	SAFEWAY INC, A DELAWARE CORP	0922049080	1,220	0	0	88	552	Y
50	BELANICH ROGER M & SUSAN P	0922049054	987	0	0	489	150	Y

NOTE: AREAS ARE IN SQUARE FEET AND ARE SHOWN AS TOTALS PER PARCEL

DATE	BY	APP	REVISION

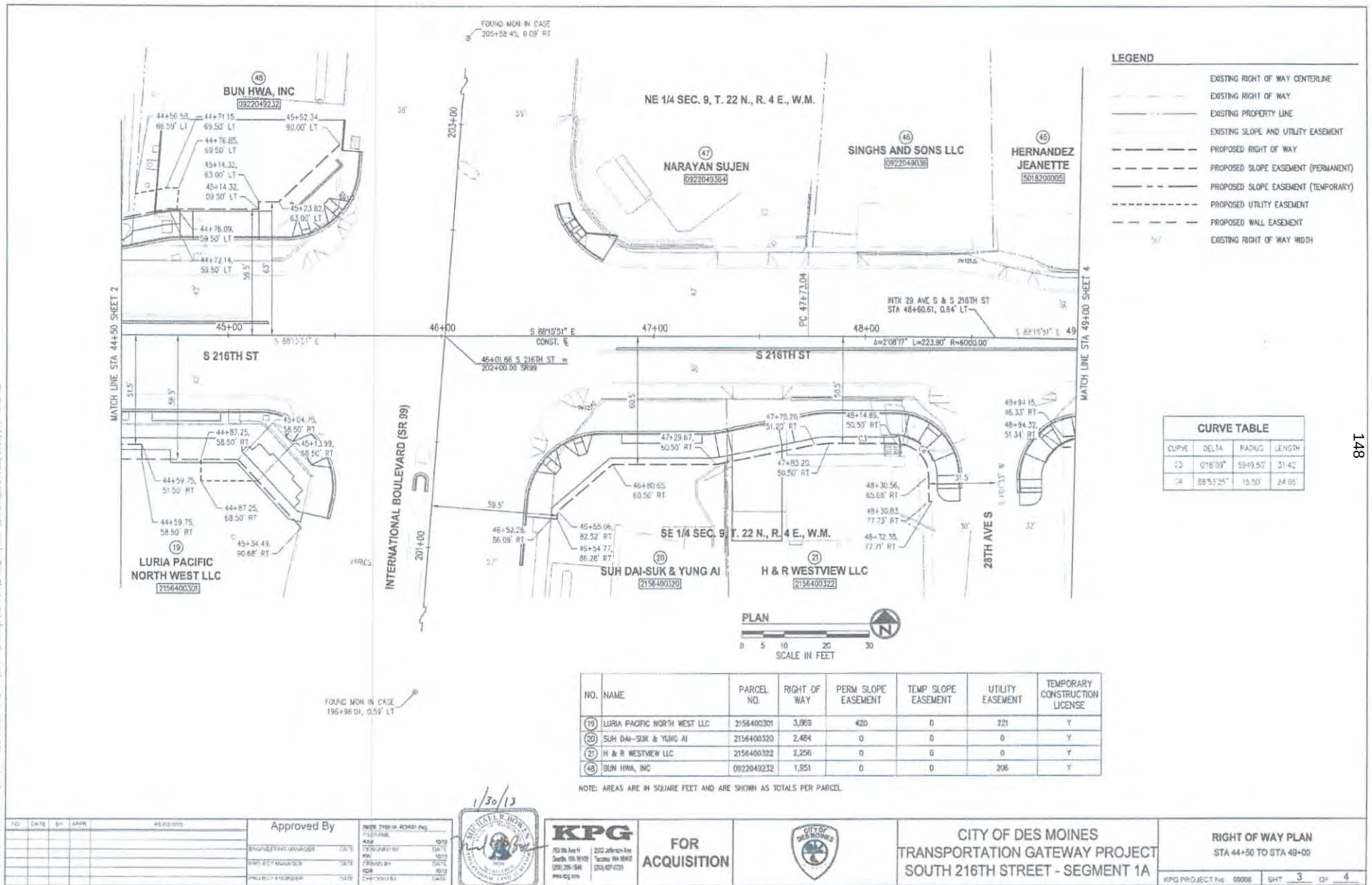
Approved By	DATE
DESIGNED BY	DATE
CHECKED BY	DATE
PROJECT ENGINEER	DATE

KPG

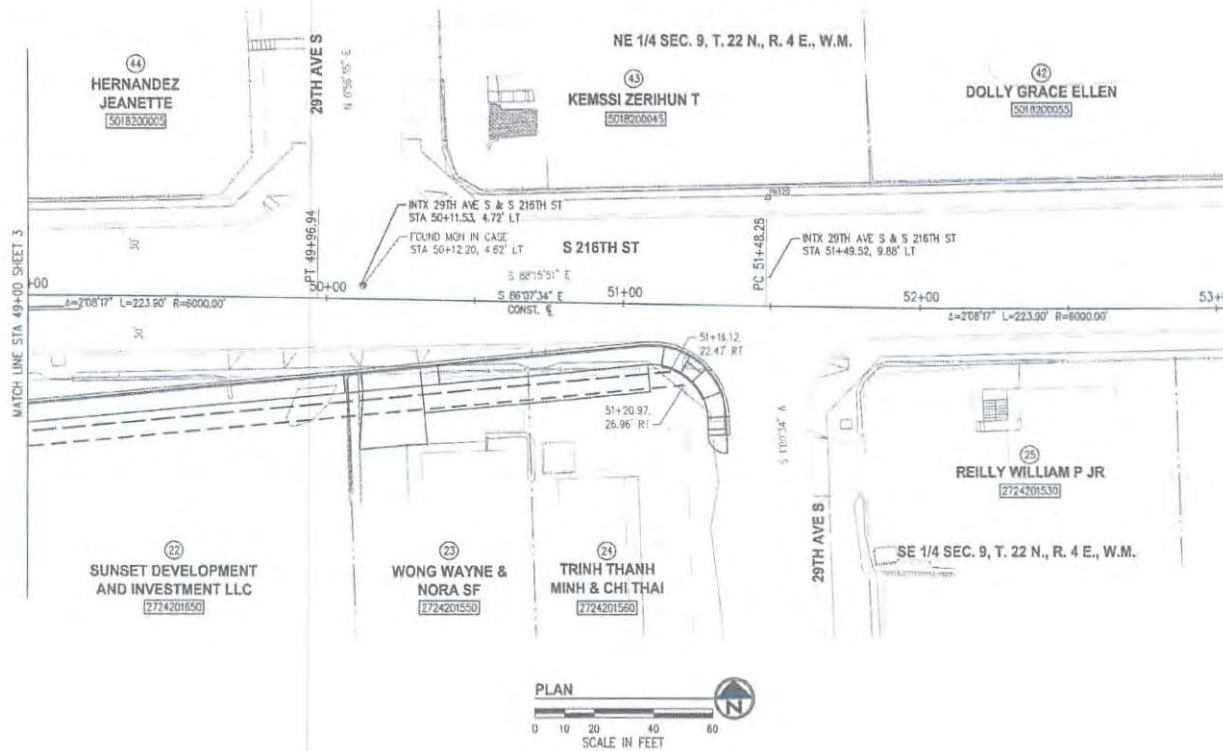
7010 Ave N
Suite 800
Des Moines, IA 50318
515-281-5844
www.kpg.com

FOR ACQUISITION

CITY OF DES MOINES TRANSPORTATION GATEWAY PROJECT SOUTH 216TH STREET - SEGMENT 1A		RIGHT OF WAY PLAN STA 41+00 TO STA 44+50
KPG PROJECT NO.	09038	SHT 2 OF 4



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LEGEND	
	EXISTING RIGHT OF WAY CENTERLINE
	EXISTING RIGHT OF WAY
	EXISTING PROPERTY LINE
	EXISTING SLOPE AND UTILITY EASEMENT
	PROPOSED RIGHT OF WAY
	PROPOSED SLOPE EASEMENT (PERMANENT)
	PROPOSED SLOPE EASEMENT (TEMPORARY)
	PROPOSED UTILITY EASEMENT
	PROPOSED WALL EASEMENT
	EXISTING RIGHT OF WAY WIDTH

NO.	NAME	PARCEL NO.	RIGHT OF WAY	PERM SLOPE EASEMENT	TEMP SLOPE EASEMENT	UTILITY EASEMENT	TEMPORARY CONSTRUCTION LICENSE
22	SUNSET DEV AND INVESTMENT LLC	2724201650	1,499	569	0	0	Y
23	WONG WAYNE & NORA SF	2724201550	417	303	0	0	Y
24	TRINH THANH MINH & CHI THAI	2724201560	137	252	0	0	Y

NOTE: AREAS ARE IN SQUARE FEET AND ARE SHOWN AS TOTALS PER PARCEL.

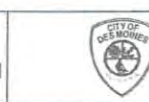
REV	DATE	BY	APPD	REVISIONS

Approved By		DESIGN ENGINEER	DATE
PROJECT MANAGER		DATE	
PROJECT ENGINEER		DATE	

DESIGN ENGINEER	DATE
PROJECT MANAGER	DATE
PROJECT ENGINEER	DATE



FOR ACQUISITION



CITY OF DES MOINES
TRANSPORTATION GATEWAY PROJECT
SOUTH 216TH STREET - SEGMENT 1A

RIGHT OF WAY PLAN STA 49+00 TO STA 53+00			
HPG PROJECT No	09008	SHT	4 OF 4



**S 216th Street
Segment 1A
24th Ave S to Pac Highway
(Inc. Transition to 29th Ave S)**

**S 216th Street
Segment 1B
Pac Highway to I-5
(Future Phase w/SR509)**

City of Des Moines

Transportation Gateway Project



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Department of Assessments

500 Fourth Avenue, Suite ADM-AS-0708, Seattle, WA 98104

Office Hours: Mon - Fri 8:30 a.m. to 4:30 p.m.

TEL: 206-296-7300 FAX: 206-296-5107 TTY: 206-296-7888

[Send us mail](#)

PARCEL

Parcel Number	092204-9232
Name	BUN HWA INC
Site Address	21449 PACIFIC HWY S 98198
Legal	PORTION OF SW QTR NE QTR STR 09-22-04 DAF: BEGIN AT POINT OF INTERSECTION OF NLY LINE OF 216TH ST S & WLY LINE OF STATE ROAD NO 1 TH NLY ALONG SAID WLY LINE 200 FT TH WEST PARALLEL WTH S LINE OF SAID SUBDIV 100 FT TH SOUTH PARALLEL TO SAID WLY LINE 200 FT TH EAST 100 FT TO POB EXC S 12 FT THEREOF CONDEMNED IN KCSC CAUSE NO 754947 FOR S 216TH ST & EXC PORTION CONVEYED TO STATE OF WA BY DEED UNDER RECORDING NO 8801250312 & EXC PORTION THEREOF CONVEYED TO CITY OF DES MOINES BY DEED UNDER RECORDING NO 9610080753 LESS PORTION TAKEN FOR R/W PER SCC #04-2-17989-1KNT DTD 10-20-04

BUILDING 1

Year Built	1988
Building Net Square Footage	2426
Construction Class	WOOD FRAME
Building Quality	GOOD
Lot Size	17478
Present Use	Conv Store with Gas
Views	N
Waterfront	

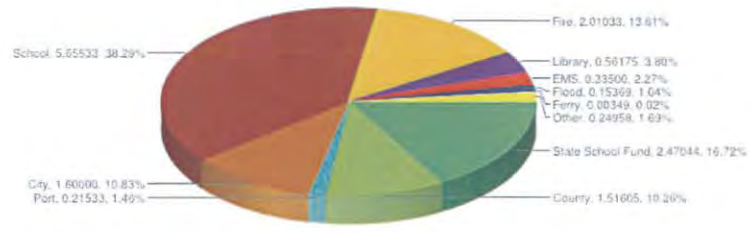


Reference Links:

- [King County Taxing Districts Codes and Levies \(.PDF\)](#)
- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue](#) (External link)
- [Washington State Board of Tax Appeals](#) (External link)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)

TOTAL LEVY RATE DISTRIBUTION

Tax Year: 2014 Levy Code: 1126 Total Levy Rate: \$14,77099 Total Senior Rate: \$8,48532



42.55% Voter Approved

[Click here to see levy distribution comparison by year.](#)

TAX ROLL HISTORY

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2013	2014	419,400	467,400	886,800	419,400	467,400	886,800
2012	2013	419,400	469,200	888,600	419,400	469,200	888,600
2011	2012	419,400	476,400	895,800	419,400	476,400	895,800
2010	2011	419,400	537,500	956,900	419,400	537,500	956,900
2009	2010	349,500	551,900	901,400	349,500	551,900	901,400
2008	2009	349,500	545,100	894,600	349,500	545,100	894,600
2007	2008	262,100	544,700	806,800	262,100	544,700	806,800
2006	2007	262,100	534,400	796,500	262,100	534,400	796,500
2005	2006	209,700	531,600	741,300	209,700	531,600	741,300
2004	2005	209,700	520,500	730,200	209,700	520,500	730,200
2003	2004	209,700	521,500	731,200	209,700	521,500	731,200
2002	2003	209,800	467,900	677,700	209,800	467,900	677,700
2001	2002	212,600	271,400	484,000	212,600	271,400	484,000

2000	2001	221,800	289,200	511,000	221,800	289,200	511,000
1999	2000	138,500	285,400	423,900	138,500	285,400	423,900
1998	1999	26,700	191,900	218,600	26,700	191,900	218,600
1997	1998	0	0	0	26,700	191,900	218,600
1996	1997	0	0	0	26,700	191,900	218,600
1995	1996	0	0	0	9,100	191,900	201,000
1994	1995	0	0	0	168,100	191,900	360,000
1992	1993	0	0	0	140,100	198,300	338,400
1990	1991	0	0	0	130,700	183,800	314,500
1988	1989	0	0	0	112,000	190,600	302,600
1987	1988	0	0	0	93,800	131,000	224,800
1986	1987	0	0	0	94,000	131,000	225,000
1984	1985	0	0	0	109,000	31,500	140,500
1982	1983	0	0	0	109,000	31,500	140,500

Updated: Dec. 4, 2013

[Share](#)[Tweet](#)[Email](#)**Information for...**

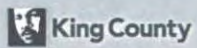
Healthcare enrollment
Residents
Businesses
Job seekers
Volunteers
King County employees

Do more online

Trip Planner
Property tax information & payment
Jail inmate look up
Parcel viewer or iMap
Public records
More online tools...

Contact us

206-296-0100
Email us [✉](#)
Staff directory
Customer service
Report a problem
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January 17, 2014

Via Certified Mail

Bun Hwa, Inc.,
c/o Gagandeep Bains
PO Box 1428
Okanagan, WA 98840

RE: City of Des Moines
Project Name: Transportation Gateway Project, South 216th Street, Segment 1A, Improvements 29th Ave S. to 24th Ave S.
Tax Parcel No: 0922049232
Project Parcel No: 48

Dear Mr. Bains:

The City of Des Moines is proceeding with the Transportation Gateway Project, Segment 1A. This Project will involve road widening on both sides of South 216th Street to east of SR99 and will include new curb/gutter, sidewalks, landscape features, modified traffic controls and a U-turn pocket that will allow eastbound traffic access to your property. The City has determined that this Project requires acquisition of a portion of your property in fee and in permanent utility easement. Said property is located at 21449 International Blvd, Des Moines and identified as King County Assessor's tax parcel number 0922049232. The City has retained ROW Group to assist in securing property and property rights needed for the project.

The City's total offer is **\$98,300.00** which includes property rights and improvements, if any. This offer is based upon an appraisal and is allocated as follows:

Land taken in Fee Simple: 1,951 SF @ \$30.00 per SF	\$ 58,500.00(r)
Permanent Utility Easement: 206 SF @ \$30.00 per SF @ 90%	\$ 5,600.00(r)
Improvements Taken: Landscaping, Pavement contribute	\$ 3,500.00(r)
Damages: loss of land visibility:(15,527-206 SF @ \$30.00-\$28.00) per SF	\$ 30,700.00(r)
Total Just Compensation	\$ 98,300.00

This offer is based upon an impartial, qualified real estate appraiser who has carefully considered all of the elements that contribute to the fair market value. This compensation amount is outlined in the appraisal report enclosed with this offer. The appraised value has been reviewed by the City's reviewing appraiser to ensure that you are receiving just compensation for your property.

Please take the time to consider the merits of the City's offer. You may choose to employ professional services to independently evaluate and corroborate the City's offer. If you do so, we recommend that you employ a well-qualified real estate professional. If you decide to have the City's offer evaluated, the City will reimburse you up to \$750 for any expenditure actually and reasonably incurred by you. These costs would include the cost of professional



appraisal services, provided you submit to the City the bills or paid receipts confirming that you incurred and paid these costs.

Please understand that every reasonable effort will be made to reach settlement in connection with this property acquisition. However, if agreement cannot be reached regarding the City's purchase of your property, the City, acting in the public interest, may take the next step to use its right of eminent domain to acquire the property for public use. Pursuant to the Washington State Constitution and laws, the City would file an eminent domain lawsuit in King County Superior Court to obtain a Court Order of Public Use and Necessity and Possession and Use and a trial would be scheduled to determine just compensation to be paid for the property.

Upon your acceptance of the City's offer, payment will be made available within 30 to 45 days, assuming there are no delays in closing (all tax and monetary liens will be cleared prior to payment) the transaction. The Internal Revenue Service (IRS) requires that the City obtain your correct taxpayer identification number (TIN) or social security number (SSN) to report income paid to you as a result of this real estate transaction. You will be required to complete the attached W-9 form and provide it to the acquisition agent upon acceptance of the City's offer. If you want additional information, please contact an IRS office.

Please feel free to direct any questions you may have to me, Sonja Kraus at (425) 577-2184, by January 29, 2014. We look forward to working with you and we would appreciate a response to this offer at your earliest convenience.

Sincerely,

Sonja Kraus
skraus@rowgroup.net

Receipt of this letter is hereby acknowledged. I understand that this acknowledgement does not signify acceptance or rejection of this offer.

Signature & Date



April 11, 2014

Via Regular Mail and Email

Final Offer Letter

Bun Hwa, Inc.,
c/o Gagandeep Bains
PO Box 1428
Okanagan, WA 98840

RE: City of Des Moines

Project Name: Transportation Gateway Project, South 216th Street, Segment 1A, Improvements 29th Ave S. to 24th Ave S.

Tax Parcel No: 0922049232

Project Parcel No: 48

Dear Mr. Bains:

We appreciate the efforts you and your attorney Tom Gallagher have been making with reference to City of Des Moines negotiating for the purchase of right-of-way on the Transportation Gateway Project. This final letter of intent is to confirm our Final Offer and to request a response to the City's offer by **April 18, 2014**.

By letter dated January 17, 2014, we provided you with a written offer to purchase right-of-way needed for the Transportation Gateway Project. The documents associated with that purchase were presented to you at that same time. The offer letter sent to you described the land and property rights required and the documents further described the acquisition.

We have been working with your attorney in hopes of a conclusion to your review of City of Des Moines' offer. Subsequent to our initial offer, we have been awaiting a response that we believe will be forthcoming that contains evidence supporting additional compensation. Without a proposal from you, City of Des Moines is unable to discuss this further, which puts us at an impasse.

The City's total offer, the determined Just Compensation for the property required for the right-of-way, is **\$98,300.00**. In the event that we do not reach an agreement by **April 18, 2014**, this letter is to serve notice that the City of Des Moines may exercise its right to acquire the property through eminent domain procedures and all files will be turned over to the City Attorney's office.

I am hopeful that we can come to an amicable agreement by the requested date. Please feel free to direct any questions you may have to me at (425) 577-2184, by **April 18, 2014**. I look forward to working with you and I would appreciate a response to this letter at your earliest convenience.

Sincerely,


Sonja Kraus
skraus@rowgroup.net

cc: Thomas Gallagher, PS
Pat Bosmans, City Attorney, City of Des Moines
Brandon Carver, City of Des Moines, Engineering Services Manager
Len Madsen, City of Des Moines Transportation Gateway Project Manager

1913 6th Street, Kirkland, WA 98033 ■ 425.576.0164 ■ www.rowgroup.net

THE HONORABLE _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

IN THE MATTER OF THE PETITION OF)
 THE CITY OF DES MOINES TO)
 ACQUIRE BY CONDEMNATION)
 CERTAIN PROPERTY AND PROPERTY)
 RIGHTS FOR THE IMPROVEMENT OF)
 THE CITY'S TRANSPORTATION)
 GATEWAY FACILITIES, AS)
 CONTEMPLATED BY CITY OF DES)
 MOINES ORDINANCE NO. 14-088)

No.

PETITION FOR CONDEMNATION

Petitioner, the City of Des Moines ("City"), respectfully submits as follows:

1. PETITIONER

The City is a municipal corporation of the State of Washington and is authorized by the laws of the State of Washington, including, without limitation, RCW 8.12.030 and Chapter 8.12 RCW to appropriate, condemn and damage real estate for public use.

PUBLIC USE

The object and use for which the property and property rights described herein are sought to be taken or damaged is a public use, *i.e.*, acquisition of real property to enable the City to complete the Transportation Gateway Project, S. 216th Street, Segment 1-A, as follows:

South Side of Property

Approximately 16 foot ROW Strip Take

- Roadway and Sidewalk Improvements
- U-Turn Accommodation

Approximately 10 foot X 20 foot Easement

- Franchise Utility Easement for below/above ground facilities

South-East Corner of Property

Approximately 20 foot ROW Strip Take (Parallel to Existing Diagonal ROW)

- Roadway and Sidewalk Improvements
- ADA Sidewalk and Signalized Intersection Improvements
- Urban Design Elements

The Transportation Gateway Project as initially designed included improvements to S. 216th Street from I-5 to S. 18th Avenue S. with a new traffic signal at 20th Avenue S., and 24th Avenue S. between S. 208th Street and S. 216th Street. S. 216th Street Segment 1B, between I-5 and Pacific Highway S, was included in the design report, but work will be deferred until SR 509 advances into construction.

The three remaining segments in this 20 million dollar construction Project are included in the City of Des Moines Capital Improvement Plan, 2014-2019 as follows: t:

1. S. 216 Street Segment 1-A Improvement, between 29th Avenue S. and 24th Ave. S; (the segment of the Project that is the subject of this cause of action.)
2. S. 216 Street, Segment 2 Improvement, including 24th Avenue S. to 18th Avenue S. with a new traffic signal at 20th Avenue S. (substantially completed); and
3. 24th Avenue S. Improvement between S. 208th Street and S. 216 Street (currently under construction).

All segments include roadway transitions to match existing streets.

(See the attached Exhibit A the vicinity map for Segment 1-A).

Following planning, design and engineering, the City has determined to continue the widening of S. 216th Street Segment 1-A. Accordingly, the City Council adopted a right of way plan and has determined that certain properties and property rights be condemned, appropriated, taken and damaged for the improvement of S. 216th Street Segment 1-A, as provided in the Ordinance.

2. NECESSITY

It is necessary that the City acquire fee interests in the real property identified in the Ordinance in order to make the complete the collective Gateway Transportation Project improvements as outlined above. This proceeding is brought to obtain an adjudication of public use and necessity for the taking or damaging of the property or property rights listed herein and to ascertain the just compensation to be paid for such taking or damaging.

3. NECESSITY OF DECREE AS TO COMPENSATION

The City and the interested parties listed below have been unable to agree upon the compensation to be paid by the City for the property rights or interest in the necessary portions of the respective parcels.

4. THE ORDINANCE

The City Council of Des Moines adopted Ordinance No. _____ on May 22, 2014. A certified copy of the Ordinance is attached to this Petition as Exhibit B and is incorporated herein by this reference. The Ordinance authorizes and directs the City Attorney to begin and prosecute the necessary proceedings provided by law to condemn, take and appropriate the land and other property rights necessary to carry out the provisions of the Ordinance.

5. INTERESTED PARTIES

The public records of King County disclose that the following persons have interests in the real property to be taken by the City. That real property is described more fully in Exhibit C, which is attached to this Petition and incorporated herein by this reference, upon which the construction will be necessary to provide for the transportation improvements described above. The parenthetical references are for information only, and do not constitute an admission or acknowledgement of a party's interest in the property.

Parcel No. 0922049232

Bun Hwa, Inc.;

Utility and Construction/Right of Entry Easement (Exhibits D and E)

King County (as taxing authority for general taxes, liens or assessments);

Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the Petition herein, pursuant to RCW 4.28.150.

6. RELIEF REQUESTED

Wherefore, the City prays that the Court enter an order:

(1) Adjudicating that the use for which the property sought is a public use, that the public interest requires the prosecution of this action; and that the acquisition of the property described in this petition is for a public use;

(2) Directing that a jury be summoned and called in the manner provided by law to ascertain the just compensation to be paid for the property and property rights described herein, unless a jury be waived, in which case the same determination shall be made by the Court, sitting without a jury;

1 (3) Assigning the first reasonably available trial date for the ascertaining of such
2 compensation; and

3 (4) For such other and further relief as the Court deems just and equitable.

4 RESPECTFULLY SUBMITTED this ____ day of _____, 2014.

5 DES MOINES CITY ATTORNEY

6
7
8 PATRICIA BOSMANS, WSBA #9148

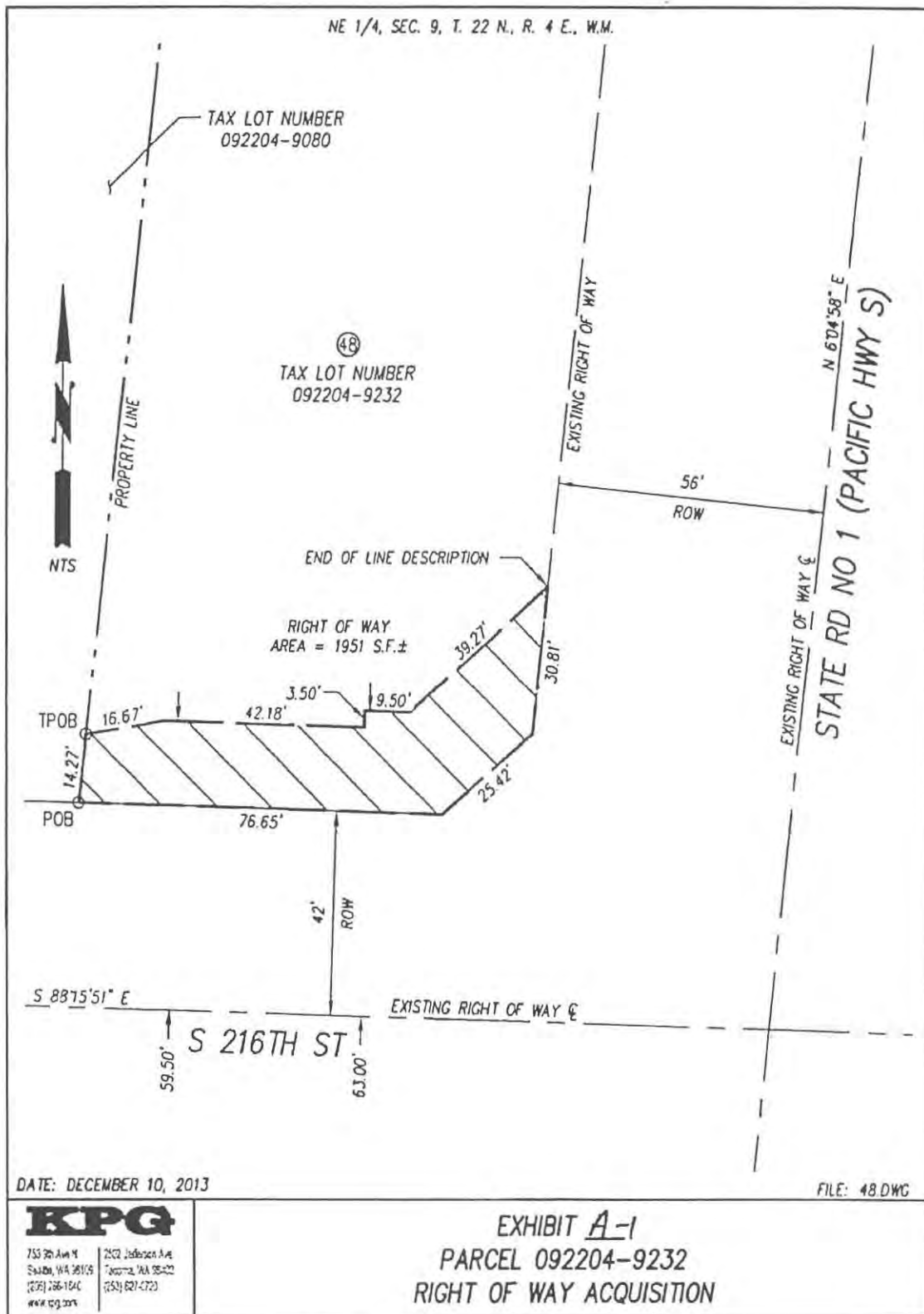


Exhibit A

EXHIBIT B

**CERTIFIED COPY OF
ORDINANCE**

EXHIBIT A
PARCEL NUMBER 092204-9232
RIGHT OF WAY ACQUISITION

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A", LYING SOUTHERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", ALSO BEING ON THE NORTH MARGIN OF SOUTH 216TH STREET;

THENCE NORTH 06° 04' 58" EAST ALONG THE WEST LINE OF SAID PARCEL "A", 14.27 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 80° 25' 34" EAST, 16.67 FEET TO A LINE THAT IS 59.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 42.18 FEET;

THENCE NORTH 01° 44' 09" EAST, 3.50 FEET TO A LINE THAT IS 63.00 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 9.50 FEET;

THENCE NORTH 48° 18' 18" EAST, 39.27 FEET TO THE EAST LINE OF SAID PARCEL "A", ALSO BEING ON THE WESTERLY MARGIN OF STATE ROAD NO 1, AND THE TERMINUS OF SAID LINE DESCRIPTION;

CONTAINING 1,951 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER STEWART TITLE COMPANY ORDER NO. 01148-12284, DATED NOV. 29, 2012)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF 216TH SOUTH AND THE WESTERLY LINE OF STATE ROAD NO. 1;
 THENCE NORTHERLY ALONG SAID WESTERLY LINE, 200 FEET;
 THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION, 100 FEET;
 THENCE SOUTH PARALLEL TO SAID WESTERLY LINE, 200 FEET;
 THENCE EAST 100 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 754947 FOR 216TH STREET;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 8801250312;

48-0922049232 row.doc

Page 1 of 2
KPG
 TACOMA · SEATTLE

Exhibit C

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF DES MOINES BY DEED RECORDED UNDER RECORDING NO. 9610080753;

ALSO EXCEPT THAT PORTION THEREOF CONDEMNED BY THE CITY OF SEATAC PURSUANT TO DECREE OF APPROPRIATION ENTERED IN KING COUNTY SUPERIOR COURT CAUSE NO. 04-2-17989-1 KNT AND RECORDED UNDER RECORDING NO. 20050719001576.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, SOUTH 216TH STREET – SEGMENT 1A, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.

Michael N. Bowler
12/11/13

After Recording, Return to:
 CITY OF DES MOINES
 ATTN: CITY ATTORNEY
 21630 11th Avenue South, Suite C
 Des Moines, WA 98198

UTILITY EASEMENT

Grantor:	Bun Hwa, Inc. a Washington corporation
Grantee:	City of Des Moines, a municipal corporation of the State of Washington
Legal Description/STR:	Sec 9, Town 22, Range 4, SW ¼ of NE 1/4
Assessor's Tax Parcel ID#:	0922049232
ROW Plan:	Parcel 48
Property Address:	21449 International Blvd, Des Moines, WA.
Mailing Address:	PO Box 1428 Okanogan, WA 98866509-322-6200
Phone Contact #:	

Transportation Gateway Project
South 216th Street, Segment 1A, Improvements
29th Avenue South to 24th Avenue South

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2014, by and between BUN HWA, INC., a Washington corporation ("Grantor" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

WITNESSETH:

- Grant of Easement.** The Grantors, for and in consideration of TEN DOLLARS (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grant and convey to the City of Des Moines, a municipal corporation of the State of Washington, its contractors, employees, agents, franchisees, successors and assigns, (Grantee), for the purposes set forth herein, a non- exclusive perpetual easement for the placement, operation, and maintenance of public and private utility equipment ("Easement"

herein) over, under, along, across, and through the following described real property ("Easement Area" herein) in King County, Washington.

2. Property Subject to Easement

a. **Property Description.** The Property subject to this Easement is legally described and shown in Exhibit "A" and Exhibit "A-1" attached hereto and incorporated by reference.

b. **Easement Areas.** Except as is otherwise set forth herein, Grantee's rights shall be exercised only upon that portion of the property legally described in Exhibit "A" and Exhibit "A-1" ("Easement Areas" herein) attached hereto and incorporated by reference.

3. **Purpose.** Grantee shall have the right to construct, operate, maintain, repair, replace, improve, remove, and enlarge utility structures and associated features within the Easement Areas for the purpose of constructing and maintaining utilities. Such utilities may include, but is not limited to:

Utility Features.

Above and below ground handholes, conduits, vaults, switches, pedestals, transformers, fire Hydrant connection, water meters, valves, and all other facilities and/or appurtenances necessary and/or convenient to any and/or all of the foregoing.

Following the initial construction of all and/or portion of its utility features, Grantee may, from time to time, construct such additional facilities as it may require for such utility features.

4. **Access.** Grantee shall have the right of access to the Easement Areas over and across the Property to enable Grantee to exercise its rights hereunder. Grantee shall compensate Grantor for any damage to the Property caused by the exercise of such right of access by Grantee.
5. **Easement Area Clearing and Maintenance.** Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Areas. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, tree or other vegetation in the Easement Area.

6. **Grantor's Use of Easement Area.** Grantors reserve the right to use the Easement Areas for any purpose so long as the use does not interfere with the Easement rights herein granted. Grantors may install groundcover and shrub landscaping plantings within the Easement Area with Grantee's prior written consent. Grantors shall not alter the ground surface and subsurface with the Easement Area by excavation, placement of fill material, or installation of any wall or rockery, without Grantee's prior written consent. Grantee's prior written consent, where required, shall not be unreasonably withheld. Grantor shall not construct or maintain any buildings within the Easement Areas.
7. **Indemnity.** Grantee agrees to indemnify Grantors from and against liability incurred by Grantors as result of Grantee's negligence in the exercise of the rights herein granted to Grantee, but nothing herein shall require Grantee to indemnify Grantors for that portion of any such liability attributable to the negligence of Grantors or the negligence of others.
8. **Covenant Running With the Land.** This Easement shall be covenant running with the land and shall forever bind Grantors, their heirs, successors, and assigns.
9. **Assignment.** Grantee shall have the right to assign this Easement to franchised utilities in the event that Grantee need to request underground of overhead lines; provided, however just compensation and have waived said rights.

Grantors acknowledge that property and/or property rights conveyed herein are in consideration of mutual benefit to be derived; and Grantors has been informed of its right to receive just compensation and have waived said rights.

The lands herein described can be found in design plans on file with the Director of the City of Des Moines Public Works in Des Moines, Washington 216th Street, Segment 1A Improvements.

DATED this _____ day of _____, 2014.

GRANTORS:

BUN HWA, INC.
a Washington corporation

By: _____
Its: _____

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date:

At the direction of the Des Moines City Council on ___ day of _____, 2014.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

STATE OF WASHINGTON }
 } SS.
 COUNTY OF KING }

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the _____ of Bun Hwa, Inc., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____

STATE OF WASHINGTON }
 } SS.
 COUNTY OF KING }

This instrument was acknowledged before me on _____ (date of acknowledgment) by Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal corporation, on behalf of said corporation.

Dated: _____

Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____

EXHIBIT A
PARCEL NUMBER 092204-9232
UTILITY EASEMENT

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A", DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", ALSO BEING ON THE NORTH MARGIN OF SOUTH 216TH STREET;

THENCE NORTH 06° 04' 58" EAST ALONG THE WEST LINE OF SAID PARCEL "A", 14.27 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 80° 25' 34" EAST, 16.67 FEET TO A LINE THAT IS 59.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE SOUTH 88° 15' 51" EAST ALONG SAID PARALLEL LINE, 3.96 FEET;

THENCE NORTH 06° 04' 58" EAST, 10.03 FEET TO A LINE THAT IS 69.50 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF SAID SOUTH 216TH STREET;

THENCE NORTH 88° 15' 51" WEST ALONG SAID PARALLEL LINE, 5.71 FEET;

THENCE SOUTH 80° 25' 34" WEST, 14.86 FEET TO SAID WEST LINE OF PARCEL "A";

THENCE SOUTH 06° 04' 58" WEST ALONG SAID WEST LINE, 10.39 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 206 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER STEWART TITLE COMPANY ORDER NO. 01148-12284, DATED NOV. 29, 2012)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF 216TH SOUTH AND THE WESTERLY LINE OF STATE ROAD NO. 1;

THENCE NORTHERLY ALONG SAID WESTERLY LINE, 200 FEET;

THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID SUBDIVISION, 100 FEET;

THENCE SOUTH PARALLEL TO SAID WESTERLY LINE, 200 FEET;

THENCE EAST 100 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 754947 FOR 216TH STREET;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 8801250312;

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF DES MOINES BY DEED RECORDED UNDER RECORDING NO. 9610080753;

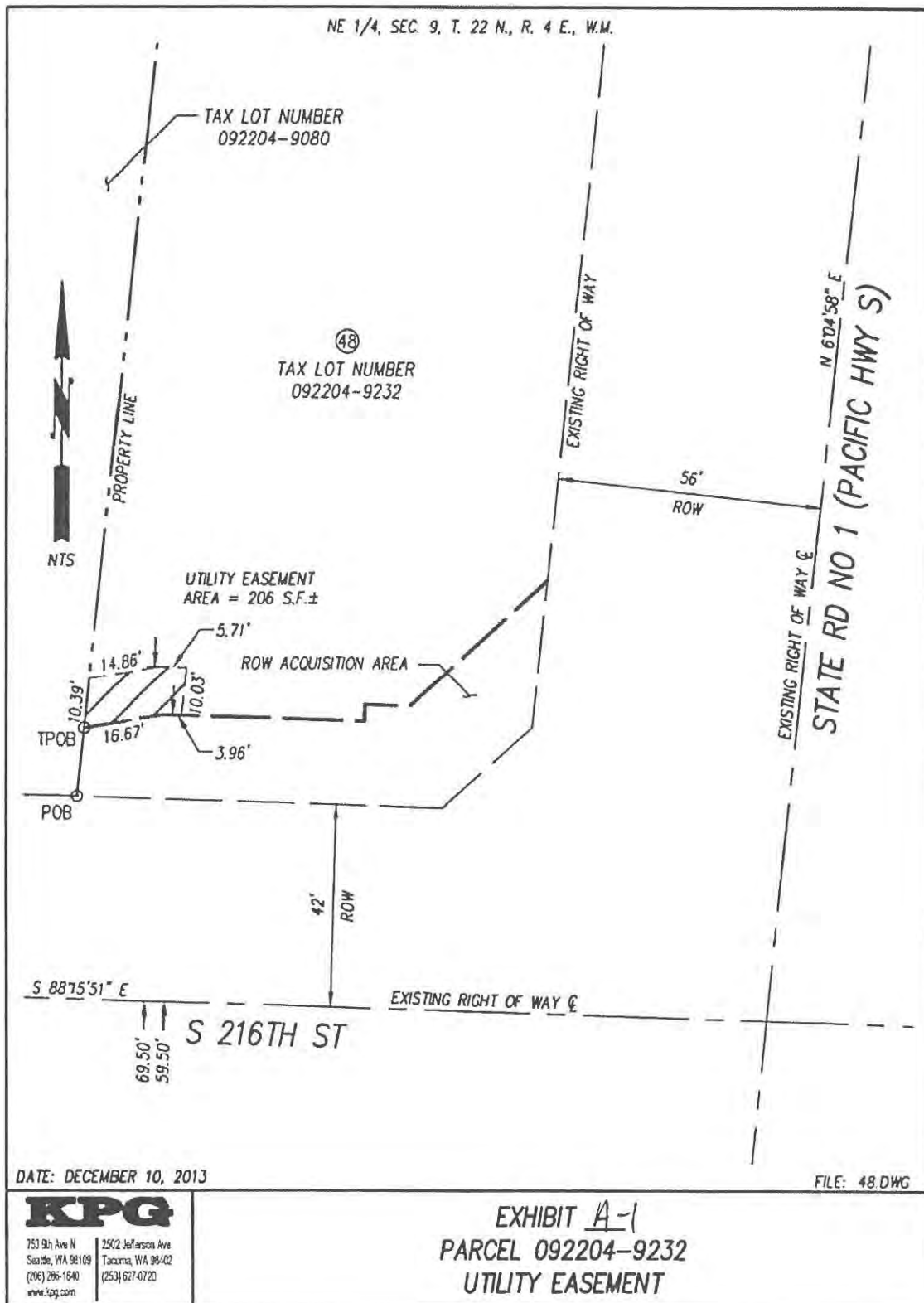
ALSO EXCEPT THAT PORTION THEREOF CONDEMNED BY THE CITY OF SEATAC PURSUANT TO DECREE OF APPROPRIATION ENTERED IN KING COUNTY SUPERIOR COURT CAUSE NO. 04-2-17989-1 KNT AND RECORDED UNDER RECORDING NO. 20050719001576.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, SOUTH 216TH STREET – SEGMENT 1A, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.



Michael N. Borne 12/11/13



Return Address:
 City of Des Moines
 Attn: City Attorney
 21630 11th Avenue So., Suite C
 Des Moines, WA 98198-6398

**CONSTRUCTION EASEMENT/
 RIGHT OF ENTRY**

Grantor:	BUN HWA, INC. a Washington corporation
Grantee:	City of Des Moines, a municipal corporation of the State of Washington
Legal Description/STR:	Sec 9, Town 22, range 4, SW ¼ of NE 1/4
Assessor's Tax Parcel ID#:	0922049232
Property Address:	21449 International Blvd, Des Moines, WA.
Mailing Address:	Same as above
Phone Contact #:	509-322-6200

Transportation Gateway Project
South 216th Street, Segment 1A, Improvements
29th Avenue South to 24th Avenue South

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2014, by and between BUN HWA, INC., a Washington corporation ("Grantor" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

In consideration of the transportation, sidewalk, utility and general improvements planned to occur immediately on or adjacent to property that is subject to this easement as a result of the above S. 216th Street Improvements, the Grantor(s) hereby grants to the Grantee, its contractors, employees, agents, successors and assigns the right to enter upon land known as King County Assessor's Parcel Number 0922049232 located adjacent to S. 216th St, Des Moines, WA 98198, as required for the purpose of placing personnel and equipment on said premises to re-construct driveway access, restore fences, utility services, mailboxes, plantings, walls and/or walkways to match newly constructed roadway and sidewalk grades within right of way as shown in the plans and specifications found on file with the City Engineer of the Grantee.

SPECIAL STIPULATIONS

1. This license shall remain in force until such time as the construction of street improvements has been accepted for operation and maintenance by the Grantee. Specific details concerning the public street improvements may be found on maps, plans, and specifications on file with Grantee's City Engineer.
2. Grantee, its agents and assigns, will notify Grantor their agents, successors, and assigns, of its construction schedule, and will, to the greatest extent practicable, schedule the construction activity so as to minimize any inconvenience to the property and business operations. The Grantee agrees to require that the Contractor implement a City approved traffic control plan that maintains 24 hour business access to S. 216th Street.
3. The Grantee agrees, to the extent practicable, to leave the property in as good condition as existed on the day construction commenced. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities.
4. Compensation: Grantor acknowledges that the property and/or property rights conveyed herein are in consideration for benefits to be derived by matching the roadway improvements with the Grantor's property.
5. Grantor authorizes and appoints Grantee as its agent and attorney-in-fact to make application for any and all permits required to complete the project.
6. The rights herein granted shall include all incidental rights, including but not limited to, rights of ingress and egress necessary to properly perform the work indicated for construction of the project. Grantee and those entitled to exercise the rights granted herein shall exercise all due diligence in their activities upon the property. Grantee hereby agrees to indemnify and hold harmless Grantor against and from any and all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the rights herein granted to Grantee and/or its contractors, employees, agents, successors or assigns.
7. The termination date for this easement shall be by the physical completion date of the project.

DATED this _____ day of _____, 2014.

GRANTOR:

BUN HWA, INC.
a Washington corporation

By: _____
Its: _____

Date: _____

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date: _____

At the direction of the Des Moines City Council on ___ day of _____, 2014.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

STATE OF WASHINGTON }
 } SS.
 COUNTY OF KING }

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the _____ of Bun Hwa, Inc., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____

STATE OF WASHINGTON }
 } SS.
 COUNTY OF KING }

This instrument was acknowledged before me on _____ (date of acknowledgment) by Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal corporation, on behalf of said corporation.

Dated: _____

Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____



2014 - 2019 CAPITAL IMPROVEMENT PLAN Transportation CIP Fund

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	Transportation	PROJECT NO.	319.332
PROGRAM	Des Moines Transportation Gateway	Project Type:	Capacity
PROJECT	South 216th Street Improvement - Segment 1-A (29th to 24th)	Council Goals met:	1, 2, 3
		Council Objectives met:	
		Project Status	Adopted

LOCATION S. 216th St - 29th Avenue to 24th Avenue South including the Pacific Highway South Intersection

DESCRIPTION: Widen roadway to 5 lanes with a continuous left turn lane, bicycle lanes, sidewalks planter strips and U-turn pockets at Pacific Highway S. Formerly S. 216th St, Segment 1 (I-5 to 24th Avenue S), this project is the first of two stages.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL*	FY 09 Act	FY 10 Act	FY 11 Act	FY 12 Act	FY 13 Est	FY 13 Amend	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
ADMIN (CITY STAFF)	\$ 292,851	\$ 16,235	\$ 17,939	\$ 10,529	\$ 3,148	\$ 10,000	\$ 10,000	\$ 30,000	\$ 30,000	\$ 35,000	\$ 40,000	\$ 50,000	\$ 50,000
CIP PROJ MANAGEMENT	50,000		-								15,000	20,000	15,000
DESIGN / ENGINEERING	808,115	296,604	190,890	138,354	8,150	84,117	84,117	15,000	15,000	15,000	15,000	15,000	15,000
LAND	1,282,500					132,500	132,500	150,000	250,000	200,000	350,000	200,000	
ROW SERVICES	463,952				19,822	39,130	39,130	80,000	90,000	85,000	100,000	50,000	
IMPROVEMENTS	3,927,530											2,353,000	1,574,530
INSPECTION	417,224										-	208,612	208,612
CONTINGENCY	740,000						10,000	50,000	70,000	65,000	85,000	300,000	170,000
Utility Undergrounding	127,400											127,400	
Highline Water District	39,500											39,500	
OTHER	-		-										
TOTAL	\$ 8,149,072	\$ 312,839	\$ 208,829	\$ 148,883	\$ 31,120	\$ 265,747	\$ 275,747	\$ 325,000	\$ 455,000	\$ 400,000	\$ 605,000	\$ 3,363,512	\$ 2,033,142

FUNDING SOURCES	TOTAL*	FY 09 Act	FY 10 Act	FY 11 Act	FY 12 Act	FY 13 Est	FY 13 Amend	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
PWTF Loan (confirmed)	\$ 325,000	\$ 243,750	\$ 67,500	\$ 13,750	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Federal STP (Unconfirmed)	2,500,000											1,500,000	1,000,000
Federal Grant (Unconfirmed)	-												
TRAFFIC IMPACT FEES	800,000							50,000	150,000	250,000	150,000	100,000	100,000
IN-LIEU FEES (unconfirmed) 1/4	1,300,000								250,000	350,000	275,000	225,000	200,000
TIB (Unconfirmed)	2,500,000										250,000	1,500,000	750,000
Highline Water District	39,500											39,500	
2008 Bond Proceeds	-		13,750	(13,750)									
Transportation CIP Fund	684,572	69,089	127,579	148,883	31,120	265,747	275,747	275,000	55,000	(200,000)	(70,000)	(988)	(16,858)
TOTAL	\$ 8,149,072	\$ 312,839	\$ 208,829	\$ 148,883	\$ 31,120	\$ 265,747	\$ 275,747	\$ 325,000	\$ 455,000	\$ 400,000	\$ 605,000	\$ 3,363,512	\$ 2,033,142

*Excludes FY 13 Amd



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LOCATION	S. 216th St - 29th Avenue to 24th Avenue South including the Pacific Highway South Intersection		
JUSTIFICATION:	The need for capacity increases, pedestrian, bicycle and transit facilities along South 216th Street is identified in the City's Comprehensive Transportation Plan and the Six Year Transportation Improvement Plan. South 216th Street has numerous retail and multi-family developments that generate pedestrian and bicycle traffic along the shoulder of the road. Pedestrians use this route to access bus stops, city buildings, and the Pacific Highway Corridor. Given the eventual development of the Des Moines Creek Business Park and other potential developments, additional capacity improvements will be needed to maintain concurrency and support development activity. With pending development in the immediate area, planning and design for the South 216th Street corridor cannot be delayed. Design is funded by a PWTF loan. The City will need to secure "outside" funding sources for right of way acquisition and construction. A 30% design report (Transportation Gateway Project) was completed in December 2009. The report includes design recommendations for Segment 1, I-5 to 24th Avenue S., described in the 2009 capital budget. Given the lack of foreseeable funding to replace and expand the I-5 overcrossing to 4 lanes, staging is recommended to transition the S. 216th St roadway, bicycle lanes and sidewalk back to the current 3 lane configuration east of 29th Avenue S. Segment 1-B, I-5 to Pacific Highway S., will remain a capital improvement in the long range plan awaiting SR509 funding to replace and widen the I-5 bridge overpass.		
SCOPE OF WORK:	An 85% design level estimate of probable right-of-way and construction costs are included herein for Segment 1A. The project includes the following improvements: installation of curbs, gutters and sidewalks on both sides of the street, bicycle lanes, transit stop improvements, planters, widening the road with asphalt pavement to four lanes with a center left turn lane and U-turn pockets at Pacific Highway S., improvements to the existing closed drainage system, pedestrian and street lighting, and undergrounding of overhead communication and electrical distribution wires. The scope includes engineering, environmental analysis, permit documents, and preparation of final plans, specifications and cost estimates by a consultant scheduled to be completed by March, 2011. A right of way plan will be adopted, however, right of way acquisition procedures and construction will not be initiated until outside sources of funding can be secured.		