

AGENDA

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

June 5, 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

Item 1: RECOGNITION OF AWC SCHOLARSHIP APPLICANT CLARA McMICHAEL

ADMINISTRATION REPORT

Item 1: EMERGING ISSUES

CONSENT AGENDA

Page 1 Item 1: CHEFS APPRECIATION DAY PROCLAMATION

Motion is to approve the Proclamation supporting Chefs Appreciation Day.

Page 5 Item 2: DRAFT ORDINANCE NO. 14-088, AUTHORITY FOR EMINENT DOMAIN FOR TRANSPORTATION PROJECT ON 216TH & PACIFIC HIGHWAY, FINAL
Motion is to enact Draft Ordinance No. 14-088, 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.

Page 19 Item 3: DRAFT RESOLUTION No. 14-120, CDBG GRANT AUTHORIZATION
Motion is to adopt the Draft Resolution No. 14-120 to ratify City Council's unanimous decision made at the May 22, 2014 Council meeting to authorize the submittal by the City Manager of a 2015 King County Community Development Block Grant Application to King County in the amount of \$395,000 for federal funds to make improvements to Parkside Park.

Page 23 Item 4: DRAFT RESOLUTION NO. 14-123 ACCEPTING FINDINGS OF FACT THAT AN EMERGENCY EXISTED FOR THE DES MOINES FIELD HOUSE
Motion is to adopt Draft Resolution No. 14-123 accepting findings that an emergency existed on March 11, 2014 at the Des Moines Field House which justified the City's entering into an emergency contract to provide the necessary groundwater intrusion remediation and repair and restoration services.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Page 29 Item 1: DRAFT ORDINANCE NO. 14-035 TRANSIT COMMUNITY ZONE
Staff Presentation: Community Development Manager
Denise Lathrop

NEW BUSINESS

Page 143 Item 1: J DOCK CONTRACT AWARD
Staff Presentation: Harbormaster Joe Dusenbury

NEXT MEETING DATE

June 12, 2014 Regular City Council Meeting

ADJOURNMENT

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: CHEFS APPRECIATION DAY

AGENDA OF: June 5, 2014

ATTACHMENTS:

1. Proclamation

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: May 16, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

National Pink Tie Organization (NPTO) is a 501(c)(3) non-profit which was created for men supporting the fight against all types of cancer.

The Chefs Against Cancer division involves over 400,000 chefs and is growing rapidly worldwide. They are busy professionals who volunteer and stand beside fellow chefs and their immediate family members who are facing one of the most stressful times in their lives.

Chefs Against Cancer honors all chefs every third Saturday of August each year. Currently there are over 2,000 cities participating in Chefs Appreciation Day.

Suggested Motion

MOTION: “I move to approve the Proclamation supporting Chefs Appreciation Day”

City of Des Moines



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



Proclamation

WHEREAS, the National Pink Tie Organization (NPTO) has a mission of banding men together in the fight against cancer, and a vision of men nationwide wearing pink or fuchsia ties to raise awareness, educate and empower the community about cancer; and

WHEREAS, the NPTO's Chefs Against Cancer involves over 400,000 chefs and is growing rapidly worldwide; and

WHEREAS, the NPTO chefs have made the commitment that their colleagues will not be alone in their fight against this disease; and

WHEREAS, every third Saturday in August, chefs, physicians, nutritionists and fitness trainers around the world will gather to promote healthy living and cooking, uplift one another and give back to those who have already helped so many; and

WHEREAS, the citizens of Des Moines support their efforts in the fight against cancer, honor the survivors and remembering those who will forever live in our hearts.

NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS Saturday, August 16, 2014 as:

CHEFS APPRECIATION DAY

In Des Moines and call upon the people of Des Moines to join with us as we acknowledge this outstanding organization and exemplary individuals.

SIGNED this 5th day of June, 2014

Dave Kaplan, Mayor

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Eminent Domain

FOR AGENDA OF: June 5, 2014

ATTACHMENTS:

1. Draft Ordinance No. 14-088
2. Notice of Planned Final Action

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: May 23, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation

The purpose of this item is to enact Draft Ordinance No. 14-088.

Suggested Motion

Motion: “I move to enact Draft Ordinance No. 14-088, 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.”

Background

Draft Ordinance No. 14-088 was originally presented to the City Council on May 1, 2014, and was passed to a second reading on May 22, 2014 and continued to June 5, 2014 for final action. The attached Notice of Planned Final Action was presented to the City Council on May 22, 2014.

Discussion

Draft Ordinance No. 14-088, directing the City Attorney to commence action in Superior Court for the acquisition by eminent domain of the property described in Draft Ordinance No. 14-088, is hereby

presented for Council consideration following publication in the legal newspaper as provided in RCW 8.25.2902(b)(1).

Alternatives

To not pass Draft Ordinance No. 14-088, and not proceed with the Transportation Gateway Project, S. 216th Street, Segment 1-A.

Recommendation or Conclusion

It is recommended that City Council enact Draft Ordinance No. 14-088.

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 5th day of June, 2014 and signed in authentication thereof this 5th day of June, 2014.

M A Y O R

APPROVED AS TO FORM:

Assistant 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

Exhibit A

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

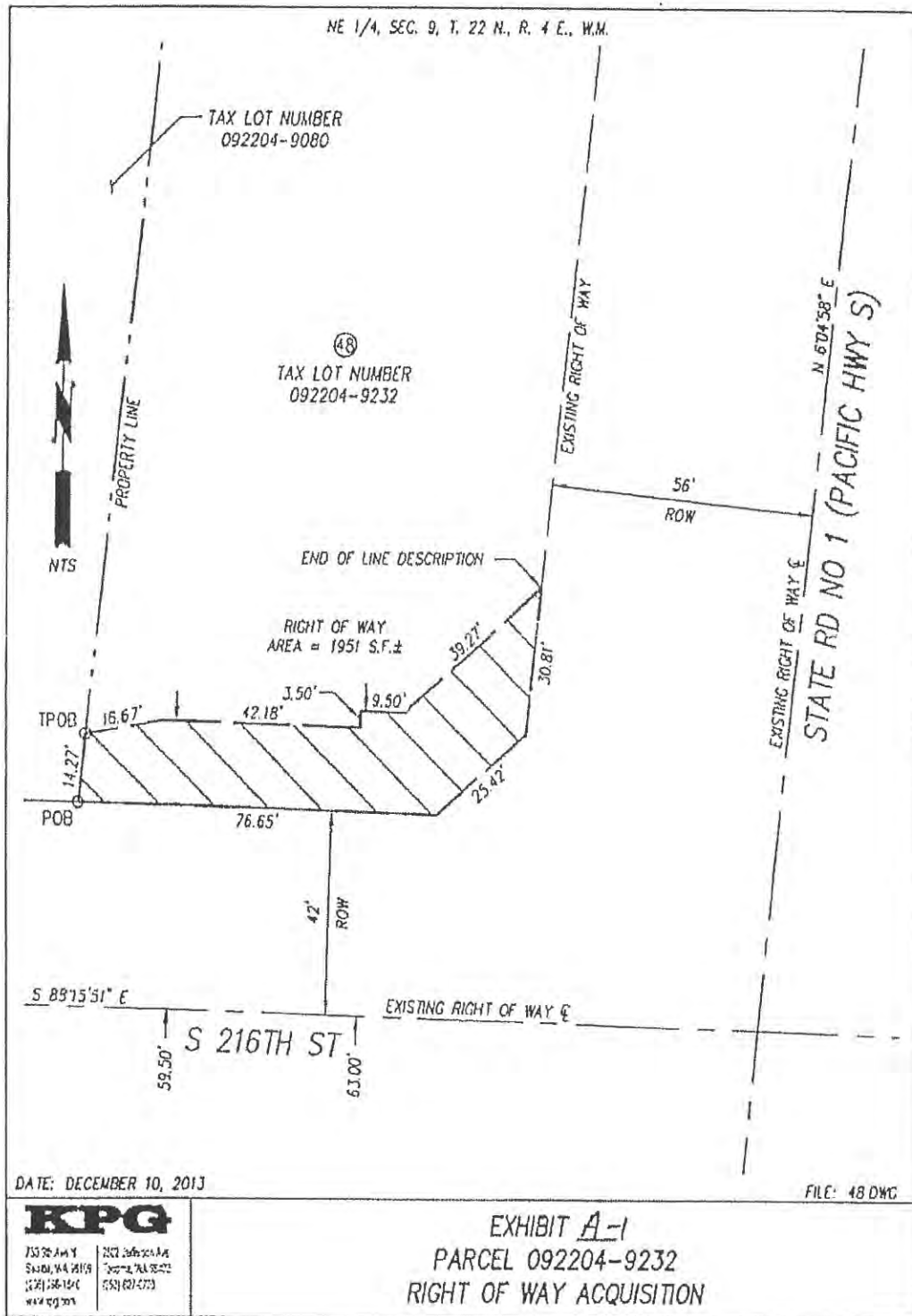


Exhibit A

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 89.50 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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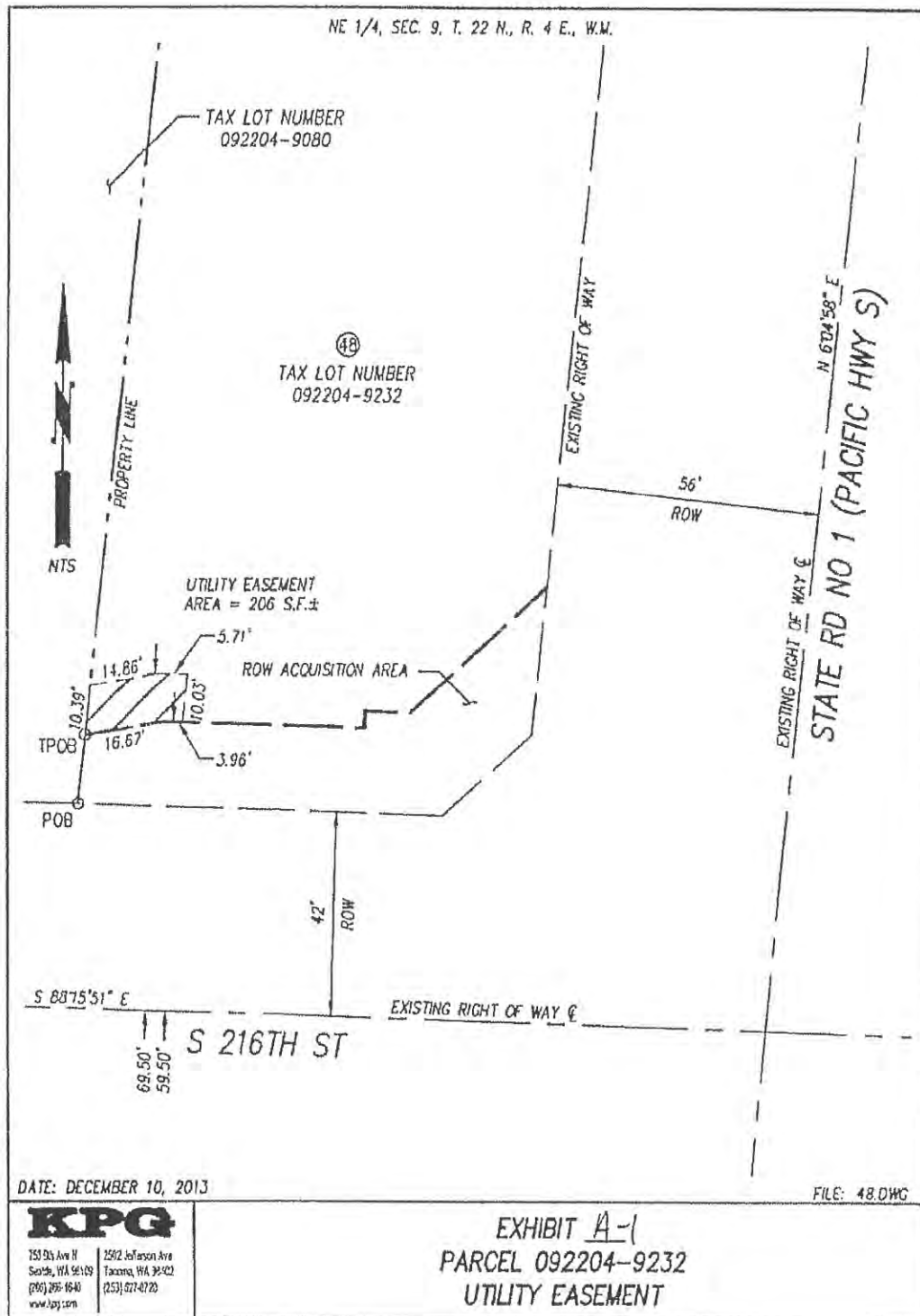
ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF DES MOINES BY DEED RECORDED UNDER RECORDING NO. 9610080753;

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 A. Bowie
12/11/13



**NOTICE OF PLANNED FINAL ACTION
City of Des Moines Eminent Domain Proceedings
(RCW 8.25.290)**

Subject Property:	21449 Pacific Highway S. Des Moines, WA 98198
King Co. Tax Parcel No.:	092204-9232
Record Property Owner on County Tax Roll:	Bun Hwa, Inc.

NOTICE IS HEREBY GIVEN that the Des Moines City Council, condemnor, will consider taking final action by approval and passage of a condemnation ordinance that will authorize the City Attorney to commence eminent domain (condemnation) proceedings against the above-described subject property.

The date, time, and location fixed for Council consideration of this proposed condemnation ordinance is Thursday, May 22, 2014 and Thursday June 5, 2014 (for final action) at 7:00 p.m. in the Des Moines City Council Chambers, located at 21630 11th Avenue So., Suite B, Des Moines, WA 98198.

/s/ Bonnie Wilkins
Des Moines City Clerk

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: CDBG Grant Authorization

FOR AGENDA OF: 6/5/2014

ATTACHMENTS:

1. Draft Resolution No. 14-120

DEPT. OF ORIGIN: Parks, Recreation and Senior ServicesDATE SUBMITTED: 5/23/2014

CLEARANCES:

☒ Legal LG☒ Finance pl☐ Marina _____☒ Parks, Recreation & Senior Services 92☐ Planning, Building & Public Works N/A☐ Police N/A☐ Courts N/AAPPROVED BY CITY MANAGER
FOR SUBMITTAL SA

Purpose and Recommendation

The purpose of this agenda item is to receive Council's approval of Draft Resolution No. 14-120 to ratify City Council's unanimous vote made on May 22, 2014 to submit a 2015 King County Community Development Block Grant (CDBG) Capital Funding application for the Parkside Park Renovation Project. The CDBG application requires that the applicant attach a copy of City Council's authorization to the grant application. The application was submitted to the King County Department of Community and Human Services on May 30, 2014.

Suggested Motion

Motion: "I move to adopt the Draft Resolution No.14-120 to ratify City Council's unanimous decision made at the May 22, 2014 Council meeting to authorize the submittal by the City Manager of a 2015 King County Community Development Block Grant Application to King County in the amount of \$395,000 for federal funds to make improvements to Parkside Park."

Background

The City's 2010 Parks, Recreation and Senior Services Master Plan identified improvements needed at Parkside Park. The Park is the only developed park located in a low to moderate income South Des Moines neighborhood serving 5,000 citizens. The Park is located one block south of Highline College and is located in the Transit Community Land Use Planning Area. The Project is in the City of Des Moines 2014-2019 Municipal Capital Program with proposed funding from CDBG and Department of Ecology (DOE). The DOE has identified that the Park has levels of arsenic that exceed the established safety levels and will provide \$119,499 funding to remove and replace contaminated soil in the park. The City wishes to submit a project application to the King County CDBG in the amount of \$395,000 to make additional park improvements. Application submission to CDBG requires City Council authorization. This project application was due on May 30, 2014.

Discussion

Parkside Park is in a beautiful setting but needs vegetation and amenity improvements to make the park safer, user friendly and accessible to the surrounding low to moderate income neighborhood. The park's entryways are in poor condition and are not ADA accessible. Much of the park perimeter is overgrown with blackberry bushes, dense brush, some unhealthy trees and has a damaged drainage culvert that needs to be addressed to enhance site safety and security. Portions of the 3,678 linear feet of fencing around the park perimeter need repair or replacement. Hillside re-grading is necessary to create accessible pathways to an open play area and to add ADA parking at the corner of 25th Avenue S. and S. 244th Street. There is 10,000 cubic feet of arsenic contaminated soil located near the 25th Ave. S. entrance that is slated for removal and replacement by the Department of Ecology. The existing sports court needs new hoops, asphalt restoration, fencing along its south side and seating area repair. The nearby swing set is out of date needs to be removed. Along the pathways, picnic tables, garbage cans and park benches are needed. The CDBG and DOE funding is needed to renovate this park located in the South Des Moines Neighborhood.

Alternatives

None Provided.

Financial Impact

The Parkside Park Project is identified in the 2014- 2019 CIP with funding provided by the King County CDBG and the State DOE. No City of Des Moines funds are proposed for this project. If approved, the CDBG grant request for \$395,000 would supplement the \$119,499 funds from the DOE to make these needed improvements. If the CDBG funds are not approved, the DOE will move ahead with its project to remove 10,000 cubic feet of soil contaminated with arsenic to 12 inches deep at no cost to the City of Des Moines.

Recommendation/Conclusion

This project was approved by City Council in the 2014-2019 CIP. City Council authorized the City Manager to submit the application for King County CDBG Capital Funding at its May 22, 2014 meeting.

CITY ATTORNEY'S FIRST DRAFT, 5/23/2014**RESOLUTION NO. 14-120**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the City Manager to submit a grant application for a Community Development Block Grant (CDBG) to the King County Department of Community and Human Services, for the funding of Parkside Park Renovation Project.

WHEREAS, The City of Des Moines has approved Capital Improvement projects for Parkside Park, and

WHEREAS, under the provisions of CDBG, federal funding assistance is requested to finance the improvements for Parkside Park, and

WHEREAS, The City of Des Moines considers it in the best public interest to make improvements to Parkside Park; now therefore,

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

Sec. 1. The City of Des Moines City Manager is authorized to make formal application to the King County Department of Community and Human Services for CDBG funding assistance.

Sec. 2. Any fund assistance received from Community Development Block Grant Funds (CDBG) will be used for the Parkside Park Renovation Project.

Sec. 3. This resolution shall become part of a formal application to the King County Department of Community and Human Services.

Sec. 4. The City Manager is authorized to sign and submit a grant application to the King County Department of Community and Human Services for the Parkside Park Renovation Project.

Resolution No. ____
Page 2 of 2

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

A G E N D A I T E M

SUBJECT: Draft Resolution 14-123 Accepting Findings of Fact That An Emergency Existed for the Des Moines Field House

ATTACHMENTS:

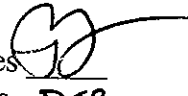
1. Draft Resolution No. 14-123
2. Emergency Declaration

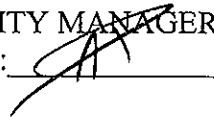
AGENDA OF: June 5, 2014

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: May 29, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this item is to present findings of the existence of an emergency resulting from groundwater intrusion at the Des Moines Field House, and acceptance of those findings by the City Council thereby justifying emergency contracts authorized by the City Manager and approved by the City Council at the May 22, 2014 meeting. The following motion will appear on the consent calendar:

Suggested Motion:

"I move to adopt Draft Resolution No. 14-123 accepting findings that an emergency existed on March 11, 2014 at the Des Moines Field House which justified the City's entering into an emergency contract to provide the necessary groundwater intrusion remediation and repair and restoration services."

Background:

March 2014 experienced historically high heavy rainfall amounts. Staff battled with groundwater intrusion during the first week and a half of March. On March 11, 2014, a significant amount of groundwater entered the Field House basement and caused the vinyl flooring to bubble up in many places. WCIA was contacted, and a claim for damages filed. Pursuant to RCW 39.04.280(3)(b), immediate action was required to prevent further property damage.

Discussion:

Staff contacted Belfor Property Restoration (a remediation company recommended by WCIA, that specializes in this type of work) to provide the necessary groundwater intrusion remediation and permanent repair and restoration services. Belfor responded within eight (8) hours of being notified and began the work shortly after to insure no further damage was done to City buildings.

Insurance claim scopes of work and costs are seldom known at the onset of remediation. Belfor has worked with WCIA every step of the way, and gotten verbal approvals before proceeding further into areas where uncertainty existed.

RCW 39.04.280 allows City's to waive competitive bidding requirements under certain circumstances; one of those is when an emergency exists. Emergency is defined in RCW 39.04.280(3)(b) as being an unforeseen circumstance beyond the control of the municipality that "will likely result in material loss or damage to property." In this situation, it was imperative to begin work immediately to address groundwater intrusion to ensure that no further damage was done to City property.

Financial Impact:

The WCIA insurance deductible for this event is \$25,000. A contract was awarded to Belfor Construction on May 22, 2014 for the remediation and restoration work in an amount not to exceed \$100,000. WCIA will reimburse the City for all event costs, except for the \$25,000 insurance deductible.

Recommendation/Conclusion:

Staff recommends that Council approve Draft Resolution No. 14-123.

Concurrence:

The Finance, Legal, Parks, and Planning, Building & Public Works Departments concur.

CITY ATTORNEY'S FIRST DRAFT 05/28/2014

DRAFT RESOLUTION NO. 14-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, accepting findings that an emergency existed on March 11, 2014 which justified the City's entering into an emergency contract to provide the necessary groundwater intrusion remediation and repair and restoration services at the Des Moines Field House.

WHEREAS, on March 11, 2014, the City experienced historically high heavy rainfall amounts, and

WHEREAS, a Declaration of Emergency was issued by the City Manager, thereby waiving competitive bidding requirements for any emergency related work, and

WHEREAS, emergency related work included efforts to assess and mitigate the effects of the groundwater flooding, and

WHEREAS, the City entered into an emergency goods and services construction contract to respond to, assess, and mitigate the effects of the groundwater flooding, and

WHEREAS, the City Council has been briefed on the situation now therefore,

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

Sec. 1. The foregoing recitals are adopted as findings of fact.

Sec. 2. The City Council finds that, under these circumstances, an emergency existed as defined by RCW 39.04.280(3), justifying execution of an emergency goods and services construction contract without compliance with competitive bidding requirements of state law.

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.

Resolution No. ____
Page 2 of ____

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

5/28/14 9:21 AM

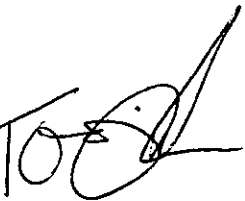
MEMO

Date: May 28, 2014

To: Dan Brewer, PBPW Director

Cc: Pat Bosmans, City Attorney

From: Tony Piasecki, City Manager



Re: Declaration of Emergency – Des Moines Field House Water Ground Water Intrusion

March 2014 experienced historically high heavy rainfall amount. Staff battled with groundwater intrusion during the first week and a half of March. On March 11, 2014, a significant amount of groundwater entered the Field House basement and caused the vinyl flooring to bubble up in many places. WCIA was contacted, and a claim for damages filed. Pursuant to RCW 39.04.280(3)(b), immediate action was required to prevent further property damage.

Staff contacted Belfor Property Restoration (a remediation company recommended by WCIA, that specializes in this type of work) to provide the necessary groundwater intrusion remediation and permanent repair and restoration services. Belfor responded within eight (8) hours of being notified and began the work shortly after to insure no further damage was done to City buildings.

Under the authority of RCW 39.04.280(1)(c), I hereby declare an emergency existed to respond to the situation in whatever way was necessary according to the judgment of our PBPW Director to prevent further damage to the Des Moines Field House.

The PBPW Director authorized to waive competitive bidding requirements and award all necessary contracts on behalf of the City to address the emergency.

You are further directed to prepare written findings of the existence of this emergency for presentation to the City Council at their next meeting, June 5, 2014.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Ordinance No. 14-035 Adding A New Transit Community Zone to Title 18, Zoning Code and Extending Other Development Regulations and Tax Exemptions to that Zone

FOR AGENDA OF: June 5, 2014

DEPT. OF ORIGIN: Planning, Building and Public Works

ATTACHMENTS:

DATE SUBMITTED: May 27, 2014

1. Draft Ordinance No. 14-035 Adding a New Chapter entitled "T-C Transit Community Zone" and Making Other Amendments to Titles 3, 14 and 18 of the DMMC.
2. Ordinance No. 1457 Adopted March 26, 2009 Establishing Multifamily Tax Exemption Program
3. Proposed Zoning Map - Excerpt
4. Proposed changes to Titles 18, 14 and 3 in Track Changes with Marginal Comments and Open Policy Questions
5. Public Comments from the March 26, 2014 Pacific Highway South Subarea Planning Open House.
6. Highline Place Mixed-Use College Housing Project (preliminary)
7. May 20, 2014 Email Response to Mr/Ms Ashurst re: LUA2014-0011 – Hwy 99 Re-Zoning Proposal Concerns
8. Draft June 5th Powerpoint Staff Presentation

CLEARANCES:

- ☒ Legal JB
- ☒ 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 N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AR

Purpose and Recommendation

The purpose of this agenda item is for City Council 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 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, 18.250.070, 14.05.130, extending the Residential Target Area for the Multifamily Tax Exemption in DMMC 3.96, and codifying a new chapter in Title 18 DMMC.

Suggested Motions:

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No 14-035 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 14-035, adding and codifying 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, 18.250.070, and 14.05.130, re-adopting the Findings of Fact in Ordinance No. 1457 establishing the Multifamily Tax Exemption (Exhibit 1 to Attachment 2) and extending the Residential Target Area for the Multifamily Tax Exemption in DMMC 3.96 to the new T-C Zone.”

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.

The Finance & Economic Development Committee met in January, February, April and May 2014 to review and provide policy direction in the development of Draft Ordinance 14-035 (Attachment 1). Attachment 4 is a "redline" version of the changes to Title 18 with marginal comments and policy questions referred by the Committee to the full Council.

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, Highline Community College, property and business owners, and residents adjacent to the corridor. The goal is to transform the South 240th Street/Highline Community College area from a lower density, auto-oriented strip development to a mixed use employment/activity center that capitalizes on the opportunities provided by Highline Community College 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 (Attachment 5) 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 was directed by the City Council 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.

One such project is Highline Place, a mixed-use college housing project being considered for 3 parcels on Pacific Highway South at the northeast corner of Highline Community College (HCC). Preliminary planning is illustrated in the nine images at Attachment 6. This concept is consistent with the regulations in the Draft Ordinance except for the building height on the northwest corner of the project adjacent to the abutting single family homes. *It should be emphasized that the project proponent is still evaluating the feasibility of the project and no development application has been submitted to the City.*

Staff anticipates the comprehensive planning work in the HCC area and further south along the Pacific Highway South corridor will be able to be completed by the late fall of 2014, which coincides with the anticipated publication of Sound Transit's Federal Way Link Extension Draft EIS.

The Draft Ordinance will allow for the planning area to 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.

The Finance & Economic Development Committee provided direction on 10 policy questions identified by staff. The Committee asked that the following additional 7 policy questions be raised to the full Council in considering the Draft Ordinance:

1. Should the proposed zone be called "Transit Community (T-C) Zone" as proposed by staff? "Midway", "Highline" and "College" have been other suggestions.
2. Are proposed 75 and 100 feet maximum building heights okay?
3. Is the proposed 35 foot building height 20 feet from the rear property line appropriate to provide appropriate privacy to adjoining single family homes?
4. Is the proposed delegated authority to approve uses similar to but not specifically enumerated in Table 18.52.010B as recommended by the Committee okay?
5. Should stand alone surface and paid parking for the next 10 years as recommended by the Committee be permitted in the T-C Zone?
6. Should the T-C Zone extend south of South 240th Street to include Ryder Truck and Sea Mar Community Health Center (under construction)? If not, should the preferred land use for this area be shown as T-C in the Comprehensive Plan?
7. Should the Multifamily Tax Exemption (MFTE) now available to qualifying projects in Pacific Ridge until March 26, 2019 under the conditions set forth in DMMC 3.96 (pages 19-28 of Attachment 4) be extended to the T-C Zone? Or should the MFTE program be available for a shorter period?

If Draft Ordinance 14-035 is adopted, staff will do the following:

1. Complete the HCC-area planning and propose appropriate Comprehensive Plan changes.
2. Extend that planning along the Pacific Highway South corridor to South 272nd Street and update the Community Commercial and remaining Highway Commercial zoning regulations to reflect FWLE alignment and station possibilities.
3. Draft design standards for high capacity transit facilities in conjunction with our Pacific Highway South planning work. These design standards for high capacity transit (HCT) facilities are intended to encourage facilities and stations that are well designed and provide distinctive community focal points; connections between the transit network, adjacent development, and community vehicular, pedestrian and bicycle routes; incorporation of pedestrian-oriented furnishings and a variety of public spaces; adequate buffers between different types of land uses; and use of alternative travel modes to single occupant vehicles. For example, design standards could relate to station design, architectural expression, site furnishings, lighting, platform landscaping and associated open space, restroom facilities, bicycle parking areas, etc. These standards might not be applicable if the Sound Transit Board ultimately identifies a station location in the City of Kent when that decision is made in July 2016, but such standards will best position Des Moines in commenting on the DEIS alternatives in January 2015 and negotiating mitigation in conjunction of the preferred alternative in conjunction with the publication of the Final EIS in April 2016.

Alternatives

The City Council may:

1. Enact the proposed Draft Ordinance.
2. Enact the proposed Draft Ordinance with changes.
3. Decline to enact the Draft Ordinance as this time.

Financial Impact

Planning for the Midway Area builds upon the recent efforts completed for Pacific Ridge and will help foster a stronger 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, Highline Community College, 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 and the Finance & Economic Development Committee recommends that City Council adopt Draft Ordinance No. 14-035.

CITY ATTORNEY'S FIRST DRAFT 05/27/2014**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 and codifying 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, 18.250.070, 14.05.130, expanding the residential target eligibility area to the Transit Community Zone for multifamily tax exemption in DMMC 3.96.010 and 3.96.040.

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

Transit Community Zone_052714

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WHEREAS, Parks, Recreation and Open Space Strategy 6-02-04 identifies the Pacific Highway Business Districts in Midway 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 higher density 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, in 2012 the Legislature expanded the purpose of RCW 84.14.007 that provides for multi-family tax exemptions to stimulate housing opportunities near college campuses to promote dense, transit-oriented walkable college communities, and

WHEREAS, the purpose of the Multifamily Tax Exemption as established by RCW 84.14.007 is to encourage and stimulate the construction of new multifamily housing opportunities in cities that are required to plan under the Growth Management Act where the governing authority of the affected city has found that there are insufficient housing opportunities, and

WHEREAS, the City of Des Moines adopted Ordinance Nos. 1457, 1540 and 1550 first creating and then amending Chapter 3.96 DMMC providing a tax exemption as an incentive to facilitate the development of market rate multiple-unit dwellings in the City of Des Moines and identifying the Pacific Ridge Neighborhood as the area to provide the majority of the

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new housing necessary to achieve the City's mandated 2020 growth targets, and

WHEREAS, extending the Multifamily Tax Exemption to include the proposed T-C Zone would provide further incentive to facilitate the development of market rate multiple-unit dwellings in the City of Des Moines, and

WHEREAS, the *Des Moines Comprehensive Plan* Policy 7-03-06 of the Housing Element states that the City should "[P]romote compatible residential development that is affordable to all economic segments of the Des Moines community", 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

WHEREAS, the City Council set the date for the public hearing by Resolution No. 1263, fixing the public hearing for June 5, 2014 as required, and

WHEREAS, RCW 84.14.040 (3) requires that notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the

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hearing generally identifying the area proposed to be designated as a residential targeted area, 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 May 12, 22 and 29, 2014 in accordance with the DMMC and RCW 84.14, and

WHEREAS, a public hearing was held on June 5, 2014 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, 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

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

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(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
50 - 60	4
60 - 70	4.5
70 - 80	5

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Building Height	T-C FAR
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 Titles 12 and 14 DMMC, 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;

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

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(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 curblin 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 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.

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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.

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.

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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
Accessory buildings and uses (as described in the applicable zone)	P	P	P	P	P	P	P	<u>P</u>
Admin, support services	P/L[3]		P	P/L[16]	P/L[22]		P	<u>P</u>
Adult family homes				P	P		P	<u>P</u>
Adult entertainment facilities							P/L[46] [5366]	
Adult theaters						P/L[35]	P/L[46] [5366]	
Amusement and recreational services				P/L[16]	P/L[22]			
Amusement parks	CUP	CUP	CUP	CUP		CUP	CUP	<u>CUP</u>
Animal or veterinary services			P	P	P	P	P	<u>P</u>
Antenna system (one)	P/L[6]							
Animal grooming	P/L[3]		P	P	P		P	<u>P</u>
Antenna systems (not accessory)	CUP	CUP	CUP	CUP	CUP	CUP	CUP	<u>CUP</u>
Apparel and accessories stores	P/L[1]		P	P	P	P	P	<u>P</u>
Arrangement of passenger transportation	P/L[3]			P	P		P	<u>P</u>
Art galleries	P			P	P		P	<u>P</u>
Art, glassware manufacturing			P	P	P			
Art, ornamental ware				P	P			
Arts, entertainment, and recreation facilities				P/L[16]	P/L[22]		P	<u>P</u>
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	<u>P/L[53]</u>
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		<u>P/L[54]</u>
Ballparks	CUP	CUP	CUP	CUP	CUP	CUP	CUP	
Banks				P	P		P	<u>P</u>
Barber, beauty and hairstyling shops	P/L[3]			P	P		P	<u>P</u>
Bed and breakfast facilities				P	P		P	<u>P</u>
Boats, building and repairing (less than 48 feet)						P	P	
Boats, repair/ sale						P	P	
Boat moorage	P/L[3]					P/L[42]		
Botanical and zoological gardens				P	P		P	
Bookbinding			P			P		<u>P</u>
Boosting stations	UUP	UUP	UUP	UUP		UUP	UUP	<u>UUP</u>
Boxing and wrestling arenas	CUP	CUP	CUP	CUP		CUP	CUP	<u>CUP</u>
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	<u>P</u>

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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
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	<u>P</u>
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	<u>P</u>
Community gardens				P	P			
Community housing services				P/L[5668]	P/L[5668]			
Confectionery, manufacture			P			P		P/L[55]
Contractors, general	P/L[3]		P/L[14]			P	P	<u>P</u>
Convention facilities			P	P	P	P		<u>P</u>
Correctional institutions			P					
Couriers and messengers	P/L[3]		P				P	<u>P</u>
Data processing, business and record storage	P/L[3]		P	P	P	P	P	<u>P</u>
Day care centers and mini day care providers	CUP	CUP	CUP	CUP	CUP		CUP	<u>CUP</u>
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	<u>P</u>
Educational services		P	P/L[7]	P	P/L[27]	P/L[37]	P	<u>P</u>
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[5568]		P/L[5568]	P/L[68]
Financial and insurance services			P	P	P		P	<u>P</u>
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	<u>P</u>
Footwear and leather goods repair	P		P	P	P	P	P	<u>P</u>
Foreign trade			P/L[13]					
Fraterpal organizations/societies		P	P/L[7]	P	P		P	<u>P</u>
Fuel dealers, other							P	
Furniture, home furnishings and equipment, sales	P/L[1] [2]		P	P	P	P	P	<u>P</u>
Furniture, repair	P/L[2] [3]		P	P	P	P	P	<u>P</u>
Gambling, amusement, and recreation industries			P/L[7]	P/L[16]	P/L[22]		P	<u>P</u>
Garages, public						P/L[30]		
General merchandise stores	P/L[1]		P/L[9]	P/L[15]	P/L[21]		P	<u>P</u>
Glass, edging, beveling, silvering			P			P/L[31]		

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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
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[5669]	P/L[5669]	P		P/L[5669]	P/L[69]
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[167]54]	P/L[67]		P/L[67]54]		P/L[67]
Marijuana Retailer, Recreational				P/L[167]54]		P/L[167]54]		P/L[67]
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
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

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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
Photocopying and duplicating services	P/L[1][3]		P	P	P		P	<u>P</u>
Photo finishing	P/L[1]		P	P	P	P	P	<u>P</u>
Planned unit development	P							
Postal service	P		P	P	P		P	
Professional, scientific, technical services	P/L[3]		P	P	P		P	<u>P</u>
Professional offices, medical, dental	P/L[3]		P	P	P		P	<u>P</u>
Public administration facilities	P		P	P/L[17]	P/L[25][23]		P/L[49]	<u>P/L[59]</u>
Public facilities	P		P/L[10]	P	P/L[25]		P	<u>P</u>
Public utility facilities	P/L[4]		P/L[10]	P/L[17]	P	P/L[34]	P/L[52]	<u>P/L[60]</u>
Publishing, telecommunications, internet service providers, data processing services	P/L[3]		P	P	P	P	P	<u>P</u>
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	<u>P</u>
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	<u>P</u>
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	<u>P</u>
Retail services and trade	P/L[1]		P/L[7]	P/L[15][19]	P/L[21]	P	P/L[43]	<u>P</u>
Retirement housing		P		P	P		P	<u>P</u>
Reupholster	P		P	P/L[19]	P	P	P	<u>P</u>
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]	<u>P/L[61]</u>
Spectator sports	CUP		CUP	P	P		P	
Stadiums	CUP	CUP	CUP	CUP		CUP	CUP	
Supermarkets	P/L[1]		P	P	P		P	<u>P</u>
Taverns and cocktail lounges	P/L[1]		P	P	P	P/L[38]	P	<u>P</u>
Telecommunication facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	<u>CUP</u>
Telephone exchanges						P		
Tire sales and service	P/L[3]						P	
Theaters				P	P	P/L[35]	P	<u>P/L[63]</u>
Towing operations						UUP		
Transportation and wholesale trade			P/L[11]					
Water transportation					CUP			
Welding repair	P/L[2][3][570]		P	P/L[16][570]	P/L[570]	P	P	
Wholesale business			P			P		<u>P/L[64]</u>

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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
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

(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.

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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);
- (b) General merchandise stores (53);

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- (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);
- (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).

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);
- (e) Apparel and accessory stores (56);
- (f) Home furniture, furnishings, and equipment stores (57);

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(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);

(o) Engineering, accounting, research, management, and related services (87); and

(p) Services, not elsewhere classified (89).

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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;

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

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(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.

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.

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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 (531113) 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.

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;

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(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.

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.

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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 except that existing on June 30, 2014.

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.

(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.

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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.

57,64. 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.

65. Self-storage/ mini-warehouse leasing. This regulation applies to all parts of Table 18.52.010B that have a [53]. Only public storage existing on June 30, 2014 shall be permitted.

All Zones

58,66. Adult Entertainment Facilities. This regulation applies to all parts of Table 18.52.010B that have a [5366]. Adult entertainment facilities are subject to the additional standards of chapter 18.16 DMMC and chapter 5.48 DMMC.

59,67. Recreational Marijuana. This regulation applies to all parts of Table 18.52.010B that have a [6754]. State licensed marijuana producers, processors, and retailers may locate in the City of Des Moines pursuant to chapter 18.250 DMMC.

60,68. Family Day Care Providers. This regulation applies to all parts of Table 18.52.010B that have a [6855]. A family day care provider home facility is a permitted use in all zones, subject to the conditions in chapter 18.180 DMMC.

61,69. Social Service Facilities. This regulation applies to all parts of Table 18.52.010B that have a [6956]. 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.

62,70. Welding Repair. This regulation applies to all parts of Table 18.52.010B that have a [7057]. Welding repair in 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 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

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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~~, 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(2) and subsection 22(2) 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:

(2) Commercial Zones.

- (a) N-C Neighborhood Commercial;
- (b) I-C Institutional Campus;
- (c) B-C Business Commercial;
- (d) B-P Business Park;
- (e) C-C Community Commercial;
- (f) D-C Downtown Commercial;

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- (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(12), (15), (17), and subsections 513(12), (15), and (17) 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:

(12) Personal Services.

(a) C-C Zone: one parking space per 300 square feet of gross floor area.

(b) D-C, —and PR and T-C 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.

...

(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.

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(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.

...

(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.

...

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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.

(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)

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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 16(2) of this Ordinance.

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

Sec. 17. DMMC 14.05.130 and section 23 of Ordinance No. 1581 is amended to read as follows:

14.05.130 Five-story wood frame buildings. The following sections, DMMC 14.05.140 through 14.05.220, shall be applicable to the following zoning classifications:

Pacific Ridge Commercial, Pacific Ridge Residential, and Business Park, Zones and Transit Community Zones.

Sec. 18. DMMC 3.96.010 and Section 1 of Ordinance No. 1457 and Section 1 of Ordinance No. 1540 are amended to read as follows:

3.96.010 Findings of fact.

This chapter shall be known as the multifamily tax exemption ordinance (hereinafter MFTE). The findings of fact set forth in Exhibit 1, attached to the ordinance codified in this chapter and incorporated by this reference, are re-adopted in full by the city council in support of its decision to designate areas of the Pacific Ridge neighborhood and Transit Community Zone as illustrated in DMMC 3.96.040, Figure 1, as a

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residential target area as required by chapter 84.14 RCW.

Sec. 19. DMMC 3.96.040 and section 4 of Ordinance No. 1457, Section 2 of Ordinance No. 1540, and Section 1 of Ordinance No. 1550 are amended to read as follows:

3.96.040 Project eligibility.

To be eligible for the MFTE the property sought to be exempted shall satisfy all of the following requirements:

(1) The property shall be located within the RTA area, which is the area within the Pacific Ridge neighborhood south of South 216th Street and the area of Pacific Highway South within the Transit Community (T-C) Zone, as illustrated below on Figure 1:



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(2) The MFTE shall only be available for a maximum of 3,000 residential units or 10 years after the approval date of Ordinance No. 1457 (March 26, 2009), whichever occurs first.

(3) The property sought to be exempted shall be developed in a manner that furthers the city's goals and objectives for the Pacific Ridge neighborhood and Transit Community Zone in the Des Moines comprehensive plan, the Pacific Ridge neighborhood improvement plan and integrated draft environmental impact statement, and DMMC ~~18.31.010~~ 18.135.030 and section 3 of this ordinance as adopted or subsequently amended.

(4) The project sought to be exempted must be multifamily housing within a residential structure or as part of a mixed use development consistent with the following requirements:

(a) Building(s) shall be a minimum of 50 feet in height as calculated by DMMC ~~18.31.090(7)~~ 18.135.070(6), 18.190.070 and section 6(6), (7) and (10) of this Ordinance.

(b) Building(s) shall contain a minimum of 60 residential units.

(c) A minimum of 50 percent of the space within such residential structure or mixed use building shall be for permanent residential occupancy.

(5) The property owner(s) shall be required to have 24-hours-a-day/seven-days-a-week on-site property management by a professional management company with a minimum of five years of experience in providing property management for large-scale residential projects. The property owner(s) shall

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also be required to provide 24-hours-a-day/seven-days-a-week private security on site, to include on-site security offices, office space for public safety use, and video camera monitoring.

(6) The property sought to be exempted shall be developed in a manner that increases or preserves property valuation, and the development of the property must represent an increased investment in the property that results in an increase in the overall property values in the area.

(7) The taxes collected during the MFTE period shall be sufficient to cover the city's costs required to provide necessary services to the residents of the property sought to be exempted. If the city determines that taxes collected do not cover the city's costs required to provide necessary services to the residents of the property sought to be exempted, the property owner(s) shall make an annual payment in lieu of taxes to cover the estimated difference.

(8) The project shall comply with all applicable Des Moines Zoning Code, land use regulations, and other requirements, including those contained in Titles 12, 14, 16, 17, and 18 DMMC.

(9) Construction of any project approved with an MFTE shall be completed within three years from the date of approval of the MFTE by city council as provided in DMMC 3.96.060.

NEW SECTION. **Sec. 20. Codification.** Sections 1 through 9 of this Ordinance shall be codified as a new chapter in Title 18 DMMC entitled "T-C Transit Community Zone".

NEW SECTION. **Sec. 21. Severability - Construction.**

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

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

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

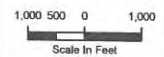
Published: _____

DRAFT
Exhibit A
Zoning

- R-10 Residential: Suburban Estates
- R-16 Residential: Suburban Estates
- R-20 Residential: Single Family 15,000
- R-30 Residential: Single Family 9,000
- R-40R Residential: Single Family 900
- R-720R Residential: Single Family 700
- R-80 Residential: Single Family 400
- RA-300 Residential: Attached Townhomes & Duplex
- RM-240R Residential: Multifamily 2400
- RM-1800 Residential: Multifamily 1800
- RM-800R Residential: Multifamily 800
- S-1000 Residential Service
- RI-900 Residential Office
- C Commercial
- N-C Neighborhood Center
- B-C Community Business
- C-O Commercial
- G-O General Commercial
- P-P Professional Park
- H-C Highway Commerce
- I Industrial Campus
- S Special Commercial
- Pacific Ridge
- PR-C Pacific Ridge Residential
- PR-C Pacific Ridge Commercial
- PR-C Pacific Ridge Professional Office Development Plan for Development Plan for
- P Planned Use Development
- O One Mission City Limits
- No Future
- Tolerance

Expenditure	Expenditure	2010-11 (Rs.)
Acquisition of digital printing press	72.00	May 2, 1993
Construction of a house	12.00	May 17, 1993
Remittance from JALP to India	12.00	June 7, 1993
Travel to India by car	7.00	July 20, 1993
Medical expenses, general	10.00	September 1, 1993
Medical expenses, special	10.00	October 11, 1993
Salary/Commission income	13.75	December 15, 1993
Remittance from India	10.00	March 7, 1994
Construction Fund	60.00	December 6, 1997
Utilities income	60.00	June 26, 2000
Stock market income	10.00	December 15, 2001
Salaries and	10.00	July 26, 2002
Additional 2010-11 year	10.00	March 20, 2003
Family Village income	10.00	September 22, 2003

IN PROVIDING 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 use, distribution or use of the 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, codes, regulations and in USING THIS DOCUMENT, THE USER ASSUMES ALL RISK OF INJURY OR DAMAGE THAT MIGHT FLOW THEREFROM.



Planning, Building & Public Works

21630 11th Ave S, Suite D
Des Moines, WA 98198-6398
PHONE: (206) 870-7576 * FAX: (206) 870-6544
WEB: <http://www.desmoineswa.gov>

Map Name: Zoning Update
Map Generated: Apr 7, 2014
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ORDINANCE NO. 1457

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON creating a new chapter in Title 3 of the DMMC providing a tax exemption as an incentive to facilitate the development of market rate multiple-unit dwellings in the City of Des Moines.

WHEREAS, the State Legislature amended chapter 84.14 RCW to provide incentives for cities with a population of 15,000 or more to promote construction of multiple-unit dwellings to provide housing, and

WHEREAS, the goal of chapter 84.14 RCW is to stimulate new multifamily housing in targeted "residentially deficient" areas in order to meet the goals established by the Growth Management Act, and

WHEREAS, the purpose of the Multifamily Tax Exemption as established by RCW 84.14.007 is to encourage and stimulate the construction of new multifamily housing opportunities in cities that are required to plan under the Growth Management Act where the governing authority of the affected city has found there is insufficient housing opportunities, and

WHEREAS, the City seeks to accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented by the City's Comprehensive Plan, and

WHEREAS, the City has identified the Pacific Ridge Neighborhood, as established in the Des Moines Comprehensive Plan, as the area to provide the majority of the new housing necessary to achieve the City's mandated 2020 growth targets, and

WHEREAS, the City seeks to encourage and promote new multifamily developments, and,

WHEREAS, the City seeks to stimulate the construction of new multifamily housing, and

WHEREAS, the City seeks to increase the supply of multifamily housing opportunities within the City, and

WHEREAS, Strategy 2-04-08 of Land Use Element of the Des Moines Comprehensive Plan states that the City should "[E]ncourage improvement of the ... Pacific Ridge Neighborhood by working with the business community and other representative organizations to achieve the goals of the City of Des Moines Comprehensive Plan", and

WHEREAS, Policy 7-03-06 of the Housing Element of the Des Moines Comprehensive Plan states that the City should, "[P]romote compatible residential development that is affordable to all economic segments of the Des Moines community", and

WHEREAS, the intent of the Pacific Ridge Neighborhood as established by Goal 11-01-01 of the Pacific Ridge Element of the Des Moines Comprehensive Plan is "to transform Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, stable soils, and view potential. The transformation of Pacific Ridge will include replacement of lower-scale, existing buildings with new structures that will dramatically enhance the

Ordinance No. 1457
Page 2 of 12

appearance, character, economics, and safety of the area. Pacific Ridge will contain buildings and open spaces designed for pedestrians as well as the motorist. Pacific Ridge will be an area of businesses and residences. New buildings may be five to eight stories in height along Pacific Highway emphasizing retail and office uses. Between the development along Pacific Highway and Interstate 5, buildings may be eight (8) or more stories in height emphasizing residential high-rise home ownership with green open spaces and view corridors. This new community will exhibit superior design features that make Pacific Ridge inviting to residents and businesses, complement other areas of Des Moines, and foster community pride," and

WHEREAS, Policy 11-03-07 of the Pacific Ridge Element of the Des Moines Comprehensive Plan provides that the City should "promote redevelopment of Pacific Ridge properties to attract new or expanded businesses and commercial development to Pacific Ridge," and

WHEREAS, Strategy 11-04-02 of the Pacific Ridge Element of the Des Moines Comprehensive Plan provides that the City should "[E]ncourage land assemblage ... so that larger-scale development proposals can be considered ...", and

WHEREAS, Strategy 11-04-04 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City should "Encourage new residential development to offer owner-occupied dwellings," and

WHEREAS, DMMC 18.31.010, et seq., was enacted by the City to implement the Des Moines Comprehensive Plan, Pacific Ridge Neighborhood Improvement Plan, and other adopted policies for the commercial and residential areas of Pacific Ridge, and

WHEREAS, other objectives and purposes of DMMC 18.31.010, et. seq., are to, inter alia, provide development regulations to promote redevelopment of properties within Pacific Ridge to create attractive, safe, and desirable areas to work and reside; to establish higher density development to meet or exceed the City's population and employment growth targets specified by the countywide planning policies for King County; and to reduce the social problems caused by the existing structures and land uses such as high crime rates (especially major felony crimes), declining property values, unsafe and undesirable housing conditions, insufficient building and property maintenance, absentee property ownership/management, violation of zoning, construction, and health codes, transient residency, and marginal businesses, and

WHEREAS, the SEPA Planned Action evaluated a build out scenario for Pacific Ridge which assumed the development of 5,541 residential units and was adopted by Des Moines Ordinance 1298 as required by WAC 197-11-168, and

WHEREAS, Pacific Highway South (SR-99) is considered a regional transit corridor by King County METRO and Sound Transit, and

WHEREAS, both agencies have plans to expand service into and through the Pacific Ridge Neighborhood, i.e., King County

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Page 3 of 12

Executive's 'Rapid Ride' program will bring high speed bus transit through the Pacific Ridge along Pacific Highway South and Phase II Sound Transit would extend light rail from SeaTac Airport through the Pacific Ridge Neighborhood, and

WHEREAS, the City supports the development of high density multifamily housing that will complement and support high intensity mass transit, and

WHEREAS, the area identified as the Pacific Ridge Neighborhood meets the standard of a blighted area as defined in RCW 35.81.015, and

WHEREAS, the City Council finds that this ordinance is appropriate and necessary; now therefore,

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

Sec. 1. Findings of fact. This chapter shall be known as the Multi Family Tax Exemption Ordinance (hereinafter MFTE). The findings of fact set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to designate areas of the Pacific Ridge Neighborhood as illustrated in Exhibit 2 to this ordinance as a residential target area as required by chapter 84.14 RCW.

Sec. 2. Purpose. The purpose of this chapter is to establish the criteria for allowing an MFTE and to achieve the following purposes:

(1) To achieve the purposes and goals established by RCW 84.14.007;

(2) To accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented by Des Moines' Comprehensive Plan;

(3) To encourage additional housing in certain areas to support investment in public transit projects.

Sec. 3. Definitions. In construing the provisions of this chapter, the definitions set forth in RCW 84.14.010, now or hereafter amended, shall apply, unless modified by this section. The following definitions shall also apply:

(1) "Assessor" means the King County Assessor.

(2) The Multi Family Tax Exemption (hereinafter "MFTE") shall refer to the tax exemption allowed pursuant to this chapter.

(3) Project is the development that will occur on property where the MFTE is sought.

(4) Residential Target Area (hereinafter "RTA") means the area within the identified urban center that has been designated by the City Council as a targeted area in accordance with chapter 84.14 RCW

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Page 4 of 12

Sec. 4. Project eligibility. To be eligible for the MFTE the property sought to be exempted shall satisfy all of the following requirements:

(1) The property shall be located within the RTA area which is the area within the Pacific Ridge Neighborhood South of South 216th Street and North of South 221st Street as extended westerly to Pacific Highway South, east of Pacific Highway and west of Interstate 5. The RTA is illustrated on Exhibit 2 to Ordinance No. 1457:

(a) The RTA consists of two subareas identified as Zone 1 and Zone 2 on Exhibit 2.

(b) If there is a conflict between the above narrative description of the boundaries and Exhibit 2, Exhibit 2 controls.

(c) If a part of any legal lot is within the RTA as shown on Exhibit 2 then the entire lot shall be deemed to lie within the RTA.

(d) The MFTE shall only be available for a maximum of 3,000 residential units or 10 years after the approval date of Ordinance No. 1457, whichever occurs first.

(2) The property sought to be exempted shall be developed in a manner that furthers the City's goals and objectives for the Pacific Ridge Neighborhood in the Des Moines Comprehensive Plan, the Pacific Ridge Neighborhood Improvement Plan and Integrated Draft Environmental Impact Statement, and DMMC 18.31.010 as adopted or subsequently amended.

(3) The project sought to be exempted must be multifamily housing within a residential structure or as part of a mixed use development consistent with the following requirements:

(a) Zone 1 Standards:

(i) Building(s) shall be a minimum of fifty (50) feet in height as calculated by DMMC 18.31.090(7)(b).

(ii) Building(s) shall contain a minimum of eighty (80) residential units.

(iii) A minimum of fifty (50) percent of the space within such residential structure or mixed use building shall be for permanent residential occupancy.

(b) Zone 2 Standards:

(i) Building(s) shall be a minimum of one hundred (100) feet in height as calculated by DMMC 18.31.090(7)(a).

(ii) Building(s) shall contain a minimum of one hundred sixty (160) residential units.

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(iii) A minimum of fifty (50) percent of the space within such residential structure or mixed use building shall be for permanent residential occupancy.

(iv) Building(s) shall be constructed as condominiums for individual ownership.

(4) The property owner(s) shall be required to have twenty-four (24) hour a day/seven (7) days a week onsite property management by a professional management company with a minimum of five (5) years of experience in providing property management for large scale residential projects. The property owner(s) shall also be required to provide twenty-four (24) hour a day/seven (7) days a week private security onsite to include onsite security offices, office space for public safety use, and video camera monitoring.

(5) The property sought to be exempted shall be developed in a manner that increases or preserves property valuation, and the development of the property must represent an increased investment in the property that results in an increase in the over-all property values in the area.

(6) The taxes collected during the MFTE period shall be sufficient to cover the City's costs required to provide necessary services to the residents of the property sought to be exempted. If taxes collected do not cover the City's costs required to provide necessary services to the residents of the property sought to be exempted, the property owner(s) shall make an annual payment in-lieu of taxes to cover the estimated difference.

(7) The project shall comply with all applicable Des Moines Zoning Code, land use regulations, and other requirements, including those contained in Titles 12, 14, 16, 17, and 18 of the Des Moines Municipal Code.

(8) Construction of any project approved with a MFTE shall be completed within three years from the date of approval of the MFTE by City Council as provided in section 6 of this ordinance.

Sec. 5. Application procedure.

(1) The owner(s) of property seeking a MFTE under this chapter shall submit an application to the City, on a form provided by the City Manager. The property owner(s) shall verify the information contained in the application by oath or affirmation. The application shall contain such information as the City Manager may deem necessary or useful, and shall include:

(a) A brief written description of the project and preliminary schematic site and floor plans of the multifamily units and the structure(s) in which they are proposed to be located.

(b) A statement from the property owner(s) acknowledging the potential tax liability for the property when the MFTE ends.

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(c) The property owner(s) shall also provide the City with a declaration as to the owners interest in the property and identify any other parties with an ownership interest. If someone other than the property owner(s) is developing the property then the owner shall declare that the developer has authority to speak on behalf of the property owner(s) and to bind the property owner(s) by any representations made by that developer.

(2) At the time of application, the property owner(s) shall pay to the City an initial application fee as established by the City Manager to cover the cost of the City's review of the application and the cost to hire an independent consultant to complete a financial analysis of the economic impacts if the application is approved by the City Council. In addition, at the time of application, the property owner(s) shall pay to the City the fee required to cover the County Assessor's administrative costs. If the City Council approves the application pursuant to section 9, the City shall forward the fee for the County Assessor's administrative costs to the County Assessor. If the City Council denies the application pursuant to section 9, the City shall refund the fee for the Assessor's administrative costs to the property owner(s).

(3) The City Manager or designee shall notify the property owner(s) within twenty-eight days of the application being filed if the application is not complete and shall identify what additional information is required before the application will be deemed complete. Within fourteen days of receiving additional information, the City Manager or designee shall notify the property owner(s) in writing if the application is incomplete, and what additional information is necessary. An application shall be deemed to be complete if the City Manager or designee does not notify the property owner(s) in writing by the deadlines in this section that the application is incomplete; however, a determination of completeness does not preclude the City Manager or designee from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in this chapter. Failure to complete the application will be deemed to be an abandonment of the application.

(4) The application shall be approved before, but no later than, the date the building or other construction permit is issued under Title 14 DMMC.

Sec. 6. Application review - Issuance of Conditional Certificate - Denial - Appeal.

(1) The City Council shall approve or deny an application under this chapter. If the application is approved, the applicant shall enter into a MFTE Agreement with the City, subject to approval by resolution of the City Council, regarding the terms and conditions of the project and eligibility for the MFTE. The City Council's resolution to approve the applicant's contract with the City shall take place within ninety days of the City Manager's or designee's receipt of the completed application. Upon City Council approval of the contract, the City Manager or designee shall execute the contract as approved

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by the City Council, and shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate shall expire three years from the date of approval unless an extension is granted as provided in section 8.

(2) If the application is denied, the City Council shall state in writing the reasons for the denial and send notice of denial to the applicant's last known address within ten days of the denial.

(3) An applicant may ask for reconsideration if the City Council denies the application by filing a request for reconsideration with the City Clerk along with the fee as established by City Manager within thirty calendar days of the date of the denial. The reconsideration before the City Council shall be based upon the existing record developed during the consideration of the application; provided that the person requesting reconsideration may enter previously unavailable information that is more likely than not to effect the outcome of the decision. Except as provided in this chapter, the request for reconsideration shall otherwise be processed in conformance with chapter 4.12 DMMC. The City Council's decision on the reconsideration is final.

Sec. 7. Amendment of the MFTE Agreement.

(1) Any property owner(s) seeking amendment(s) to the MFTE Agreement approved by the City Council may do so by submitting a request in writing to the City Manager at any time within three years of the date of the City Council's approval of the MFTE Agreement.

(2) Amendments to the approved MFTE Agreement shall be submitted to the City Council for approval by resolution.

(3) Any property owner(s) seeking amendments to the approved MFTE Agreement shall pay to the City an amendment application fee as established by the City Manager.

(4) The date for expiration of the Conditional Certificate shall not be extended unless all the conditions for extension set forth in section 8(1) and (2) are met and the City Council specifically approves the extension.

Sec. 8. Extension of conditional certificate. The conditional certificate may be extended for a period not to exceed twenty-four consecutive months. The applicant shall submit a written request stating the grounds for the extension together with a fee as established by the City Manager. The City may grant an extension if the City Council determines that:

(1) The anticipated failure to complete construction within the required time period is due to circumstances beyond the control of the applicant;

(2) The applicant has been acting and could reasonably be expected to continue to act in good faith and with due diligence;

Ordinance No. 1457
Page 8 of 12

(3) All the conditions of the MFTE Agreement between the applicant and the City will be satisfied upon completion of the project; and

(4) Construction of the building(s) that received the exemption is significantly underway.

Sec. 9. Final Certificate - Application - Issuance - Denial - Appeal.

(1) Upon completion of the construction as provided in the contract between the applicant and the City, and upon issuance of a Certificate of Occupancy, the applicant may request a Final Certificate of Tax Exemption. The applicant shall file with the City Manager or designee such information as the City Manager or designee may deem necessary or useful to evaluate eligibility for the Final Certificate, and shall include:

(a) A statement of expenditures made with respect to each multifamily housing unit and the total expenditures made with respect to the entire property.

(b) A description of the completed work and a statement of qualification for the MFTE.

(c) A statement that the work was completed within the required three-year period or any approved extension.

(2) Within thirty days of receipt of all materials required for the Final Certificate, the City Manager or designee shall determine whether the work completed is consistent with the application and MFTE Agreement approved by the City Council and is qualified for the MFTE pursuant to chapter 84.14 RCW, and which specific improvements completed meet the requirements of this chapter and the required findings of RCW 84.14.060.

(3) If the City Manager determines that the project has been completed in accordance with subsection (1) of this section, the City shall file a Final Certificate of Tax Exemption with the King County Assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The City Manager or designee is authorized to cause to be recorded, or to require the property owner(s) or owner to record, in the real property records of the King County Department of Records and Elections, the MFTE Agreement which the City required under section 6(1), and such other document(s) as will identify such terms and conditions of eligibility for the MFTE as the City Manager or designee deems appropriate.

(5) The City Manager or designee shall notify the property owner(s) in writing that the City will not file a Final Certificate if the City Manager determines that the project was not completed within the required time limitations as set forth in this chapter; or if the City Manager determines that the owner's property is not otherwise qualified under this chapter or if the owner and the City Manager cannot agree on the allocation of the value of the improvements allocated to the

Ordinance No. 1457
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exempt portion of the new construction in mixed use new construction.

(6) Within thirty days of the date of notice of denial of Final Certificate, the property owner(s) may file a notice of appeal with the City Clerk along with the appeal fee as established by the City Manager specifying the factual and legal basis for the appeal. The appeal shall be heard by the City's Hearing Examiner pursuant to section 12.

Sec. 10. Exemption - Duration - Limitations.

(1) The value of new housing construction qualifying under this chapter shall be exempt from ad valorem property taxation for eight successive years as provided in RCW 84.14.020(1)(a)(ii)(A).

(2) The exemption established in subsection 1 of this section does not apply to:

(a) The value of land and non-housing related improvements constructed as part of a mixed use structure.

(b) To increases in assessed valuation of land and non-qualifying improvements.

(c) To increases made by lawful order of the King County Board of Equalization, the Washington State Department of Revenue, the State Board of Tax Appeals, or King County, to a class of property throughout King County or a specific area of King County to achieve uniformity of assessment or appraisal as required by law.

Sec. 11. Annual certification - Cancellation of exemption.

(1) A property that receives the MFTE under this chapter is obligated to continue to comply with the MFTE Agreement and the requirements of this chapter in order to retain its MFTE.

(2) Within thirty days after the first anniversary of the date the City filed the Final Certificate of Tax Exemption and each year thereafter, for a period of eight years, the property owner(s) shall file a certification with the City Manager, verified upon oath or affirmation, which shall contain such information as the City Manager may deem necessary or useful, and shall include the following information:

(a) A statement of occupancy and vacancy of the multifamily units during the previous year.

(b) A certification that the property has not changed use and that the property has been in compliance with the requirements set forth in chapter 84.14 RCW since the date of filing of the final certificate of tax exemption, and continues to be in compliance with the contract with the city and the requirements of this chapter.

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Page 10 of 12

(c) A description of any improvements or changes to the property made after the filing of the Final Certificate or last declaration, as applicable.

(d) Any additional information requested by the City Manager or designee in regards to the units receiving the MFTE.

(3) Failure to submit the annual declaration may result in cancellation of the MFTE.

(4) For the duration of the MFTE, the property shall have no violation of applicable DM Zoning Codes, land use regulations, and other requirements contained in Titles 14 and 18 DMMC for which the designated City Department shall have issued a notice of violation or notice of civil infraction that is not resolved by a certificate of compliance, certificate of release, or withdrawal within the time period for compliance provided in such notice of violation or notice of civil infraction and any extension of the time period for compliance granted by the City Manager or designee.

(5) If the owner intends to convert the multifamily housing to another use, the owner shall notify the City Manager or designee and the County Assessor within sixty days of the change in use or noncompliance with this chapter. Upon such change in use, the MFTE shall be canceled and additional taxes, interest and penalty imposed pursuant to state law.

(6) The City Manager shall cancel the MFTE for any property that no longer complies with the terms of the MFTE Agreement or with the requirements of this chapter. Upon cancellation, additional taxes, interest and penalties may be imposed pursuant to State Law. Upon determining that a MFTE shall be canceled, the City Manager shall notify the property owner(s) by certified mail, return receipt requested. The property owner(s) may appeal the determination by filing a notice of appeal with the City Clerk along with the appeal fee established by the City Manager within thirty days of the date of notice of cancellation, specifying the factual and legal basis for the appeal. The appeal shall be heard by the City's Hearing Examiner pursuant to section 12.

Sec. 12. Appeals to the Hearing Examiner.

(1) The City's Hearing Examiner is provided jurisdiction to hear appeals of the decisions of the City Manager on the Final Certificate of tax exemption and cancellation thereof.

(2) The Hearing Examiner procedures established by chapter 18.94 DMMC shall apply to hearings under this chapter to the extent they are consistent with the requirement of this chapter and chapter 84.14 RCW. The Hearing Examiner shall give substantial weight to the City Manager's decision, and the burden of proof shall be on the appellant to demonstrate that the City Manager abused his/her discretion in denying the Final Certificate. The decision of the Hearing Examiner shall constitute the final decision of the City. An aggrieved party may appeal the decision to King County Superior Court under RCW 34.05.510 through 34.05.598 if the appeal is properly filed

Ordinance No. 1457
Page 11 of 12

within thirty days of the date of the notification by the City to the appellant of that decision.

Sec. 13. Annual reporting.

(1) Annually by December 31st of each year the City shall report to the Department of Community, Trade, and Economic Development information required pursuant to RCW 84.14.100(2)

(2) The City Manager or designee shall review the program established by this chapter and provide a report to the City Council outlining development activity, types and numbers of units produced and their locations, rent and sales prices, and other appropriate factors. These reports may include recommendations on whether any neighborhoods should be added or removed and will analyze any issues related to the use of the program for homeownership units. The annual report shall be submitted to the City Council no later than March 30th of each year the program is in effect, starting in 2010; each report shall include information for the previous year

Sec. 14. Codification. Sections 2 through 13 of this ordinance shall constitute a new chapter 3.9⁶ DMMC entitled "Multifamily Tax Exemption." *su*

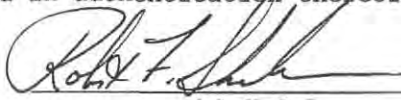
Sec. 15. Severability - Construction.

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

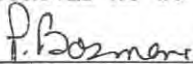
(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 16. Effective Date. This ordinance shall be in full force and effect thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this 26th day of March, 2009 and signed in authentication thereof this 26th day of March, 2009.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Effective Date: April 25, 2009

Published: April 2, 2009

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1457, Adopted March 26, 2009.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance creates a new chapter in Title 3 of the DMMC providing a tax exemption as an incentive to facilitate the development of market rate multiple-unit dwellings in the City of Des Moines.

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

Denis Staab
City Clerk

Published: April 2, 2009

EXHIBIT 1**ORDINANCE NO. 1457****FINDINGS OF FACT****MARCH 26, 2009**

The Des Moines City Council, in support of its decision to designated areas of the Pacific Ridge Neighborhood as geographically illustrated in Exhibit 2 of this Ordinance as a residential target area as required by Chapter 84.14 RCW and in consideration of information communicated during a public hearing hereby finds:

1. Strategy 2-04-08 of Land Use Element of the Des Moines Comprehensive Plan states that the City should "[E]ncourage improvement of the ... Pacific Ridge Neighborhood by working with the business community and other representative organizations to achieve the goals of the City of Des Moines Comprehensive Plan
2. Policy 7-03-06 of Housing Element of the Des Moines Comprehensive Plan states that the City should, "[P]romote compatible residential development that is affordable to all economic segments of the Des Moines community"
3. The intent of the Pacific Ridge Neighborhood as established by Goal 11-01-01 of Pacific Ridge Element, of the Des Moines Comprehensive Plan is "to transform Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, stable soils, and view potential. The transformation of Pacific Ridge will include replacement of lower-scale, existing buildings with new structures that will dramatically enhance the appearance, character, economics, and safety of the area. Pacific Ridge will contain buildings and open spaces designed for pedestrians as well as the motorist. Pacific Ridge will be an area of businesses and residences. New buildings may be five to eight stories in height along Pacific Highway emphasizing retail and office uses. Between the development along Pacific Highway and Interstate 5, buildings may be eight (8) or more stories in height emphasizing residential high-rise home ownership with green open spaces and view corridors. This new community will exhibit superior design features that make Pacific Ridge inviting to residents and businesses, complement other areas of Des Moines, and foster community pride."
4. Policy 11-03-07 of the Pacific Ridge Element of the Des Moines Comprehensive Plan provides that the City should "promote redevelopment of Pacific Ridge properties to attract new or expanded businesses and commercial development to Pacific Ridge."
5. Strategy 11-04-02 of the Pacific Ridge Element of the Des Moines Comprehensive Plan provides that the City should "[E]ncourage land assemblage ... so that larger-scale development proposals can be considered ...".
6. Strategy 11-04-04 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City should "Encourage new residential development to offer owner-occupied dwellings."

7. DMMC 18.31.010, et seq. was enacted by the City to implement the Des Moines Comprehensive Plan, Pacific Ridge Neighborhood Improvement Plan, and other adopted policies for the commercial and residential areas of Pacific Ridge, including, *inter alia*, the transformation of Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, and view potential; the replacement of lower-scale, existing buildings with new larger scale and higher structures that will dramatically enhance the appearance, character, economics, and safety of the area; and exhibit superior design features that makes Pacific Ridge inviting to residents and businesses, complements other areas of Des Moines, and fosters community pride.
8. Other objectives and purposes of DMMC 18.31.010, et. seq., are to, *inter alia*, provide development regulations to promote redevelopment of properties within Pacific Ridge to create attractive, safe, and desirable areas to work and reside; to establish higher density development to meet or exceed the City's population and employment growth targets specified by the countywide planning policies for King County; and to reduce the social problems caused by the existing structures and land uses such as high crime rates (especially major felony crimes), declining property values, unsafe and undesirable housing conditions, insufficient building and property maintenance, absentee property ownership/management, violation of zoning, construction, and health codes, transient residency, and marginal businesses; and
9. The Pacific Ridge Neighborhoods is within an urban center as defined by RCW 84.14.010(16).
10. RCW 84.14.010(16) defines "Urban center" as a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain: (a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies (b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and (c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.
11. The City has identified the Pacific Ridge Neighborhood as established in the Des Moines Comprehensive Plan as the area to provide the majority of the new housing necessary to achieve the City's mandated 2020 growth targets
12. The Pacific Ridge Neighborhood lacks sufficient available, desirable and convenient residential housing to meet the needs of the public who would be likely to live in the area if, desirable, attractive and livable residences were available.
13. Providing additional housing opportunity in the Pacific Ridge Neighborhood will assist in achieving the following purposes:

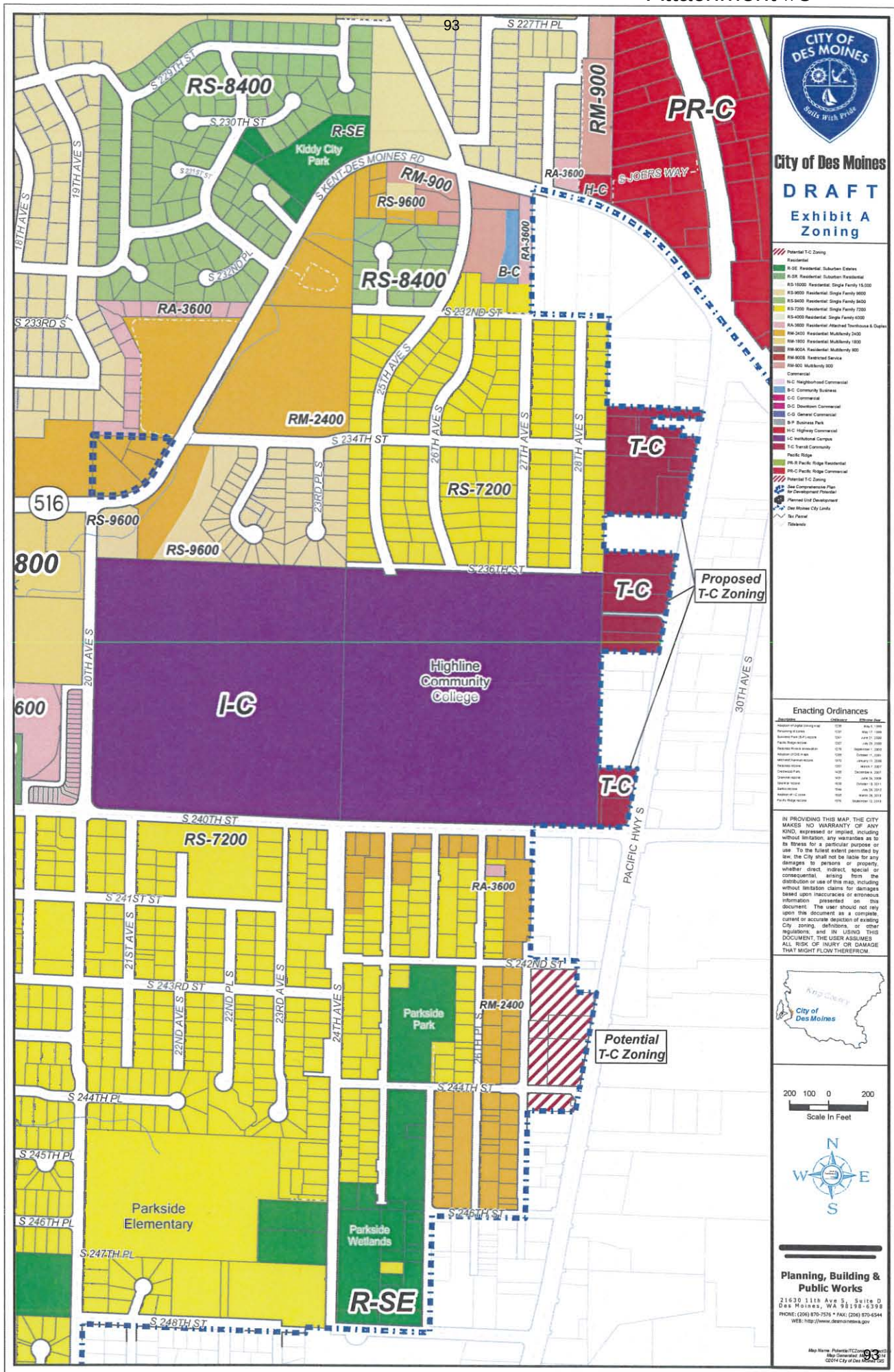
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- a. Encourage increased residential opportunities within the city.
 - b. Stimulate the construction of new multifamily housing.
- 14. Additional housing in the Pacific Ridge Neighborhood will attract and maintain an increase in the number of permanent residents.
- 15. Increasing permanent residential population in the Pacific Ridge Neighborhood is critical to achieving the planning goals mandated by the Growth Management Act under Chapter 36.70A RCW, as implemented through the City's Comprehensive Plan.
- 16. Encouraging additional housing in the Pacific Ridge Neighborhood supports plans for significant public investment provided for in Sound Transit's ST2 plan and Metro Transit's Bus Rapid Transit (BRT) program.
- 17. Encouraging additional housing in the Pacific Ridge Neighborhood supports the City's goal of achieving a better jobs and housing balance.
- 18. The area identified as the Pacific Ridge Neighborhood meets the standard of a blighted area as defined RCW 35.81.015(2).
- 19. RCW 35.81.015(2) defines "Blighted area" as an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age or obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate uses of land or buildings; existence of overcrowding of buildings or structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; existence of hazardous soils, substances, or materials; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; existence of persistent and high levels of unemployment or poverty within the area; or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime; substantially impairs or arrests the sound growth of the municipality or its environs, or retards the provision of housing accommodations; constitutes an economic or social liability; and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, or morals in its present condition and use.

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20. The tax exemption is necessary to facilitate and encourage re-development within a blighted area.
21. The tax exemption is necessary to facilitate the transforming the Pacific Ridge Neighborhood into a new urban community taking advantage of its geographic location, local and regional transportation linkages, and view potential.
22. The tax exemption is necessary to replace lower-scale, existing buildings with new larger scale and higher structures that will dramatically enhance the appearance, character, economics, and safety of the area; and exhibit superior design features making Pacific Ridge inviting to residents and businesses.
23. The existing pattern of land use and building size represents low-scale, suburban, automobile-oriented activities that do not contribute to realization of the City Council's vision for Pacific Ridge.
24. Many of the properties and buildings within Pacific Ridge, by reason of substantial physical dilapidation, age, obsolescence of buildings or improvements, unsanitary or unsafe conditions, absentee ownership, high rates of transience, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, juvenile delinquency, and criminal activity including gang violence, drug possession and distribution, domestic violence, prostitution, assault, battery, and theft
25. The conditions within Pacific Ridge substantially impair the sound growth of the City, retard the provision of safe and desirable housing conditions, decrease property values, discourage financial investment, and are detrimental to the public health, safety, welfare, and morals, and





(NEW Zone)

Chapter 18.XXX

T-C Transit Community Zone

Sections:

18.136.010	Title.
18.136.020	Application.
18.136.030	Purpose.
18.136.040	Authority.
18.136.050	Environmental performance standards and general limitations.
18.136.060	Dimensional standards.
18.136.070	General building design requirements.
18.136.080	Required right-of-way improvements.

Comment [gf1]: The proposed new zone consists of 14 parcels totaling 10.2 acres between KDM and 240th. Almost all of the \$3.9 million appraised improvement value is in 2 parcels (Public Storage and Gas Station at 240th). For all parcels, appraised land value is twice improvement value.

Comment [gf2]: Policy Question 1: Should the new zone be named something else, e.g., Midway, Highline or College?

18.136.010. Title. This chapter shall be entitled "T-C Transit Community Zone."

18.136.020. Application. This chapter shall apply to all areas zoned T-C Transit Community.

18.136.030. Purpose. The 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, 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.

18.136.040. Authority. This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63 and 36.70A RCW and other applicable laws.

18.136.050. 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:

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

- (i) Outdoor seating and dining;
- (ii) Signs;
- (iii) Loading areas;
- (iv) Incidental outdoor display areas for merchandise sold on site as approved through the design review process; and
- (v) Play/recreation areas.

(b) 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.

(c) High capacity transit facilities shall be developed in accordance with DMMC 18.136.XXX **(to be developed)** to standards intended to achieve good design, provide a distinctive community focal point with a variety of uses consistent with the City's vision for this station area, integrate and accommodate multiple transportation modes, and provide adequate buffers between different types of land uses.

Comment [gf3]: Design Standards are proposed to be developed (modeled on SeaTac's MC Ch 15.36, Design Standards for High Capacity Transit Facilities) to both guide Sound Transit's design decisions and provide a basis for negotiating impact mediation as part of any Development Agreement or SEPA mitigation.

18.136.060. 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 DMMC 18.136.070(11). 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.

(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 DMMC 18.136.060(11).

(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:

Comment [gf4]: Policy Question 2: Is the proposed increase from the current 35 feet okay?

Comment [DB5]: Policy Question 3: Is a maximum 35' building height within 20' of SF zoned property in conjunction with building modulation to achieve Floor Area Ratios in Section 18.136(3) (a) (or Draft Ordinance Section 7(3)(a)) appropriate to provide sufficient privacy to single family homes immediately to the west?

(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 18.136.070

(b) The maximum building height established in subsections (8) and (9) of this section 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 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 DMMC 18.136.070(3).

(e) The building area or amount of building structure extending above the maximum height established in subsection (9) of this section 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.

18.136.070. 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.

(a) Building shall be appropriate in scale and in harmony with neighboring development.

(b) 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.

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

(d) Colors shall be harmonious.

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

(f) 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
50 – 60	4
60 – 70	4.5

Building Height	T-C FAR
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) **Structural encroachments.** Within the T-C 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;

(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 curblin 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 upon 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 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 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.

18.136.080. 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.

Comment [D6]: This section would only apply to the design and construction of 236th Lane, and other potential new public access roads in other parts of the zone, not frontage improvement along Pacific Highway South.

Extract of Permitted Use Tables

Chapter 18.52 Permitted Uses

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.

Comment [DB7]: Policy Question 4: Does the Council support the recommendation that the proposed delegated authority to approve similar residential and commercial uses not listed in 18.52.010A and B apply City-wide?

18.52.010B. Commercial use chart.

TABLE 18.52-010B COMMERCIAL ZONE PRIMARY USES								
Use is:	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] [64-20]	
Adult theaters						P/L _[35]	P/L _[46] [64-20]	
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 _[11]		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 _[6]		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 _[11]		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

TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is:	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
P: Permitted								
P/L: Permitted, but with special limitations								
CUP: Conditional use review required								
UUP: Unclassified use review required								
Bed and breakfast facilities				P	P		P	<u>P</u>
Boats, building and repairing (less than 48 feet)						P	P	
Boats, repair/ sale						P	P	
Boat moorage	P/L _[3]					P/L _[42]		
Botanical and zoological gardens				P	P		P	
Bookbinding			P			P		<u>P</u>
Booster stations	UUP	UUP	UUP	UUP		UUP	UUP	<u>UUP</u>
Boxing/land wrestling arenas	CUP	CUP	CUP	CUP		CUP	CUP	<u>CUP</u>
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	<u>P</u>
Car washes				P/L _[18]	P/L _[26]	P		
Carpentry and cabinet shops	P/L _{[1][2]}		P	P	P	P	P	
Casino/hotels and motels				P	P		P	<u>P</u>
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	<u>P</u>
Community gardens				P	P			
Community housing services				P/L _{[99][5]}	P/L _{[99][5]}			
Confectionery, manufacture			P			P		P/L _[55]
Contractors, general	P/L _[3]		P/L _[14]			P	P	<u>P</u>
Convention facilities			P	P	P	P		<u>P</u>
Correctional institutions			P					
Couriers and messengers	P/L _[3]		P				P	<u>P</u>
Data processing, business and record storage	P/L _[3]		P	P	P	P	P	<u>P</u>
Day care centers and mini day care providers	CUP	CUP	CUP	CUP	CUP		CUP	<u>CUP</u>
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	<u>P</u>
Educational services		P	P/L _[7]	P	P/L _[27]	P/L _[37]	P	<u>P</u>
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 _{[56][2]}		P/L _{[56][2]}	P/L _[68]
Financial and insurance services			P	P	P		P	<u>P</u>
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	<u>P</u>
Footwear and leather goods repair	P		P	P	P	P	P	<u>P</u>
Foreign trade			P/L _[13]					
Fraternal organizations/societies		P	P/L _[7]	P	P		P	<u>P</u>
Fuel dealers, other							P	
Furniture, home furnishings and equipment, sales	P/L _{[1][2]}		P	P	P	P	P	<u>P</u>

TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is:	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
P: Permitted								
P/L: Permitted, but with special limitations								
CUP: Conditional use review required								
UUP: Unclassified use review required								
Furniture, repair	P/L _[21] ^[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 _[36] ^[9]	P/L _[40] ^[8]	P		P/L _[50] ^[9]	P/L _[50] ^[9]
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 _[55]
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 _[55] ^[5-4]	P/L _[55] ^[5]		P/L _[55] ^[5-4]		P/L _[55] ^[5]
Marijuana Retailer, Recreational				P/L _[55] ^[5-4]		P/L _[55] ^[5-4]		P/L _[55] ^[5]
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
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 _[5]		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 _[55]
Pet shop	P/L _[1]			P	P	P/L _[33]	P	P

TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is:	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required								
Photocopying and duplicating services	P/L ₁₁ [3]		P	P	P		P	P
Photo finishing	P/L ₁₁		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 [23]		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 ₉		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 ₉		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	P/L ₆₅
Services to buildings and dwellings	P/L ₃		P	P	P		P	
Services, miscellaneous	P/L ₉		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
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 ₂₃ [57][70]		P	P/L ₁₈ [67][70]	P/L ₆₂ [70]	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.

TABLE 18.52-010B
COMMERCIAL ZONE PRIMARY USES

Use is:	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required								

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 except that existing on June 30, 2014.

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:

1. At least 25% of the gross floor area is dedicated to retail sales; and
2. 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:

1. At least 25% of the gross floor area is dedicated to retail sales; and
2. 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].

Kennel 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 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.
- (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

Comment [gf8]: Policy Question 5: Should stand alone surface and paid parking be allowed until 2024? Parcels at LaPlaza used for parking would be a grandfathered permitted use. This keeps the La Plaza parking from becoming non-conforming in 2024.

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.

65. Self-storage/mini-warehouse leasing

This regulation applies to all parts of Table 18.52.010B that have a [65].

Only public storage existing on June 30, 2014 shall be permitted.

Comment [gf9]: The Public Storage business at 23439 PHS, built in 1987 before annexation into Des Moines, is allowed to continue as a legal conforming use. No other public storage or mini-warehouses are allowed in the T-C Zone.

All Zones

63.66. Adult Entertainment Facilities

This regulation applies to all parts of Table 18.52.010B that have a [6366].

Adult entertainment facilities are subject to the additional standards of chapter 18.16 DMMC and chapter 5.48 DMMC.

64.67. Recreational Marijuana

This regulation applies to all parts of Table 18.52.010B that have a [6764].

State licensed marijuana producers, processors, and retailers may locate in the City of Des Moines pursuant to chapter 18.250 DMMC.

66.69. Family Day Care Providers

This regulation applies to all parts of Table 18.52.010B that have a [6866].

A family day care provider home facility is a permitted use in all zones, subject to the conditions in chapter 18.180 DMMC.

66.69. Social Service Facilities

This regulation applies to all parts of Table 18.52.010B that have a [6966].

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.

67.70. Welding Repair

This regulation applies to all parts of Table 18.52.010B that have a [7067].

Welding repair shall only be permitted in an enclosed structure.

Extract of Zoning Classifications Chapter

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:

- (2) Commercial Zones.
 - (a) N-C Neighborhood Commercial;
 - (b) I-C Institutional Campus;
 - (c) B-C Business Commercial;
 - (d) B-P Business Park;
 - (e) C-C Community Commercial;
 - (f) D-C Downtown Commercial;
 - (g) C-G General Commercial;
 - (h) H-C Highway Commercial;
 - (i) PR-C Pacific Ridge Commercial; and
 - (j) T-C Transit Community.

Parking Code Extract Affecting T-C Zone

18.210.070. Modification of parking provisions.

(1) Number of spaces. The City Manager or the City Manager's designee may, by formal action, waive or modify the number of spaces required, establishing the amount of required parking for uses involving very limited number of employees or which do not require personnel and daily attendance or for which the number of parking spaces proposed is demonstrated sufficient to fully serve the use, is consistent with the intent of this chapter and when strict application of the code would result in unnecessary hardship. The Institute of Transportation Engineers (ITE) Parking Generation Manual or an independent consultant study are examples that could be used to demonstrate sufficiency of proposed parking.

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:

(12) Personal Services.

(a) C-C Zone: one parking space per 300 square feet of gross floor area.

(b) D-C, ~~and~~ PR and T-C 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.

(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 - .75 parking space

(ii) For one-bedroom dwellings - one parking space

(iii) For 2 bedroom or more dwellings - 1.75 parking spaces

(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 are a minimum of six spaces.

**Extract from State-Licensed Marijuana Producers, Processors, and
Retailers Chapter**

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~~ Zones generally located along Pacific Highway South south of Kent-Des Moines Road.

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.

(2) Persons may conduct business with 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.

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

Extract from Title 14, Building and Construction

14.05.130 Five-story wood frame buildings. The following sections, DMMC 14.05.140 through 14.05.220, shall be applicable to the following zoning classifications:

Pacific Ridge Commercial, Pacific Ridge Residential, ~~and Business Park, Zones~~ and Transit Community Zones.

14.05.140 Purpose - Five-story wood frame buildings.

The purpose of these provisions is to authorize the construction of five-story wood frame buildings as an approved alternate design and construction method under the IBC, and to set forth the criteria and standards which must be met before a building permit may be issued for a five-story wood frame building within the zoning classifications set forth in DMMC 14.05.130.

14.05.150 Construction - Five-story wood frame buildings.

(2) Lowest Story Construction Requirements. The lowest story in a five-story wood frame building shall be constructed of Type V-A fire-resistive construction, except that all structural frame and load-bearing elements must consist of approved, two-hour fire-resistive construction.

(3) Upper Four Stories. The upper four stories of a five-story wood frame building shall be constructed of at least Type V-A fire-resistive construction.

(4) Use of Type V above Type I-A Construction. Where Type V wood frame stories are constructed over Type I-A construction, the Type V stories shall be separated from the Type I stories as provided in the IBC.

14.05.190 Height.

The maximum height of five-story buildings designed and constructed shall be 75 feet. The height shall be measured as provided in the IBC.

Extract from Chapter 3.96, MULTIFAMILY TAX EXEMPTION

3.96.010 Findings of fact.

This chapter shall be known as the multifamily tax exemption ordinance (hereinafter MFTE). The findings of fact set forth in Exhibit 1, attached to the ordinance codified in this chapter and incorporated by this reference, are adopted in full by the city council in support of its decision to designate areas of the Pacific Ridge neighborhood and Transit Community Zone as illustrated in DMMC 3.96.040, Figure 1, as a residential target area as required by chapter 84.14 RCW. [Ord. 1540 § 1, 2012; Ord. 1457 § 1, 2009.]

Comment [gf10]: Policy Question 7:
Should the Residential Target Area for the Multifamily Tax Exemption be extended into the proposed T-C Zone?

3.96.020 Purpose.

The purpose of this chapter is to establish the criteria for allowing an MFTE and to achieve the following purposes:

- (1) To achieve the purposes and goals established by RCW 84.14.007;
- (2) To accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented by Des Moines' comprehensive plan;
- (3) To encourage additional housing in certain areas to support investment in public transit projects. [Ord. 1457 § 2, 2009.]

3.96.030 Definitions.

In construing the provisions of this chapter, the definitions set forth in RCW 84.14.010, now or hereafter amended, shall apply, unless modified by this section. The following definitions shall also apply:

- (1) "Assessor" means the King County assessor.
- (2) "Multifamily tax exemption" (hereinafter "MFTE") shall refer to the tax exemption allowed pursuant to this chapter.
- (3) "Project" is the development that will occur on property where the MFTE is sought.
- (4) "Residential target area" (hereinafter "RTA") means the area within the identified urban center that has been designated by the city council as a targeted area in accordance with chapter 84.14 RCW. [Ord. 1457 § 3, 2009.]

3.96.040 Project eligibility.

To be eligible for the MFTE the property sought to be exempted shall satisfy all of the following requirements:

(1) The property shall be located within the RTA area, which is the area within the Pacific Ridge neighborhood south of South 216th Street and the area on Pacific Highway South within the Transit Community (T-C) Zone.

(2) The MFTE shall only be available for a maximum of 3,000 residential units or 10 years after the approval date of Ordinance No. 1457 (March 26, 2009), whichever occurs first.

(3) The property sought to be exempted shall be developed in a manner that furthers the city's goals and objectives for the Pacific Ridge neighborhood and Transit Community Zone in the Des Moines comprehensive plan, the Pacific Ridge neighborhood improvement plan and integrated draft environmental impact statement, and DMMC ~~18.31.010~~ 18.135.030 and 18.136.030 as adopted or subsequently amended.

(4) The project sought to be exempted must be multifamily housing within a residential structure or as part of a mixed use development consistent with the following requirements:

(a) Building(s) shall be a minimum of 50 feet in height as calculated by DMMC ~~18.31.090(7)(b)~~ 18.135.070(6), 18.190.070 and 18.136.060 (6).

(b) Building(s) shall contain a minimum of 60 residential units.

(c) A minimum of 50 percent of the space within such residential structure or mixed use building shall be for permanent residential occupancy.

(5) The property owner(s) shall be required to have 24-hours-a-day/seven-days-a-week on-site property management by a professional management company with a minimum of five years of experience in providing property management for large-scale residential projects. The property owner(s) shall also be required to provide 24-hours-a-day/seven-days-a-week private security on site, to include on-site security offices, office space for public safety use, and video camera monitoring.

Comment [gf11]: Yellow-highlighted sections here and in (4)(a) below correspond to Sections 3 and 6 in Draft Ordinance 14-035. Section 18.136 was used in this document as a placeholder for the proposed new T-C chapter. When it is eventually codified, it will be assigned a new chapter number consistent with how other zone chapters are now numbered.

(6) The property sought to be exempted shall be developed in a manner that increases or preserves property valuation, and the development of the property must represent an increased investment in the property that results in an increase in the overall property values in the area.

(7) The taxes collected during the MFTE period shall be sufficient to cover the city's costs required to provide necessary services to the residents of the property sought to be exempted. If the city determines that taxes collected do not cover the city's costs required to provide necessary services to the residents of the property sought to be exempted, the property owner(s) shall make an annual payment in lieu of taxes to cover the estimated difference.

(8) The project shall comply with all applicable Des Moines Zoning Code, land use regulations, and other requirements, including those contained in Titles 12, 14, 16, 17, and 18 DMMC.

(9) Construction of any project approved with an MFTE shall be completed within three years from the date of approval of the MFTE by city council as provided in DMMC 3.96.060. [Ord. 1550 § 1, 2012: Ord. 1540 § 2, 2012: Ord. 1457 § 4, 2009.]

3.96.050 Application procedure.

(1) The owner(s) of property seeking an MFTE under this chapter shall submit an application to the city, on a form provided by the city manager. The property owner(s) shall verify the information contained in the application by oath or affirmation. The application shall contain such information as the city manager may deem necessary or useful, and shall include:

(a) A brief written description of the project and preliminary schematic site and floor plans of the multifamily units and the structure(s) in which they are proposed to be located.

(b) A statement from the property owner(s) acknowledging the potential tax liability for the property when the MFTE ends.

(c) The property owner(s) shall also provide the city with a declaration as to the owner's interest in the property and identify any other parties with an ownership interest. If someone other than the property owner(s) is developing the property, then the owner shall declare that the developer has authority to speak

on behalf of the property owner(s) and to bind the property owner(s) by any representations made by that developer.

(2) At the time of application, the property owner(s) shall pay to the city an initial application fee as established by the city manager to cover the cost of the city's review of the application and the cost to hire an independent consultant to complete a financial analysis of the economic impacts if the application is approved by the city council. In addition, at the time of application, the property owner(s) shall pay to the city the fee required to cover the county assessor's administrative costs. If the city council approves the application pursuant to DMMC 3.96.090, the city shall forward the fee for the county assessor's administrative costs to the county assessor. If the city council denies the application pursuant to DMMC 3.96.090, the city shall refund the fee for the assessor's administrative costs to the property owner(s).

(3) The city manager or designee shall notify the property owner(s) within 28 days of the application being filed if the application is not complete and shall identify what additional information is required before the application will be deemed complete. Within 14 days of receiving additional information, the city manager or designee shall notify the property owner(s) in writing if the application is incomplete, and what additional information is necessary. An application shall be deemed to be complete if the city manager or designee does not notify the property owner(s) in writing by the deadlines in this section that the application is incomplete; however, a determination of completeness does not preclude the city manager or designee from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in this chapter. Failure to complete the application will be deemed to be an abandonment of the application.

(4) The application shall be approved before, but no later than, the date the building or other construction permit is issued under Title 14 DMMC. [Ord. 1457 § 5, 2009.]

3.96.060 Application review - Issuance of conditional certificate - Denial - Appeal.

(1) The city council shall approve or deny an application under this chapter. If the application is approved, the applicant shall enter

into an MFTE agreement with the city, subject to approval by resolution of the city council, regarding the terms and conditions of the project and eligibility for the MFTE. The city council's resolution to approve the applicant's contract with the city shall take place within 90 days of the city manager's or designee's receipt of the completed application. Upon city council approval of the contract, the city manager or designee shall execute the contract as approved by the city council, and shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate shall expire three years from the date of approval unless an extension is granted as provided in DMMC 3.96.080.

(2) If the application is denied, the city council shall state in writing the reasons for the denial and send notice of denial to the applicant's last known address within 10 days of the denial.

(3) An applicant may ask for reconsideration if the city council denies the application by filing a request for reconsideration with the city clerk along with the fee as established by the city manager within 30 calendar days of the date of the denial. The reconsideration before the city council shall be based upon the existing record developed during the consideration of the application; provided, that the person requesting reconsideration may enter previously unavailable information that is more likely than not to affect the outcome of the decision. Except as provided in this chapter, the request for reconsideration shall otherwise be processed in conformance with chapter 4.12 DMMC. The city council's decision on the reconsideration is final. [Ord. 1457 § 6, 2009.]

3.96.070 Amendment of the MFTE agreement.

(1) Any property owner(s) seeking amendment(s) to the MFTE agreement approved by the city council may do so by submitting a request in writing to the city manager at any time within three years of the date of the city council's approval of the MFTE agreement.

(2) Amendments to the approved MFTE agreement shall be submitted to the city council for approval by resolution.

(3) Any property owner(s) seeking amendments to the approved MFTE agreement shall pay to the city an amendment application fee as established by the city manager.

(4) The date for expiration of the conditional certificate shall not be extended unless all the conditions for extension set forth in DMMC 3.96.080(1) and (2) are met and the city council specifically approves the extension. [Ord. 1457 § 7, 2009.]

3.96.080 Extension of conditional certificate.

The conditional certificate may be extended for a period not to exceed 24 consecutive months. The applicant shall submit a written request stating the grounds for the extension together with a fee as established by the city manager. The city may grant an extension if the city council determines that:

- (1) The anticipated failure to complete construction within the required time period is due to circumstances beyond the control of the applicant;
- (2) The applicant has been acting and could reasonably be expected to continue to act in good faith and with due diligence;
- (3) All the conditions of the MFTE agreement between the applicant and the city will be satisfied upon completion of the project; and
- (4) Construction of the building(s) that received the exemption is significantly underway. [Ord. 1457 § 8, 2009.]

3.96.090 Final certificate - Application - Issuance - Denial - Appeal.

(1) Upon completion of the construction as provided in the contract between the applicant and the city, and upon issuance of a certificate of occupancy, the applicant may request a final certificate of tax exemption. The applicant shall file with the city manager or designee such information as the city manager or designee may deem necessary or useful to evaluate eligibility for the final certificate, and shall include:

- (a) A statement of expenditures made with respect to each multifamily housing unit and the total expenditures made with respect to the entire property.
- (b) A description of the completed work and a statement of qualification for the MFTE.
- (c) A statement that the work was completed within the required three-year period or any approved extension.

(2) Within 30 days of receipt of all materials required for the final certificate, the city manager or designee shall determine whether the work completed is consistent with the application and MFTE agreement approved by the city council and is qualified for the MFTE pursuant to chapter 84.14 RCW, and which specific improvements completed meet the requirements of this chapter and the required findings of RCW 84.14.060.

(3) If the city manager determines that the project has been completed in accordance with subsection (1) of this section, the city shall file a final certificate of tax exemption with the King County assessor within 10 days of the expiration of the 30-day period provided under subsection (2) of this section.

(4) The city manager or designee is authorized to cause to be recorded, or to require the property owner(s) or owner to record, in the real property records of the King County department of records and elections, the MFTE agreement which the city required under DMMC 3.96.060(1), and such other document(s) as will identify such terms and conditions of eligibility for the MFTE as the city manager or designee deems appropriate.

(5) The city manager or designee shall notify the property owner(s) in writing that the city will not file a final certificate if the city manager determines that the project was not completed within the required time limitations as set forth in this chapter; or if the city manager determines that the owner's property is not otherwise qualified under this chapter or if the owner and the city manager cannot agree on the allocation of the value of the improvements allocated to the exempt portion of the new construction in mixed use new construction.

(6) Within 30 days of the date of notice of denial of final certificate, the property owner(s) may file a notice of appeal with the city clerk along with the appeal fee as established by the city manager specifying the factual and legal basis for the appeal. The appeal shall be heard by the city's hearing examiner pursuant to DMMC 3.96.120. [Ord. 1457 § 9, 2009.]

3.96.100 Exemption - Duration - Limitations.

(1) The value of new housing construction qualifying under this chapter shall be exempt from ad valorem property taxation for eight successive years as provided in RCW 84.14.020(1)(a)(ii)(A).

(2) The exemption established in subsection (1) of this section does not apply to:

(a) The value of land and non-housing-related improvements constructed as part of a mixed use structure.

(b) Increases in assessed valuation of land and nonqualifying improvements.

(c) Increases made by lawful order of the King County board of equalization, the Washington State Department of Revenue, the State Board of Tax Appeals, or King County, to a class of property throughout King County or a specific area of King County to achieve uniformity of assessment or appraisal as required by law. [Ord. 1457 § 10, 2009.]

3.96.110 Annual certification - Cancellation of exemption.

(1) A property that receives the MFTE under this chapter is obligated to continue to comply with the MFTE agreement and the requirements of this chapter in order to retain its MFTE.

(2) Within 30 days after the first anniversary of the date the city filed the final certificate of tax exemption and each year thereafter, for a period of eight years, the property owner(s) shall file a certification with the city manager, verified upon oath or affirmation, which shall contain such information as the city manager may deem necessary or useful, and shall include the following information:

(a) A statement of occupancy and vacancy of the multifamily units during the previous year.

(b) A certification that the property has not changed use and that the property has been in compliance with the requirements set forth in chapter 84.14 RCW since the date of filing of the final certificate of tax exemption, and continues to be in compliance with the contract with the city and the requirements of this chapter.

(c) A description of any improvements or changes to the property made after the filing of the final certificate or last declaration, as applicable.

(d) Any additional information requested by the city manager or designee in regards to the units receiving the MFTE.

(3) Failure to submit the annual declaration may result in cancellation of the MFTE.

(4) For the duration of the MFTE, the property shall have no violation of applicable Des Moines zoning codes, land use regulations, and other requirements contained in Titles 14 and 18 DMMC for which the designated city department shall have issued a notice of violation or notice of civil infraction that is not resolved by a certificate of compliance, certificate of release, or withdrawal within the time period for compliance provided in such notice of violation or notice of civil infraction and any extension of the time period for compliance granted by the city manager or designee.

(5) If the owner intends to convert the multifamily housing to another use, the owner shall notify the city manager or designee and the county assessor within 60 days of the change in use or noncompliance with this chapter. Upon such change in use, the MFTE shall be canceled and additional taxes, interest and penalty imposed pursuant to state law.

(6) The city manager shall cancel the MFTE for any property that no longer complies with the terms of the MFTE agreement or with the requirements of this chapter. Upon cancellation, additional taxes, interest and penalties may be imposed pursuant to state law. Upon determining that an MFTE shall be canceled, the city manager shall notify the property owner(s) by certified mail, return receipt requested. The property owner(s) may appeal the determination by filing a notice of appeal with the city clerk along with the appeal fee established by the city manager within 30 days of the date of notice of cancellation, specifying the factual and legal basis for the appeal. The appeal shall be heard by the city's hearing examiner pursuant to DMMC 3.96.120. [Ord. 1457 § 11, 2009.]

3.96.120 Appeals to the hearing examiner.

(1) The city's hearing examiner is provided jurisdiction to hear appeals of the decisions of the city manager on the final certificate of tax exemption and cancellation thereof.

(2) The hearing examiner procedures established by chapter 18.94 DMMC shall apply to hearings under this chapter to the extent they are consistent with the requirements of this chapter and chapter 84.14 RCW. The hearing examiner shall give substantial weight to the city manager's decision, and the burden of proof shall be on the appellant to demonstrate that the city manager abused his/her discretion in denying the final certificate. The decision of the hearing examiner shall constitute the final decision of the city. An aggrieved party may appeal the decision to King County superior court under RCW 34.05.510 through 34.05.598 if the appeal is properly filed within 30 days of the date of the notification by the city to the appellant of that decision. [Ord. 1457 § 12, 2009.]

3.96.130 Annual reporting.

(1) Annually by December 31st of each year the city shall report to the Department of Community, Trade, and Economic Development information required pursuant to RCW 84.14.100(2).

(2) The city manager or designee shall review the program established by this chapter and provide a report to the city council outlining development activity, types and numbers of units produced and their locations, rent and sales prices, and other appropriate factors. These reports may include recommendations on whether any neighborhoods should be added or removed and will analyze any issues related to the use of the program for homeownership units. The annual report shall be submitted to the city council no later than March 30th of each year the program is in effect, starting in 2010; each report shall include information for the previous year. [Ord. 1457 § 13, 2009.]

SUMMARY OF COMMENTS
Pacific Highway South Subarea Planning
Open House March 26th, 2014

Key Takeaways:

1. Higher density and mixed use positive
2. Good design is essential for buildings, landscaping and streetscape
3. Parking and improving traffic flow important as density increases
4. Common area for community gatherings
5. Pedestrian safety: sidewalks
6. Community green space
7. Security: street lighting
8. No big box, auto dependent uses



Highline Place Mixed-Use College Housing Project

Des Moines, WA



Vicinity Map



Existing Site Conditions



Aerial View of Proposal











Grant Fredricks

From: Denise Lathrop
Sent: Tuesday, May 20, 2014 9:30 AM
To: 'S.A.'
Cc: Nikole Coleman-Porter; Dan Brewer; Grant Fredricks
Subject: RE: concerns re: LUA2014-0011 - Hwy 99 re-zoning proposal

Greetings Mr./Ms. Ashurst,

Please see my responses to your questions below in the red typeface. I would be happy to speak with you further on the telephone if you still have questions.

Regards,

Denise E. Lathrop, AICP
Community Development Manager
 City of Des Moines Planning, Building and Public Works Department
 21630 11th Avenue S, Suite D
 Des Moines, WA 98198-6398
 Phone: 206-870-6563
 Fax: 206-870-6544

From: S.A. [mailto:ashurss@yahoo.com]
Sent: Thursday, May 15, 2014 7:33 AM
To: Denise Lathrop
Cc: Nikole Coleman-Porter
Subject: concerns re: LUA2014-0011 - Hwy 99 re-zoning proposal

Hello! We recently received a Notice of Determination of Nonsignificance and Public Hearing for Permit # LUA2014-0011. I have several concerns about this project, and you are listed as the point of contact.

I went to the My Permits webpage indicated in the Notice letter to do additional research. This brought up several issues

1. The link for the DNS and Checklist file leads to an incomplete document - all even-numbered pages are missing. This makes it hard to review. I would like to be notified when the problem is corrected.

The DNS and Checklist document as well as the draft ordinance has all of the pages now.

2. From what is available online of this document, I notice that the whole first portion of it defers any discussion of potential impact: *"The proposal is a non-project action. No development activity is directly associated with this proposal. Site-specific development regulations would be imposed as new development occurs."* While on the one hand, I understand this (a zoning change doesn't directly do anything), but the whole point of changing the zoning designation is to promote new development (in this case pertaining to Sound Transit Light Link). So on the other hand, this is smoke and mirrors, really. You know there will be impacts and can make reasonable approximations of what those will be and are choosing to defer addressing them... The last portion of the DNS and Checklist doc appears to be more direct in this regard (i.e., acknowledges that the zoning change will affect transportation and potentially housing, etc.), but again - the document is incomplete.

The proposal relates to changing the zoning; therefore, there is no specific development action that is currently proposed. Our checklist form is one that is standard for the Department of Ecology who is the SEPA administrator at the State level, and it is used for both programmatic and project specific actions. You are correct that Section D on page 18 of the checklist evaluated the potential impacts associated with the proposed rezone. If the zoning is ultimately changed, development projects that are proposed in the future would need to complete an environmental evaluation to determine the specific impacts (including benefits) associated with their project such as traffic, noise, and demand for public services.

3. The Draft Ordinance 14-035 indicates that the City wants to make the stretch of Hwy 99 between Midway and Highline Community College more transit-friendly. This is generally in keeping with information that Sound Transit has been presenting on its website and in open houses pertaining to the extension of the light rail southward. The Draft Ordinance goes on to say that this Transit Community Zone encourages mixed residential, commercial, and employment opportunities by allowing for "more intense and efficient use of land at **increased densities...**" (emphasis added). However, from the documents available on the My Permits webpage, I don't have a good sense of what these newly re-zoned areas are apt to be used for - parking? apartments? footprints for the supports for a potentially elevated rail line? a new station? Where are the planning documents? The areas called out for re-zoning are discontinuous (per the proposed amended zoning map), so there must be something in mind for each of them other than a general "promoting transit" idea. Where can I find this information?

To provide some planning context, during 2008-2009 we did an extensive community outreach effort with the City of Kent called "Envision Midway" where we held numerous meetings with residents, businesses and property owners as well as other stakeholders such as Highline Community College to create a vision for this area that is characterized by an irregular saw-toothed border with the City of Kent. Our shared vision with Kent is to transform the Midway area from a lower density, auto-oriented strip development to a mixed use employment/activity center that capitalizes on the opportunities provided by Highline Community College 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 of Kent has since rezoned the properties in their City to reflect the vision. Des Moines is now ready to rezone our properties discussed during the Envision Midway planning effort as proposed by Draft Ordinance No. 14-035.

The permitted uses chart starting on page 12 of Draft Ordinance No. 14-035 indicates what uses and under what conditions those uses would be permitted in the T-C zone (far right column). The proposed T-C zone would allow for a mix of uses such as apartments with commercial space on the ground floor or single purpose commercial development. The hope is that the area would develop at higher density and provide opportunities for people to live and work closer to transit (both RapidRide and Sound Transit's Link Light Rail). Our intent is that the proposed T-C zone would support the siting of a light rail station in the area if that is decided by Sound Transit.

One of the proposed new T-C zones is directly behind my house, and is where the Goodwill and other small business are located in a strip mall along the highway near the SR 516-Hwy 99 junction. Currently, the strip mall acts as a noise block between our property and Hwy 99. Further, there is no truck access behind the mall. This means that our back yard is quiet and private - big selling points when we bought the place 5 years ago. I'm concerned that the rezoning will ultimately spell the demise of that strip mall (or at least the portion behind my house) - which would remove the noise block and diminish privacy (potentially significantly if either an elevated rail and/or station or a high-rise apartment complex is constructed in its place).

The majority of the La Plaza shopping complex is located within the City of Kent. The City of Kent's zoning allows for higher density mixed use and building heights of 55 feet. Any properties within the proposed T-C zone are intended to compliment Kent's zoning by allowing similar uses but with building heights at 75 feet. The exception are for the parcels on the east side of Highline Community College where the proposed building height is 100 feet.

Please direct me to where I can find additional planning documents pertaining to this re-zoning proposal.

You can access more information about the proposed rezone and the Envision Midway background information, as well as the subarea planning work that is underway for the Pacific Highway S/S 240th Street node at:
www.desmoineswa.gov/PacHwyPlanning

In addition, is the June 5 Hearing focuses solely on the DNS/SEPA, or will additional information regarding the overall planning be presented?

The public hearing on June 5th relates to the T-C rezone. You can provide written comments by 4:30 pm 5/27/14 or testify at the public hearing. I will include your e-mail in the comments received to date.

Thank you!

-S. Ashurst

PUBLIC HEARING TRANSIT COMMUNITY (T-C) ZONE

Denise Lathrop, AICP
Community Development Manager

June 5, 2014

Purpose

- Consider Draft Ordinance which creates new development regulations for the area now zoned Highway Commercial near South 240th Street, Highline Community and the planned Federal Way Link Extension station.
- Modeled on the Pacific Ridge Zone, the Ordinance:
 - ▣ Adds a new zone entitled “T-C Transit Community”
 - ▣ Allows more uses similar to Pacific Ridge including mixed use
 - ▣ Raises building heights from 35 feet to 75-100 feet
 - ▣ Delegates authority to City Manager to approve similar but unlisted uses
 - ▣ Allows paid and surface parking through 2024
 - ▣ Reduces required parking
 - ▣ Extends the Residential Target Area for the Multifamily Tax Exemption to the new T-C Zone

Policy Questions for City Council



1. Confirm “Transit Community” as name of zone
2. Agree with recommended 75 feet and 100 feet maximum heights
3. Decide on building heights abutting single family homes
4. Confirm City Manager-delegated authority to approve uses similar to but not specifically identified in use tables
5. Agree that surface and paid parking are appropriate as interim land uses through 2024
6. Decide whether the new Zone should be extended south of 240th adding remaining 4 H-C zoned properties totaling 3.65 acres
7. Decide whether the Multifamily Tax Exemption should be available in the T-C Zone.

Suggested Motions

Motion 1: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No 14-035 on first reading.”

Motion 2: “I move to enact Draft Ordinance No. 14-035, 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, 18.250.070, and 14.05.130, re-adopting the Findings of Fact in Ordinance No. 1457 establishing the Multifamily Tax Exemption (Exhibit 1 to Attachment 2) and extending the Residential Target Area for the Multifamily Tax Exemption in DMMC 3.96 to the new T-C Zone, and codifying a new chapter in Title 18 DMMC.” **OR**

Motion 2A: “I move to enact Draft Ordinance No. 14-035, adding a new chapter entitled “T-C Transit Community Zone” to Title 18 DMMC, adopting a new zoning map including all Highway Commercial-zoned parcels, amending DMMC 18.05.080, 18.10.050, 18.52.005, 18.52.010B, 18.210.090, 18.250.060, 18.250.070, and 14.05.130, re-adopting the Findings of Fact in Ordinance No. 1457 establishing the Multifamily Tax Exemption (Exhibit 1 to Attachment 2) and extending the Residential Target Area for the Multifamily Tax Exemption in DMMC 3.96 to the new T-C Zone, and codifying a new chapter in Title 18 DMMC.”

Alternate Motion 2: “I move to pass Draft Ordinance 14-035 to a second reading on _____ or as soon thereafter as the matter may be heard.”

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Award of Contract for the J Dock Fire Rehabilitation Project.

FOR AGENDA OF: June 5, 2014

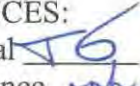
DEPT. OF ORIGIN: Marina

ATTACHMENTS:

DATE SUBMITTED: May 22, 2014

1. Draft Contract between Contractor and the City of Des Moines.
2. Opinion of Probable Cost
3. Bid Sheet and Consulting Engineers Recommendation. To be included in the power point presentation

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this New Business item is to request the Council's approval of the Contract between the City and the contractor submitting the lowest responsive bid for the J Dock Fire Rehabilitation Project.

Suggested Motion: "I move to award the contract for construction services for the J-Dock Fire Damage Rehabilitation Project to Marine Floats Corporation in the amount of \$ 554,388.78, which includes Bid Schedules A and B, and to authorize the City Manager to sign said contract substantially in the form as attached, and to further authorize a contingency for the J-Dock Fire Damage Rehabilitation Project not to exceed \$ 55,000 to cover unforeseen conditions and change orders as determined necessary by the City Manager."

Background

During the late evening hours of June 23, 2012 a fire occurred on J Dock. The fire originated on a boat moored in J-13 and the fire caused extensive damage to the first eighteen slips on the Dock and destroyed seven boats. The recovery proceeded in two phases. The first phase was the demolition of the damaged portion of the dock and the clean-up and repair of what remained so that the dock could be put back in service until the entire damaged part of the dock could be replaced. Phase One was completed by mid-August and cost approximately \$250,000.00. The City has been reimbursed by its insurance carrier for all the costs associated with Phase One.

Phase Two began immediately after the clean-up was completed. The City retained Moffatt Nichols Engineers to obtain the necessary permits and to develop the plans, specifications, and bid documents for the Project. The state and federal permit applications were filed in January; and, as of this date, the state permits have been issued and the federal permit is expected in July.

The plans, specifications and the bid documents were completed by the end of February and the project was advertised the week of April 21, 2014, with the bids due back to the City on May 29, 2014.

The Project was advertised as a design-build project subject to the contract award process in RCW 39.10.330. This process was selected because contractors that do this type of work generally have established plans and designs of their own and allowing the contractor to produce the design eliminated the cost of paying the City's consultant for design work. Additionally, the nature of the Project allowed the design-build procedure to be used under RCW 39.10.300(3).

The contract was awarded in two steps as required under the design-build procedure. The first step was to determine qualified bidders. In all, seven bids were received. That number was cut to five as required in RCW 39.10.330 based on the information in the Contractors Qualifications Statements received by the City of Des Moines on May, 2, 2014. Evaluation factors included, but were not limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposer's team, including the architect-engineer and construction members; and other appropriate factors.

After confirmation that all five finalists are qualified to complete the Project, state law allows the public body to award the contract to the firm that submits the responsive proposal with the lowest price. RCW 39.10.330(5)(b). The firm selected today has been pre-qualified to complete the Project and has submitted the lowest bid.

Discussion

The damaged part of J Dock will be replaced with a covered moorage structure that will be generally the same shape, but will look entirely different. The new structure will have to comply with current building and fire codes, and the codes have changed significantly since J Dock was originally built in 1969. At this time the plan is to have the new dock built off-site and towed to the Marina for installation.

Financial Impact

The Engineer's opinion of probable cost for phase two of the recovery is \$724,000.00. Staff expects to recover most of the costs from the City's insurance companies, but they expect that some items like the installation of a cable carrier for the utilities and the remodel of the security gate to fit the new dock may be considered "upgrades" by the insurance companies and subject to negotiations. One of the insurance carriers has questioned the City's decision to demolish slips 1 thru 6 because those slips were not heavily damaged by fire, although they received extensive smoke damage and all of the electrical system for those slips was compromised by the intense heat of the fire. Staff has already started negotiations on this issue. Any costs not recovered from the insurance companies will be paid out of the Marina Repair & Replacement Fund.

Conclusion

Although one person was seriously injured, a fast and massive response by South King Fire and Rescue, the Coast Guard, the City's Police Department, and Marina staff kept the fire from totally destroying J Dock and possibly neighboring docks as well. Other marina fires in the region have had much worse outcomes.

Staff recommends that the Council award the bid to replace the damaged part of J Dock to the lowest responsive bidder.

Concurrence

The City Attorney's office and the Finance Department concur with this recommendation.

CITY OF DES MOINES MARINA

SECTION 00 01 01
PROJECT TITLE PAGE

CITY OF DES MOINES MARINA
J-DOCK FIRE DAMAGE REHABILITATION

CONTRACT DOCUMENTS



CITY OF DES MOINES
22307 Dock Avenue South
Des Moines, WA 98198

Prepared by:



moffatt & nichol
600 University Street, Suite 610
Seattle, WA 98101

April 2014

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

DOCUMENT 00 01 07
SEAL PAGE

The undersigned hereby certifies that the Divisions 26 and 27 Technical Specifications in this Project Manual were prepared by me or under my direct supervision, and that I am duly registered under the laws of the State of Washington and hereby affix my "Professional Seal".

Wood Harbinger, Inc.
Noppadol P. Lekhakul, PE



END OF DOCUMENT

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

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00 43 36	Proposed Subcontractors Form
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00 45 13	Contractor's Qualification Statement
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CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

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26 09 25	Low Voltage Lighting Control
26 24 16	Installation of Panelboards
26 27 26	Wiring Devices
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DIVISION 27 - COMMUNICATIONS	
27 05 30	Conduits and Back Boxes for Communications Systems
DIVISION 31 - EARTHWORK	
31 62 16	Steel Pipe Pile
DIVISION 35 - MARINE SPECIALTIES	
35 51 13	Timber Floats
APPENDICES	
A	Geotechnical Report, Des Moines Guest Moorage Expansion and Bulkhead Replacement Project, Des Moines, Washington, by Shannon & Wilson Inc. dated June 10, 2004.
B	Supplementary Geotechnical Report, Des Moines Guest Moorage Expansion and Bulkhead Replacement, North Marina Combined Projects, Des Moines Washington, by Shannon & Wilson Inc. dated May 6, 2009.
C	Environmental Permits and Documentation

END SECTION

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 21 13
INSTRUCTIONS TO BIDDERS

PART 1.0 INSTRUCTIONS TO BIDDERS

PROJECT TITLE:

City of Des Moines J-Dock Fire Damage Rehabilitation

THE OWNER:

City of Des Moines Marina
22307 Dock Avenue South
Des Moines, WA 98198

THE ENGINEER:

Moffatt & Nichol
600 University Street, Suite #610
Seattle, WA 98101

TABLE OF ARTICLES:

- 1.01 Definitions
- 1.02 Bidder's Representations
- 1.03 Bidding Documents
- 1.04 Bidding Procedures
- 1.05 Consideration of Bids
- 1.06 Post-bid Information
- 1.07 Bid Bonds and Performance Bonds

1.01 DEFINITIONS**A. Definitions**

1. Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consists of the Call for Bids, Instructions to Bidders, Contractor's Qualification Statement, Subcontractor's Lists, the Bid Proposal, and other bidding and contract forms. The proposed Contract Documents consist of the Conditions of the Contract (General, Supplemental, Special, and other Conditions), Drawings, Specifications, and all Addenda issued prior to execution of the Contract.
2. Definitions set forth in the General Conditions of the Contract for Construction or in other Contract Documents are applicable to the Bidding Documents.
3. Addenda are written or graphic instruments issued by the Engineer prior to the Bid opening time, which modify or interpret the Bidding Documents by additions, deletions, clarifications, or corrections.
4. A Bid is a complete and properly executed proposal to do the work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
5. The Total Bid Price is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as Schedule A and Schedule B.
6. A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or for a portion of the Work as described in the Bidding Documents.
8. A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.
9. A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

1.02 BIDDER'S REPRESENTATIONS

- A. The Bidder, by making a Bid, represents that:
1. The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
 2. The Bid is made in compliance with the Bidding Documents.
 3. The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 21 13
INSTRUCTIONS TO BIDDERS

4. The Bid is based upon the materials, equipment, and systems required by the Bidding Documents, without exception.
5. The Bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all the authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract as though written out in full herein.
6. The Bidder shall obtain a City of Des Moines Business License to be eligible to receive the Contract Award.

1.03 BIDDING DOCUMENTS

A. Copies

1. Bidders and sub-bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Call for Bids in the number and for the deposit sum, if any, stated therein.
2. Bidders and sub-bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor the Engineer assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
3. The Owner may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

B. Interpretation or Correction of Bidding Documents

1. The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Engineer errors, inconsistencies, or ambiguities discovered.
2. Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request, which shall reach the Engineer at least 10 days prior to the date for receipt of Bids.
3. Interpretations, corrections, and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections, and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

B. Addenda

1. Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents from the printer and who are listed on the official Planholder's List. It is the Bidder's

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 21 13
INSTRUCTIONS TO BIDDERS

responsibility to verify with the Owner that they are listed on the official Planholder's List.

2. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.
3. Addenda will be issued no later than 48 hours prior to the time on the date for receipt of Bids, except an Addendum that includes postponement of the date for receipt of Bids.
4. Each Bidder shall ascertain, prior to submitting a Bid, which the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

1.04 BIDDING PROCEDURES

- A. This project is predominantly a design-build project subject to the contract award process in RCW 39.10.330, Design-build contract award process.

1. Prospective bidders shall complete the Contractors Qualification Statement and submit it to:

City of Des Moines
21630 11th Ave. South
Des Moines, WA 98198
Attn: Harbormaster – Qualification Statement

2. Qualification Statements must be received by 2:00 PM PST on May 2, 2014. Failure to submit by the time and date specified shall disqualify prospective bidders from bidding on the project.
3. The Qualification Statements will be reviewed by a committee composed of the City's consulting engineer and City Staff.
4. Firms that are judged by the committee to meet the experience and technical competence requirements of this project will be asked to submit proposals. The evaluations will be completed and prospective bidders notified by May 7, 2014.
5. The Committee will select not more than five responsive and responsible firms to submit proposals.
6. The successful firm's Qualification Statement will become part of the final contract documents.

B. Preparation of Bids

1. Bids shall be submitted on the forms included with the Bidding Documents.
2. All blanks on the Bid Proposal shall be legibly executed in a non-erasable medium.

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 21 13
INSTRUCTIONS TO BIDDERS

3. Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern. In the event of a discrepancy between a unit price and an extended amount and/or the total price, the unit price will govern and the extended price or total price will be corrected accordingly. However, downward correction of a bid that would displace the apparent low bidder will only be permitted if the error made and the intended bid price can be determined solely from the Bidding Documents.
4. Interlineations, alterations, and erasures must be initialed by the signer of the Bid.
5. The Bidder shall make no stipulations on the Bid Proposal, nor qualify the Bid in any other manner.
6. Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

C. Bid Security

1. Bid security is required. Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Call for Bids. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.
2. A surety bond is required, and shall be written on the form included in the Contract Documents or as acceptable to the City Attorney.
3. The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.

D. Submission of Bids

1. All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be

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enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof

2. Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.
3. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.
4. Oral, telephonic, telegraphic, facsimile, or other electronically-transmitted bids will not be considered.

E. Modification or Withdrawal of Bids

1. A Bid may not be modified, withdrawn, or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.
2. Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date-and time stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.
3. Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
4. Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

1.05 CONSIDERATION OF BIDS

A. Opening of Bids

1. At the discretion of the Owner, if stipulated in the Call for Bids, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

B. Rejection of Bids

1. The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid that is in any way incomplete or irregular is subject to rejection.

C. Acceptance of Bid (Award)

1. It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds

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available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

2. **The contract will be awarded based on the lowest Total Bid Price received for Schedule A and Schedule B.**

1.06 POST-BID INFORMATION

- A. The following are to be executed after the contract is awarded:
1. Agreement
 - a. The agreement in Section 00 52 13 is to be executed by the successful bidder. Four (4) signed originals are required.
 2. Performance and Payment Bond
 - a. The Performance and Payment Bond in Section 00 61 13 is to be executed by the successful bidder and his surety company. Four (4) signed originals are required.
 3. Certificate of Insurance
 - a. All insurance certificates must show thirty (30) days cancellation notice by certified mail and Hold Harmless Statement. Insurance certificates are required for the prime contractor and all subcontractors prior to commencement of any work.
 4. Construction Schedule
 - a. Prior to beginning any work on site, a Construction Schedule shall be submitted per Section 00 73 00 Paragraph 5.02.
 5. Department of Labor and Industries Fees
 - a. The Contractor is responsible for all fees relating to the processing of the Department of Labor and Industries: (1) Intent to Pay Prevailing Wages, (2) Affidavit of Prevailing Wages Paid.
 6. Business License
 - a. The Contractor and all subcontractors that perform work on this project shall obtain a City of Des Moines business license per Des Moines Municipal Code Chapter 5.04.020. Information and form can be found on the City website www.desmoineswa.gov.
 7. Submittals
 - a. The Bidder shall, as stipulated in the Bidding Documents, furnish to the Owner in writing on the forms included in the Contract Documents:
 - 1). A designation of the Work to be performed with the Bidder's own forces;
 - 2). Names of the manufacturers, products, and suppliers of principal items or systems of materials and equipment proposed for the work; and

- 3). Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.
- b. The Bidder will be required to establish, to the satisfaction of the Engineer and Owner, the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.
- c. Prior to the execution of the Contract, the Engineer will notify the Bidder in writing if either the Owner or Engineer, after due investigation, has reasonable objection to a person or entity, including the project manager and the superintendent, proposed by the Bidder. If the Owner or Engineer has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder.
- d. Persons and entities, including the project manager and superintendent, proposed by the Bidder and to whom the Owner and Engineer have made no reasonable objection, must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Engineer.

1.07 **BID BONDS AND PERFORMANCE BONDS**

A. Bond Requirements

1. The Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Bonds may be secured through the Bidder's usual sources. See Bid Bond and Performance Bond requirements, specification Sections 00 43 14 and 00 61 13, respectively.
2. The cost of such bonds shall be included in the Bid.

B. Time of Delivery and Form of Bonds

1. The Bidder shall deliver the required bonds to the Owner.
2. As provided by the Contract Documents, the bonds shall be written on the forms provided as Sections 00 42 13 – Bid Proposal Form or 00 43 14 – Bid Bond Form and 00 61 13 – Performance Bond Form. Bonds shall be written in the amount of the Contract Sum.
3. The bonds shall be dated on the date of the Contract.

END OF SECTION

PART 1.0 SCOPE OF WORK**1.01 GENERAL**

- A. A portion of the existing J Dock timber floats and covered moorage structure was damaged by a fire. This portion of the floats and covered moorage are beyond repair and must be replaced. The **J Dock Fire Damage Rehabilitation Project** includes the following work:
 - 1. Design, furnish, fabricate, and install a complete covered moorage timber float system.
 - A. Covered moorage timber float system shall be pre-engineered and prefabricated primarily off-site with minimal pieces required for on-site installation as described in the contract documents.
 - B. Design, furnish, and install steel guide piling.
 - C. Design, furnish, and install on-dock utilities, including the electrical, potable water, and sanitary sewer pump-out systems.
 - 2. Removal of creosote-treated timber piling.
 - 3. Installation of items from the original float system that are salvaged, restored by the CITY, and provided to the CONTRACTOR.
- B. The City of Des Moines will perform the following work either with CITY staff or by contracting the work to a vendor on the CITY's small works roster. These tasks will be coordinated with the CONTRACTOR to ensure the CONTRACTOR's schedule is not impeded.
 - 1. Removal of the existing damaged timber float system including associated utilities and utility disconnects.
 - 2. Removal and restoration for reuse in this project of the existing gangway.
 - 3. Removal and restoration for reuse in this project of the existing security gate and fence on the gangway landing.
 - 4. Removal and restoration for reuse on this project of the existing slip power boxes and power panel on the floating docks.
 - 5. Detaching the existing fire standpipe system from the existing floating docks and sinking the system to the mudline. The CITY will reinstall the fire standpipe system after final acceptance of the project.
 - 6. Connect utilities at the bulkhead interface.
 - 7. Providing temporary tenant access.
 - 8. Securing regulatory permits.

CITY OF DES MOINES
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SECTION 00 24 13
SCOPE OF WORK

All construction shall be in accordance with the 2012 standard specifications for Road, Bridge and Municipal Construction (WSDOT) as amended by the City of Des Moines.

The contractor shall furnish all labor, materials, equipment and workmanship to complete the project.

The contractor shall obtain and pay for all other permits not attached to this document as required.

The contractor shall verify all conditions and dimensions at the project site before starting work and shall notify the City of any discrepancies.

As a minimum requirement, all disturbed areas within the project site and City right-of-way shall be returned to the equivalent of their preconstruction condition.

END OF SECTION

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 42 13
BID PROPOSAL FORM

BID PROPOSAL

Proposal of _____
(hereinafter called the "Bidder"), organized and existing under the laws of the State of
Washington and doing business as *
(*Insert "a corporation", "a partnership", or "an individual")

To the Honorable Mayor and City Council
City of Des Moines,
21630 11th Avenue South
Des Moines, WA 98198

In compliance with your Call for Bids, the Bidder hereby proposes to furnish all labor and materials specified herein necessary for and incidental to the completion of the J Dock Fire Damage Rehabilitation Project in strict accordance with the Contract Documents, within the time set forth herein, and at the unit prices stated below. The undersigned Bidder hereby certifies that he or she has examined the site of all the proposed work under this Contract and has read and thoroughly understands the Drawings, Specifications, and other Contract Documents pertaining to this Contract is fully aware of the construction problems and costs involved, and proposes to perform all work for the following stated prices. The Bidder shall complete all required forms or the bid may be considered non-responsive. Additionally, the Owner has the right to correct obvious mathematical errors.

Show lump sum and unit prices for bid items as described in Section 01 29 00 Payment Procedures and individual specification sections:

A. BID SCHEDULE

Bid Schedule A:

Bid Item	Description	Estimated Quantity	Unit	Unit Price (Dollars)	Extended Price (Dollars)
A-1.	Mobilization and Demobilization	1	LS	\$_____	\$_____
A-2.	Demolition	1	LS	\$_____	\$_____
A-3.	Timber Float System and Appurtenances	1	LS	\$_____	\$_____
A-4.	As-Built Documents	1	LS	\$_____	\$_____
SUBTOTAL					\$_____
9.5% Washington State Sales Tax:					\$_____
TOTAL BID SCHEDULE A					\$_____

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 42 13
BID PROPOSAL FORM

Bid Schedule B:

Bid Item	Description	Estimated Quantity	Unit	Unit Price (Dollars)	Extended Price (Dollars)
B-1.	Calculations and Shop Drawings	1	LS	\$ _____	\$ _____
SUBTOTAL					\$ _____
TOTAL BID SCHEDULE B					\$ _____

The **Total Bid Price** (Sum of Total Bid Schedule A and Total Bid Schedule B) for the City of Des Moines J-Dock Fire Damage Rehabilitation Project, as shown on the drawings and as specified in the Contract Documents (including 9.5% Washington State Sales Tax applied only to Bid Schedule A), IS:

\$ _____ (Amount in words) \$ _____ (Amount in numbers)

Trench Excavation Safety Provisions: Bidder to indicate costs for trench safety exaction. Any work which requires trenching exceeding a depth of four feet, all costs for trench safety shall be included in all bids and indicated below for adequate safety systems in compliance with Chapter 39.04 RCW, 49.17 RCW and WAC 296-155-650. **Bidder must include a lump sum dollar amount in blank below even if the value is \$0.00.** Do not include Washington State sales tax.

\$ _____ (Amount in words) \$ _____ (Amount in numbers)

The bidding proposal requires bidders to submit complete bids for Schedule A and Schedule B. A limited amount of funds are available for the project. The successful bidder will be determined by the lowest responsible responsive bid based on the Total Bid Price amount (Sum of Total Bid Schedule A and Total Bid Schedule B).

- B. TIME OF COMPLETION: The Bidder shall complete the Physical Work in all respects within 210 working days from the date of written Notice to Proceed. This period shall be known as the "Contract Time" for the purposes of the project.
- C. STATE SALES TAX: The undersigned agrees that the above Bid includes 9.5% Washington State and local sales taxes.
- D. OVERHEAD AND PROFIT: The above Bid Items include overhead, profit, and all other expenses involved.
- E. STATEMENT OF NON-COLLUSION: By submission of the Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that the Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to the Bid with any other Bidder or with any competitor.
- F. INSURANCE: By signing below, the Bidder certifies that he or she has reviewed the insurance provisions of the Bid Documents and will provide the required coverage.

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 42 13
BID PROPOSAL FORM

- G. BID ALTERNATES: It is understood that there are no Bid Alternates for this project.
- H. COMMENCEMENT OF WORK: The Bidder hereby agrees to commence work under this contract within ten (10) calendar days after the Notice to Proceed and to fully complete the work within the time established in paragraph B of this proposal.
- I. LIQUIDATED DAMAGES: The Bidder further agrees to pay, as liquidated damages, the sum as calculated in specification section 00 73 00-5.04 for each consecutive calendar day thereafter for which the work is not completed.
- J. BID SECURITY: Bid security, consisting of a cashier's check or bid (surety) bond, in the amount of 5% of the Total Bid Price attached hereto.
- K. ESTIMATED QUANTITIES: If the adjusted final quantity of any item does not vary from the quantity shown in the bid schedule by more than 25 percent, then all work under that item shall be performed at the original contract unit price.

The Bidder acknowledges the receipt of Addenda to the Contract Documents as follows:

<u>Addendum Number:</u>	<u>Date of Receipt and Acknowledgment:</u>
1. _____	_____
2. _____	_____
3. _____	_____

Bid Date

Company Name

Address 1

Submitted By (Signature)

Address 2

Submitted By (printed Name)

Telephone Number (incl'd area code)

Title

Fax Number

Email Address

Registration or License, Division of Professional Licensing

END OF SECTION

00 42 13-3

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 43 13
BID SECURITY FORM

BID SECURITY

Herewith find deposit in the form of: _____
(state whether certified check, cashier's check, Bid Bond, or postal money order)

for the amount of: _____

which amount is not less than five percent (5%) of the Total Bid Price, including 9.5% sales tax.

Signature

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 43 14
BID BOND FORM

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____ "as Principal, and
_____, as Surety, are held and
firmly bound unto the City of Des Moines, as Obligee, in the penal sum of:

_____ dollars (\$ _____)

for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents. The Condition of this obligation is such that if the Obligee shall make award to the Principal for the CITY OF DES MOINES J DOCK FIRE DAMAGE REHABILITATION PROJECT, according to the terms of the proposal or bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or, if the Principal shall in case of failure so to do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids; then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED, AND DATED THIS _____ DAY OF _____ 20__

PRINCIPAL

SURETY

Received return of deposit in the sum of \$ _____

Date: _____

Signature: _____

END OF SECTION

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 43 36
PROPOSED SUBCONTRACTORS FORM

PROPOSED MAJOR SUBCONTRACTOR LIST

PROPOSED MAJOR SUBCONTRACTOR LIST

Due at bid submittal time

Name of Bidder: _____

The following is a list of security subcontractors that will be used in the work if the Bidder is awarded the contract. RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void. The successful Bidder must have the written permission of the Owner to make any change to this list.

Percent of total bid to be performed by Bidder: _____ %

Name	Schedule/Bid Item Numbers Subcontractor will perform	% of Total Bid
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

END OF DOCUMENT

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 43 37
PROPOSED 3%
SUBCONTRACTOR LIST

PROPOSED 3% SUBCONTRACTOR LIST

List each subcontractor, from any tier of subcontractors that shall perform any subcontract work amounting to greater than 3% of the total bid contract price. Subcontractors listed on the Major Subcontractor List may be omitted from this form. List each bid item to be performed by each designated subcontractor in numerical sequence. If no subcontractors will be performing the specified percentage of the work, indicate this by writing "None" and signing this form. Failure to submit a fully completed and signed subcontractor list after the time set for bid opening may disqualify your bid. This form must be submitted to the Owner within five (5) working days of the bid opening for the three apparent low bidders. If additional space is required, copies of this form or similar type forms are acceptable.

CONTRACTOR'S SIGNATURE

Subcontractor Name: _____

Item Numbers: _____

Subcontractor Name: _____

Item Numbers: _____

Subcontractor Name: _____

Item Numbers: _____

Subcontractor Name: _____

Item Numbers: _____

END OF SECTION

STATE OF WASHINGTON) ss.
County of King)

_____, being first duly sworn on her/his oath, says s/he is and that the bid above submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person not therein named; and s/he further says that the said Bidder has not directly or indirectly induced or solicited any bidder on the above work or supplies to put in a sham bid, or any other person or corporation to refrain from bidding; and that said Bidder has not in any matter sought by collusion to secure to (her)(him)self an advantage over any other bidder or bidders.

SIGNATURE

Subscribed and sworn to before me this _____ day of _____, 20_____

_____, Notary Public in and for the State of Washington,

Residing at: _____

My commission expires: _____

END OF DOCUMENT

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 45 20
CERTIFICATE OF
NON-SEGREGATED FACILITIES

CERTIFICATION OF NON-SEGREGATED FACILITIES

The Bidder certifies that s/he does not maintain or provide for his/her employees any segregated facilities at any of her/his establishments, and that s/he does not permit her/his employees to perform their services at any locations under her/his control where segregated facilities are maintained. The undersigned certifies further that s/he will not maintain or provide for her/his employees any segregated facilities at any of her/his establishments, and that s/he will not permit her/his employees to perform their services at any location under her/his control where segregated facilities are maintained. The undersigned agrees that a breach of this certification will be in violation of the Equal Opportunity clause set forth in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The undersigned agrees that, except where s/he has obtained identical certification from subcontractors prior to the award of subcontracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity clause, and that s/he will obtain identical certifications from subcontractors and that s/he will retain such certifications in her/his files.

Date: _____

Signature: _____

Name/Title: _____

Contractor Name: _____

Address: _____

City/State/Zip: _____

END OF SECTION

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 52 13
CONTRACT FORM

**CONTRACT FOR CONSTRUCTION SERVICES
BETWEEN THE CITY OF DES MOINES AND (CONTRACTOR)**

THIS CONTRACT is made and entered into this ____ day of ____ 2014, by and between the CITY OF DES MOINES, Washington, hereinafter called the "City", and (CONTRACTOR), hereinafter called the "Contractor".

WHEREAS, the City has requested assistance in providing engineering and construction services for the CITY OF DES MOINES J DOCK FIRE DAMAGE REHABILITATION, hereinafter called the "Project", and

WHEREAS, (CONTRACTOR), responded to the City's call for bids on the Project; and presented a bid that has been determined to be responsive by the City, and

WHEREAS, the Contractor has agreed to provide services described in the Contract Documents, and is qualified to provide and perform the services described;

WHEREAS, the Des Moines City Council, by motion, approved the award of this Contract to _____ as the lowest most responsive and responsible bidder for the project at the _____ City Council Meeting;

THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties, and other good and valuable consideration, it is mutually agreed as follows:

1. **Scope of Service:** The Contractor shall provide the following services identified in the City of Des Moines J Dock Fire Damage Rehabilitation – Contract Documents, which are attached to this document and shall be incorporated herein by this reference as part of this Contract.

All work is to be done in accordance with City of Des Moines, County, State, and Federal laws, which are by this reference incorporated herein and made part hereof, and the Contractor shall perform any additions, as negotiated, to the work provided under this Contract and every part thereof.

2. **Contractor's Obligations:** That all labor, materials, tools, software, equipment, utilities, services, and all incidentals necessary or required in the satisfactory performance of the work shall be furnished by the Contractor and the Contract performed and completed under the supervision of and subject to the approval of the City or its authorized representatives.

3. **Compensation:** In consideration for the complete and faithful performance of the Contract, the Contractor shall be paid as follows: Excepting reimbursables, additional services pre-approved by the City, and/or changes and modifications necessitated or agreed upon as provided in the Contract, the City Council has authorized payment to Contractor of \$_____.
(Amount in Words)

The Contractor shall submit monthly invoices in the amounts set forth in the bid schedule table found in the contract documents, for tasks accomplished, in a form as directed by the City's

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 52 13
CONTRACT FORM

authorized representative(s). Invoices shall be paid within thirty (30) days of receipt. Invoices left unpaid beyond 30 days of receipt of invoice shall be subject to a monthly interest rate of 1 %. Reimbursables, standard hourly rates, and additional services shall be as outlined in the fee proposal.

4. **Term:** The term of this Contract shall be 210 working days from the date of execution. This Contract may be extended upon written agreement of both parties. Within 10 working days of execution of this Contract the City and Contractor will jointly establish and abide by a schedule, under which the work and services described in this Contract will be performed and completed. It is the responsibility of both City and Contractor to maintain the schedule, unless changes are agreed upon in writing by both parties. This Contract may be terminated by the City on thirty (30) days notice for the Contractor's failure to perform services outlined in the schedule.

5. **Performance Standards:** Contractor's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.

6. **Record Keeping:** All records or papers of any sort relating to the City and the Project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said Project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or in part, now or at any time, disclose that information without the express written consent of the City.

7. **Assignment:** This Contract may not be assigned or otherwise transferred by either party hereto.

8. **Modification:** No change, alteration, modification, or addition to this Contract will be effective unless it is in writing and properly signed by both parties.

9. **Independent Contractor:** The services provided by the Contractor under this Contract are provided as an independent Contractor. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither the Contractor nor any employee of the Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor.

10. **Indemnification / Hold Harmless:** Contractor shall indemnify and hold the City, officials, employees, consulting engineer, and volunteers harmless from any and all damages, including attorney fees, caused by the negligent acts, errors or omissions of the Contractor in performance of the professional services of this Agreement. The City shall hold the Contractor harmless from any and all damages caused by the sole negligence of the City.

11. **Insurance:** The Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION

SECTION 00 52 13
CONTRACT FORM

a. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. **Automobile Liability** insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on the Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. **Commercial General Liability** insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
3. **Workers' Compensation** coverage required by the Industrial Insurance laws of the state of Washington.
4. **Professional Liability** insurance appropriate to the Contractor's profession.

b. Minimum Amount of Insurance

Contractor shall maintain the following insurance limits:

1. **Automobile Liability** insurance with minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. **Commercial General Liability** insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.
3. **Professional Liability** insurance shall be written with limits no less than \$100,000 per claim and \$1,000,000 policy aggregate limit.

c. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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2. The Contractors Insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

d. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

e. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

f. Further Requirements

Insurance requirements are more completely described in Division 01 – General Conditions, Section 01 41 00 – Regulatory Requirements, Part 3 and incorporated herein by reference.

12. **Dispute Resolution Procedures:**

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

b) **Venue, Applicable Law and Personal Jurisdiction:** All questions related to this Contract shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Contract, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Contract until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

13. **Severability:** If any term, provision, covenant, or condition of this Contract is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the

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provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

14. **Waiver:** The waiver by either party of any breach of any term, condition, or provision of the Contract shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Contract.
15. **Captions:** The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.
16. **Time of Essence:** Time is of the essence for each and all of the terms, covenants, and conditions of this Contract.
17. **Concurrent Originals:** This Contract may be signed in counterpart originals.
18. **Ratification and Confirmation:** Any acts consistent with the authority and prior to the effective date of this Contract are hereby ratified and confirmed.

IN WITNESS THEREOF, four (4) identical counterparts of this Contract, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES

By _____

Its _____

22307 Dock Ave. South

Des Moines, WA 98198

Dated _____

(CONTRACTOR)

By _____

Its _____

Dated _____

APPROVED AS TO FORM:

City Attorney

END OF SECTION

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PERFORMANCE BOND

PERFORMANCE BOND

Bond to City of Des Moines, Washington

Bond No.: _____

We, _____, (Principal) and _____, (Surety) a corporation, and as a surety corporation authorized to become a surety upon Bonds of Contractors with municipal corporations in Washington State, are jointly and severally bound to the City of Des Moines, Washington ("City"), in the penal sum of _____ Dollars (\$ _____), the payment of which sum, on demand, we bind ourselves and our successors, heirs, administrators, executors, or personal representatives, as the case may be. This Performance Bond is provided to secure the performance of Principal in connection with a Contract dated _____ 2014, between Principal and City for a project entitled **City of Des Moines J Dock Fire Damage Rehabilitation** ("Contract"). The initial penal sum shall equal 100% of the Total Bid Price, including sales tax, as specified in the Proposal submitted by Principal. NOW, THEREFORE, this Performance Bond shall be satisfied and released only upon the condition that Principal:

- A. Faithfully performs all provisions of the Contract and changes authorized by the City in the manner and within the time specified as may be extended under the Contract;
- B. Pays all laborers, mechanics, subcontractors, lower tier subcontractors, material men, and all other persons or agents who supply labor, equipment, or materials to the Project;
- C. Indemnifies and holds the City, its officers, and agents harmless from and against all claims, liabilities, causes of action, damages, and costs for such payments for labor, equipment, and materials by satisfying all claims and demands incurred under the Contract, and reimbursing and paying the City all expenses that the City may incur in making good any default by Principal; and
- D. Indemnifies and holds The City harmless from all claims, liabilities, causes of action, damages, and costs, including property damages and personal injuries, resulting from any defect appearing or developing in the material provided or workmanship performed under the Contract.

The indemnities to the The City shall also inure to the benefit of the Consulting Engineer and other design professionals retained by the The City in connection with the project. PROVIDED, however, that after the Final Acceptance of this Contract and the expiration of the lien period, and if there are no liens pending, then the penal sum of this Performance Bond shall be reduced to the sum of _____ Dollars (\$ _____) (10% of Total Bid Price), to insure against all defects appearing or developing in the material provided or workmanship performed under this Contract within one year after Final Acceptance.

The liability of Surety shall be limited to the penal sum of this Performance Bond. No change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be

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performed under the Contract shall in any way affect Surety's obligation on the Performance Bond. Surety hereby waives notice of any change, extension of time, alteration, or addition to the terms of the Contract or the Work, with the exception that Surety shall be notified if the Contract time is extended by more than twenty percent (20%). The surety will be notified by the Contractor within 72 hours of the date that it is determined that Contract time will be extended beyond 42 days; and in that event, a certified copy of the Contractor's notification of the surety shall be sent to the City.

If any modification or change increases the total amount to be paid under the Contract, Surety's obligation under this Performance Bond shall automatically increase in a like amount. Any such increase shall not exceed twenty-five percent (25%) of the original amount of the Performance Bond without the prior written consent of Surety.

This Performance Bond shall be governed and construed by the laws of the State of Washington, and venue shall be in King County, Washington.

IN WITNESS WHEREOF, the parties have executed this instrument in four (4) identical

counterparts this _____ day of _____, 2014.

Principal Surety _____
(Signature of Authorized Official)

By _____
(Signature of Authorized Official)

Title Attorney in Fact _____

(Attach Power of Attorney)

Name and address of local office of agent and/or Surety Company:

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington.

END OF SECTION

CONDITIONS OF THE CONTRACT**PART 1.0 GENERAL****1.01 GENERAL DESCRIPTION**

A. These documents provide the general terms and conditions of the contract for construction.

1.02 GUARANTY

A. The Contractor shall be responsible for the quality of materials and workmanship and shall produce a finished job that complies in all respects with the requirements of the Specifications. In the event defects develop in the work, they shall be promptly repaired to the satisfaction of the City.

1.03 PROJECT SCHEDULE

A. The Contractor shall work when weather conditions permit. In the event that any shutdowns are necessary, the Contractor shall take all precautions that may be necessary to protect the site and completed work. He or she shall maintain a patrol during any shutdown and shall take whatever emergency precautions as may be necessary. All work must be completed within the permitted in-water work window and the number of calendar days indicated on the Bid Proposal.

1.04 CHANGE ORDERS

A. Changes to the work shall be as indicated in the General Conditions. Work may commence only upon receiving a written change order from the City.

1.05 CONSTRUCTION SURVEYING

A. All work performed shall be in conformity with the lines, grades, slopes, cross sections, super elevation data, and dimensions as shown in the drawings or as directed by the City or Engineer. If the plans, special provisions, or specifications state specific tolerances, the work shall be performed within those limits. The City's decision as to the conformity of the work shall be final.

1.06 PREVAILING WAGES

A. Wages of Employees:

1. This contract is subject to the minimum wage requirements of Chapter 39.12 Revised Code of Washington (RCW) and Chapter 49.28 RCW (as amended or supplemented). On federal aid projects, federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in these Contract Documents.

2. The Contractor, any subcontractor, and all individuals or firms required by Chapter 39.12 RCW, Chapter 296-127 Washington Administrative Code (WAC) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by Chapter 39.12 RCW. Higher wages and benefits may be paid. The Contractor shall ensure that any firm (supplier, manufacturer, or fabricator) that falls under the provisions of

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Chapter 39.12 because of the definition "Contractor" in Chapter 296127-010 WAC complies with all the requirements of Chapter 39.12 RCW.

B. Exemptions to Prevailing Wage:

The prevailing wage requirements of Chapter 39.12 RCW, and as required in this contract do not apply to:

1. Sole owners and their spouses;
2. Any partner who owns at least 30% of a partnership;
3. The President, Vice-President, and Treasurer of a corporation if each one owns at least 30% of the corporation.

C. Reporting Requirements:

On forms provided by the Industrial Statistician of the Washington State Department of Labor and Industries (State L&I), the Contractor shall submit to the City the following for itself and for each firm covered under Chapter 39.12 RCW that provided work and materials of the contract:

1. A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I form number F700-029-000. The City will make no payment under this contract for the work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the Owner.
2. A copy of an approved "Affidavit of Prevailing Wages Paid, "State L&I form number F700-007-000. The City will not release to the Contractor any funds retained under Chapter 60.28.011 RCW until all of the "Affidavit of Prevailing Wages Paid" forms have been approved by State L&I and a copy of all the approved forms have been submitted to the City.
3. The Contractor shall be responsible for requesting these forms from the State L&I and for paying any approved fees required by State L&I.

D. Disputes:

A. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the City and the Contractor, the matter shall be referred for arbitration to the Director of the State L&I and the decision therein shall be final and conclusive and binding on all parties involved in the dispute.

1.07 LICENSING

A. The Contractor agrees to comply with all requirements of Chapter 18.27 RCW. The Contractor agrees and covenants to furnish unto the City proper evidence that the Contractor has fully complied with the State Licensing Law of the State of Washington, Chapter 18.27 RCW, a valid City of Des Moines Business License, and a Contractor's Certificate of Registration shall be in full force and effect throughout the work project herein above enumerated, prior to starting work.

PART 2.0 GENERAL**2.01 COORDINATION OF DOCUMENTS GOVERNING THE WORK**

A. The standard forms, specifications, associated plans, solicitation provisions, and contract clauses, made a part of the contract are essential parts thereof, and the requirements in one are as binding as though contained in all. They are intended to be mutually supplementary to describe and provide for a complete work.

B. All discrepancies in the drawings shall be brought to the attention of the Engineer for resolution. Blueprints shall not be scaled to obtain missing or conflicting dimensions. The Contractor shall keep a check on dimensions and details as the work progresses, and any errors or discrepancies discovered shall be promptly reported to the Engineer.

C. In cases of conflict between the plans and the specifications, the specifications shall govern. In all cases of dispute in respect to such conflict or as to what part or parts of the specifications apply to any given parts of the work; decisions shall be made by the Engineer.

PART 3.0 SUBCONTRACTORS AND SUBCONTRACTS**3.01 CONTRACTOR RESPONSIBILITY**

A. Nothing contained in the Contract shall create any contractual or other relationship between the City and/or the Engineer and any Subcontractor or sub-subcontractor, and no performance undertaken by any such Subcontractor or sub-subcontractor shall, under any circumstances, relieve the Contractor of its obligations and responsibilities under the Contract.

B. Prior to subcontracting any work, the Contractor shall verify that every first tier Subcontractor meets the responsibility criteria stated below at the time of subcontract execution. The Contractor shall include these responsibility criteria in every subcontract, and require every Subcontractor to:

1. Possess any electrical contractor license required by 19.28 RCW or elevator contractor license required by 70.87 RCW, if applicable;
2. Have a certificate of registration in compliance with Chapter 18.27 RCW;
3. Have a current State unified business identifier number and a City of Des Moines Business License;
4. If applicable, have:
 - a. Industrial insurance coverage for the bidder's employees working in Washington (Title 51 RCW);
 - b. An employment security department number (Title 50 RCW);
 - c. A state excise tax registration number (Title 82 RCW).

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5. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3);
6. Verify these responsibility criteria for every lower tier subcontractor at the time of subcontract execution; and
7. Include these responsibility criteria in every lower tier subcontract.

3.02 CONTRACTOR WORK PERFORMANCE REQUIREMENT

A. Work done by the Contractor's own organization shall account for at least 30 percent of the awarded Contract price. The Contractor shall not assign all or a part of the work unless the Engineer approves in writing. The Engineer will not approve any proposed assignment that would relieve the original Contractor or Surety of responsibility under the contract.

3.03 APPROVAL OF SUBCONTRACTORS

A. The Contractor shall not subcontract work unless the Engineer approves in writing. Each request to subcontract shall be on the form the Engineer provides. If the Engineer requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The Contractor shall require each subcontractor to comply with Part 3.01B and to furnish all certificates and statements required by the contract. Approval of a Subcontractor by the City shall not relieve the Contractor or Subcontractor of any obligations or responsibilities under the Contract. Any delays or other impacts caused by the failure of the Contractor to provide required information and obtain approval of any Subcontractor in a timely manner will not be considered as justification for additional compensation or an extension of the Contract Time.

3.04 SUBCONTRACTS

A. Upon approval of Subcontractors by the City, the Contractor shall, if requested, provide the City with complete copies of all subcontracts entered into between the Contractor and any Subcontractor. Providing requested subcontracts to the City shall be a condition precedent to the City's obligation to make any progress payment to the Contractor.

3.05 INCORPORATION OF CONTRACT

A. Every subcontract entered into by the Contractor shall expressly bind each Subcontractor to all of the terms and conditions of the Contract, which the Contractor shall incorporate into each subcontract by reference.

3.06 REPLACEMENT OF SUBCONTRACTORS

Subject to the requirements of state and/or federal agencies having jurisdiction over MBE/WBE/DBE requirements applicable to the Work, should it become impossible for a Subcontractor to perform the Subcontractor's intended work, the Contractor shall submit the information required above for an alternate Subcontractor at least 10 days prior to the time that the Subcontractor is scheduled to begin work. The failure of any Subcontractor to perform its portion of the work in a timely or workmanlike fashion is the sole responsibility of the Contractor.

PART 4.0 MUTUAL RESPONSIBILITY OF CONTRACTORS**4.01 WORK BY OTHERS**

A. The City reserves the right to perform other work on or near the Work site using its own forces and/or other contractors. The Contractor shall take all reasonable steps to coordinate its performance of the Work with the City and/or such other contractors and subcontractors. If, through acts of commission or omission on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage with respect to the other work being performed by the City, the Contractor agrees to promptly settle with such other contractor or subcontractor by agreement or other dispute resolution process. The Contractor agrees to indemnify and hold harmless the City and the Engineer from all claims asserted against and liability incurred by the City or the Engineer resulting from disputes between the Contractor and any other contractor or any subcontractor or material supplier. The indemnification rights of the City and the Engineer include expenses such as, but not limited to, salaries/wages of employees and all other expenses relating to any mediation, litigation, or arbitration, including costs, consulting fees and attorneys' fees. If such other contractor or subcontractor shall assert any claim against the City on account of any damage alleged to have been sustained by an act or omission of the Contractor or anyone for whose acts it may be liable, the City or the Engineer shall notify the Contractor, which shall defend, indemnify and save harmless the City and the Engineer against such claim.

B. The coordination of the Work with other work by the City shall be taken into account by the Contractor as part of its site investigation obligations under Section 2.01.4, and all costs thereof shall be borne by the Contractor as part of the contract price for the work.

4.02 RISK OF LOSS

A. The Contractor shall have all risk of loss for all work in progress, all materials, all equipment and all other items in any way relating to the Work through theft, fire, other casualty, act of God, or any other cause until the Contract Completion Date.

PART 5.0 GENERAL**5.01 CONTRACT TIME & CONSTRUCTION SCHEDULE**

A. The Contract Time shall begin on the first working day after the issuance of the written Notice to Proceed or the first day on which the Contractor begins to perform Work on the site, whichever occurs first. Time is of the essence of this Contract. All of the Work shall be completed within the time limits set forth in the Contract, and the Contractor's unexcused failure to do so shall result in the assessment of liquidated damages as provided in the Contract.

B. The Contractor shall complete all of the physical Work within the number of working days that are specified as the Contract Time. Every day will be counted as a working day unless it is a non-working day or the Engineer determines the day to be an unworkable day. A non-working day is a Saturday, a Sunday, a day on which the Contract suspends work, or one of the following holidays: January 1st; the third Monday of January; the third Monday of February; Memorial Day; July 4th; Labor Day; November 11th; Thanksgiving Day; the day after Thanksgiving; and Christmas. Whenever any of these holidays falls on a Sunday, the following Monday shall be counted a non-working

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day. When the holiday falls on a Saturday, the preceding Friday shall be counted a non-working day.

C. The days between December 25th and January 1st will be classified as nonworking days, provided that the Contractor actually suspends performance of the work.

D. An unworkable day is defined as a partial or whole day that the Engineer determines to be unworkable because of weather, conditions caused by the weather, or such other conditions beyond the control of the Contractor that prevent the satisfactory and timely performance of the Work, and such performance, if not hindered, would have otherwise progressed toward physical completion of the work.

E. Each working day shall be charged to the Contract Time as it occurs until the Physical Completion Date. If requested by the Contractor in writing, the Engineer will provide the Contractor with a weekly statement that shows the number of working days: (1) charged to the Contract Time the week before; (2) specified for the Contract Time; and (3) remaining to achieve the Physical Completion Date. The statement will also show the nonworking days and any partial or whole days that the Engineer declares to be unworkable. If the Contractor disagrees with any statement issued by the Engineer, the Contractor shall submit a written protest within 10 calendar days after the date of the statement. The protest shall be sufficiently detailed to enable the Engineer to ascertain the basis for the dispute and amount of time disputed. Any statement that is not protested by the Contractor as required in this Section shall be deemed as having been accepted as correct. If the Contractor elects to work 10 hours a day four days a week (a 4-10 schedule), the fifth day of that week will be charged as a working day if that day would be chargeable as a working day if the Contractor had not elected to utilize a 4-10 schedule.

5.02 **CONSTRUCTION SCHEDULE**

A. Within 5 working days after the date the Contract is executed, the Contractor shall submit to the Engineer four copies of a preliminary progress schedule covering the first 90 working days of the Work. Within 30 working days after the Contract is executed, the Contractor shall submit to the Engineer four copies of a comprehensive critical path method progress schedule and analysis for the entire Work. The preliminary progress schedule may consist of a bar graph or arrow diagram and shall show the time the Contractor intends to start and complete various Work activities. No progress payments will be made until the required progress schedules have been submitted in a form acceptable to the Engineer.

B. The comprehensive progress schedule shall include a brief explanation of the schedule submitted, together with an analysis showing the following:

1. the percentage of each Work activity completed;
2. the anticipated Substantial Completion Date, Physical Completion, and Contract Completion Date;
3. a description of anticipated problem areas that may impact the schedule;

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4. a description of any current factors that are impacting the schedule and the affect of each;
5. an explanation of corrective actions taken or proposed.

C. The Contractor shall promptly, and in no event more than seven days following the occurrence of any of the events described below, submit to the Engineer a revised schedule when:

1. a Change Order affects the Contract Time or the sequence of Work activities;
2. the progress of any activity on the critical path falls behind schedule or progresses significantly ahead of schedule;
3. a delay in the progress of a non-critical activity results in a change to the critical path for the Work;
4. the Contractor elects to change the sequence of any activities affecting the critical path.

D. The original and all supplemental progress schedules shall not conflict with any time and order-of-work requirement in the Contract.

E. If the Engineer deems that the original or any necessary supplemental progress schedule does not provide the information required in this section, the City may withhold progress payments until a schedule containing the required information has been submitted by the Contractor and approved by the Engineer.

F. The Engineer's approval of any schedule shall not transfer any of the Contractor's responsibilities to the City. The Contractor alone shall remain responsible for adjusting forces, equipment, and work schedules to ensure completion of the work within the time(s) specified in the Contract.

5.03 **EXTENSIONS OF THE CONTRACT TIME**

- A. The Contractor specifically waives claims for damages for any hindrance or delay, excepting unreasonable delays caused by the City or anyone for whose actions the City is responsible. In lieu thereof, the Contractor will be granted equitable extensions of the Contract Time for which liquidated damages will not otherwise be claimed by the City under the following circumstances:
 1. A delay caused the Contractor by any suit or other legal action against the City will entitle the Contractor to an equivalent extension of time, unless the period of such delay exceeds 90 calendar days. When such period is exceeded, the City will, upon written request of the Contractor, either negotiate a termination of the Contract or grant a further extension of the Contract Time, whichever is in the best interests of the City.
 2. If the volume of specified unit price work is increased over the estimated volume utilized in the Proposal at the time of the Award for reasons beyond the control of the Contractor, and the increased volume delays the Contractor's

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performance of the Work, the Contractor will be granted an equivalent extension of the Contract Time as determined by the Engineer.

3. Should any other unforeseen condition occur that is beyond the reasonable control of Contractor, require more time for the Contractor to complete the performance of the Work by the Substantial Completion Date, the Contractor shall notify the City and the Engineer in writing prior to the performance of such work, and in any event within 10 calendar days after the occurrence of the unforeseen condition. The notice shall set forth in detail the Contractor's estimate of the required time extension. The City will allow such equitable extension of the Contract Time that the Engineer determines to be appropriate.

5.04 LIQUIDATED DAMAGES

A. The Contractor acknowledges that the City will suffer monetary damages in the event of an unexcused delay in the Substantial Completion Date and the Physical Completion Date of the Work. If the Contractor fails, without excuse under the Contract, to complete the Work within the Contract Time, or any proper extension thereof granted, in writing, by the City, the Contractor agrees to pay to the City the amount specified in the Proposal form, not as a penalty, but as liquidated damages for such breach of the Contract for each calendar day that the Contractor shall be in default after the time stipulated for the Substantial Completion Date and the Physical Completion Date of the Work. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction of payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

B. The amount of liquidated damages is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is specifically agreed to be a reasonable approximation of damages that the City would sustain as a result of an unexcused delay in the Substantial Completion Date and the Physical Completion Date; said amount may be retained from time to time by the City from current progress payments. Accordingly the Contractor agrees:

1. To pay according to the following formula for liquidated damages for each working day beyond the number of working days established for Physical Completion; and,

2. To authorize the City to deduct these liquidated damages from any money due or coming due to the Contractor.

LIQUIDATED DAMAGES FORMULA:

$$LD = .15C/T$$

Where

LD =	liquidated damages per working day (rounded to nearest \$)
C =	original Contract amount
T =	original time for Physical Completion

PART 6.0 COMPLETION AND ACCEPTANCE OF THE WORK**6.01 SUBSTANTIAL COMPLETION DATE**

A. The Work will be considered substantially complete after the piles are driven, the Timber Float System is secured in its final location, all power is energized and tested by the CITY, and the Work is ready for its intended purpose.

B. When the Contractor considers the Work to be substantially complete and ready for its intended purpose, the Contractor shall notify the Engineer in writing and include an itemized list of remaining Work to be completed. On the Substantial Completion Date, the City shall have full and unrestricted use and benefit of all of the facilities that comprise the Work, both from an operational and safety standpoint, with only minor incidental work, replacement of temporary substitute facilities, or correction or repair of work remaining for the physical completion of the total Work.

C. If the Engineer determines that the Work is not substantially complete, it will so notify the Contractor in writing identifying those items of the Work that must be completed by the Contractor in order to achieve the Substantial Completion Date.

D. If the Engineer believes that the Work is substantially complete, the Engineer will meet with the Contractor to: (1) prepare a list of incomplete or unsatisfactory items of the Work that must be completed or corrected; (2) define the division of responsibility between City and Contractor with respect to security, operation, maintenance, heat, utilities, insurance, etc., for the facilities; and (3) describe any other issues related to approval of the substantially completed Work. Upon reaching agreement with the Contractor, the Engineer will notify the City that, in its opinion and based on the information supplied by the Contractor, the Work is substantially complete, listing the items of incomplete Work, defining the division of responsibilities for the facilities, and setting forth any other terms related to final completion and acceptance.

E. The City, who has sole authority to make the determination of the Substantial Completion Date, will review the Engineer's recommendation that the Work is substantially complete and, if it concurs, will instruct the Engineer to notify the Contractor that the Work is approved as being substantially complete. Except for any portion(s) of Work specified for early completion or required by the City for early possession, substantial completion will not occur for any portion of the Work until the entire Work is ready for possession and use. The approval notice will include a list of incomplete Work items, establish the Substantial Completion Date, and describe any other terms relating to such approval. The Contractor shall acknowledge receipt of the approval notice in writing, indicating acceptance of all of its terms and provisions.

F. The date of Substantial Completion, as determined by the Engineer and agreed to by the City, shall be the date for the beginning of the warranty period.

G. Subsequent to the Substantial Completion date, the City may exclude the Contractor from the Work during such periods when construction activities might interfere with the operation of the Project. The City, however, shall allow the Contractor reasonable access for completion of incomplete punch list items.

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6.02 PHYSICAL COMPLETION DATE

- A. The Contractor shall complete all physical Work within the Contract Time.
- B. Upon physical completion of the Work, including completion of all corrective Work described in Part 6.01-D above and the submission of all required record drawings, operation and maintenance manuals, manufacturers' affidavits, software and programming, and other items required by the Contract, the Contractor shall notify the Engineer in writing that the Work is physically complete. Upon receipt of the notification, the Engineer will determine if the Work is physically complete in accordance with the Contract. If the Engineer determines that any materials, equipment, or workmanship do not meet the requirements of the Contract, the Engineer will prepare a list of such items and submit it to the Contractor. Following the satisfactory completion of the corrective Work by the Contractor, the Engineer will notify the City that the Work is physically complete in accordance with the requirements of the Contract.
- C. The Engineer, with the concurrence of the City, will give the Contractor written notice of the Physical Completion Date for all of the Work. The Physical Completion Date shall not constitute the City's acceptance of the Work.

6.03 CONTRACT COMPLETION DATE (ACCEPTANCE OF THE PROJECT)

- A. When all of the Contractor's obligations under the Contract have been performed satisfactorily, the Engineer will provide the Contractor with written notice of the Contract Completion Date. The following events must occur in order for the Contractor to achieve the Contract Completion Date:
1. The Contractor must have achieved the Substantial Completion Date and the Physical Completion Date for the Work; and
 2. The Contractor must furnish all documentation required by the Contract and required by law. The documents shall include, but are not limited to, the following:
 - a. Complete and legally effective releases and/or waivers of liens or bond or retainage claims in a form acceptable to the City. Subject to prior approval of the City, the Contractor may, if approved by the City, submit in lieu of the lien or claims releases and waivers: (1) receipts showing payment of all accounts in full; (2) an affidavit that the release and receipts cover all labor, services, materials, and equipment for which a lien or other claim could be filed and that all payrolls, material, and equipment bills and other indebtedness connected with the Work for which the City or the City's property might in any way be responsible, have been paid; and (3) the consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release waiver or receipt in a form satisfactory to the City, the Contractor may be permitted by the City to furnish a bond or other collateral satisfactory to the City to indemnify the City against any lien or similar claim;
 - b. Certified Payrolls (Federal Aid projects only);
 - c. Final Contract Voucher Certification.

6.04 USE OF COMPLETED PORTIONS OF THE WORK

A. The City reserves the right to use and occupy any portion of the Work which has been completed sufficiently to permit partial use and occupancy, and such partial use and occupancy shall not be construed as an acceptance of the Work as a whole or any part thereof. Any claims that the City may have against the Contractor shall not be deemed to have been waived by such partial use and occupancy.

6.05 WAIVER OF CLAIMS BY CONTRACTOR

A. The Contractor's acceptance of the final payment from the City constitutes an irrevocable and complete waiver of any and all claims against the City under this Contract or otherwise arising from the Work, except for those claims that have been properly identified in writing in advance of final payment, and for which timely and sufficient prior written notice has been given, all in accordance with the Contract.

6.06 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

A. The City's final payment to the Contractor shall not relieve the Contractor of responsibility for faulty materials, equipment or workmanship. The Contractor shall promptly repair or replace any such defects discovered within the warranty or other applicable limitations period.

PART 7.0 GENERAL**7.1 RETAINAGE**

A. Pursuant to Chapter 60.28 RCW, there will be retained from monies earned by the Contractor on progress estimates a sum not to exceed 5 percent of the monies earned by the Contractor. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82 RCW, which may be due from such Contractor, and (2) the claims of any other person or entity arising under the Contract or Chapter 60.28 RCW.

B. Monies retained pursuant to RCW 60.28 shall, at the option of the Contractor, be:

1. Retained in a fund by the City;
2. Deposited by the City in an interest-bearing account in a bank, mutual savings bank, or savings and loan association (interest on monies so retained may be paid to the Contractor);
3. Deposited by the City in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the City and are not to be allowed to be withdrawn without the City's written authorization. The City will issue a check representing the sum of the monies reserved, payable to the bank or trust company;
4. A retainage bond submitted to the Port equal to five (5%) percent of the contract total plus five (5) percent of all increases in the contract amount that may occur due to change orders, increases in the quantities or the addition of any new work items. The bond shall be conditioned upon the faithful performance of the Contract by the CONTRACTOR within the Contract Time. For purposes of Chapter 60.28 R.C.W. "completion" shall mean Final Completion.

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C. In choosing option 2, 3, or 4, the Contractor agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retainage in securities.

D. At the time the Contract is executed the Contractor shall designate the option desired.

E. Release of retainage will be made within the statutory period following the last date for filing of claims pursuant to Chapter 60.28 RCW, provided that the following conditions are met:

1. A release has been obtained from the Washington State Department of Revenue;
2. A "Certificate of Payment of Contributions Penalties and Interest on Public Works Contract" is received from the Washington State Employment Security Department;
3. The Washington State Department of Labor and Industries indicates the Contractor is current on the payment of industrial insurance and medical aid premiums;
4. No claims have been filed against the retained percentage;
5. All required "Affidavits of Wages Paid" are on file with the City for the Contractor and all Subcontractors, regardless of tier;

F. In the event that claims are filed against the retainage, the Contractor will be paid the retained percentage less an amount sufficient to pay all such claims, together with a sum determined by the City to be sufficient to pay the costs of foreclosing on claims and to attorneys' fees, all in accordance with applicable law.

PART 8.0 CLAIMS AND DISPUTE RESOLUTION

8.01 DISPUTES

A. When disputes occur, the Contractor shall pursue resolution through the Engineer. If negotiations fail to provide satisfactory resolution, the Contractor shall pursue the more formalized method set forth in Part 8.02 for submitting claims.

8.02 CLAIMS

A. If the Contractor contends that additional payment is due, and the Contractor has pursued and exhausted all of the means provided in Part 8.01-A to resolve the dispute, the Contractor may submit a claim as provided in this Section. Any claim for an increase in the contract price or for an extension of the Contract Time by the Contractor is waived if the written notifications required in this part are not provided, or if the Engineer is not afforded reasonable access to the Contractor's complete records relating to the claim, as required by Part 8.05-A, or if a claim is not submitted in accordance with the requirements of this Section. The fact that the Contractor has provided proper notification, properly submitted a claim, or provided the Engineer with access to records,

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shall not in any way be construed as proving or substantiating the validity of the claim. If, after consideration by the City, the claim is found to have merit, the City will make an equitable adjustment to either the contract price, the contract time, or both. If the finds the claim to be without merit, no adjustment will be made.

B. All claims submitted by the Contractor shall be in writing and in sufficient detail to enable the Engineer to ascertain the basis for and amount of the claim. All claims shall be submitted to the Engineer. The following information must accompany each claim submitted:

1. A detailed factual statement of the basis for the claim for additional compensation and/or extension of time, including all relevant dates, locations, and items of work relating to the claim;
2. The date on which the events occurred that gives rise to the claim;
3. The name of each person involved in or having knowledge about the claim;
4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim;
5. If the claim relates to a decision of the Engineer that the Contract leaves to the Engineer's discretion or as to which the Contract provides that the Engineer's decision is final, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Engineer.
6. The identification of any documents and the substance of any oral communications that support the claim;
7. Copies of any identified documents, other than the City documents and documents previously furnished to the City by the Contractor that support the claim (manuals which are standard to the industry may be included by reference).
8. If an extension of the Contract Time is sought:
 - a. The specific days and dates for which the extension is sought;
 - b. The specific reasons why the Contractor believes a time extension should be granted;
 - c. An analysis of the Contractor's progress schedule, demonstrating the reasons why a time extension should be granted.
9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
 - a. Labor
 - b. Materials

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c. Direct equipment. The actual cost for each piece of equipment for which a claim is made, or, in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement which was in effect when the Work was performed. The amounts claimed for any piece of equipment shall not exceed the rates established by the Equipment Rental Agreement, even if the actual cost for such equipment is higher. The City may audit the Contractor's cost records, as provided in Part 8.05-A, to determine actual equipment costs. The following information shall be provided for each piece of equipment:

1. Detailed description (e.g., make, model, year, diesel or gas, size of bucket);
2. The hours of use or standby; and
3. The specific day and dates of use or standby.

d. Subcontractor claims (in the same level of detail as specified herein); and

e. Other information as requested by the Engineer or the City.

10. A notarized statement containing the following language:

Under the penalty of law for perjury or falsification, the undersigned,

_____,
(name) (title)

of _____
(company)

hereby certifies that the claim for extra compensation and time, if any, made herein for work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between the parties.

Dated: _____/s/ _____

Subscribed and sworn before me this _____ day of _____

Notary Public

My Commission Expires: _____

It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred with respect to any claim. The Contractor shall permit the Engineer to have access to those records and any other records and documents as may be required by the Engineer to determine the facts or contentions involved in the

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claim. The Contractor shall retain all records and documents in any way relating to the Work for a period of not less than three years after the Contract Completion Date.

The Contractor shall in good faith attempt to reach a negotiated resolution of all claims with the Engineer or its designee.

The Contractor's failure to submit with the Final Contract Voucher Certification a list of all claims, together with the information and details required by this Section shall operate as a waiver of the claims by the Contractor, as provided in Part 6.05-A.

If the Contractor submits a claim in full compliance with all the requirements of this Section, the City will respond in writing to the claim as follows:

1. Within 45 calendar days from the date the claim is received by the City, if the claim amount is less than \$100,000;
2. Within 90 calendar days from the date the claim is received by the City, if the claim amount is equal to or greater than \$100,000; or
3. If these time periods are unreasonable due to the complexity of the claim, the Contractor will be notified within 15 calendar days from the date the claim is received by the City of the amount of time which will be necessary for the City to evaluate the claim and issue a response.
4. Full compliance by the Contractor with the provisions of this Section is a condition precedent to the Contractor's right to commence a lawsuit or pursue other legal remedies.

8.03 CONTINUATION OF WORK PENDING RESOLUTION OF DISPUTES

A. The Contractor shall expeditiously carry on the Work, adhere to the progress schedule, and comply with all written directives of the City or the Engineer regardless of any dispute or claim that may exist between the City and the Contractor. No Work shall be delayed or postponed pending resolution of any dispute or claim. Failure or refusal of the Contractor to comply with the written directives of the City or the Engineer shall constitute a material breach of this contract and immediately constitute grounds for the City to withhold payments to the Contractor, suspend the Work or terminate this Contract. Notice under this Section shall be in accordance other provisions of the Contract.

8.04 AUDITS

A. If the Contractor requests an equitable adjustment to either the Contract price or the Contract Time, the City shall have the right to audit the Contractor's books, records, other documents, and accounting practices and procedures, and to inspect the Contractor's plant, equipment and facilities to examine all facts and verify all direct and indirect costs of whatever nature claimed to have been incurred or are anticipated to be incurred. The right to audit encompasses all subcontracts and is binding upon Subcontractors. All subcontracts that the Contractor enters into shall contain a clause allowing the City to audit all Subcontractor books, records, other documents, and accounting practices and procedures, and to inspect the Subcontractor's plant, equipment and facilities. All audits shall be performed by auditors of the City during

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normal working hours at the Contractor's or Subcontractor's office or any other location mutually agreed upon. The Contractor shall cooperate fully with the auditor and shall make available all required information. Failure to cooperate or provide requested information shall be grounds for denial of the claim.

PART 9.0 SUSPENSION OF WORK AND TERMINATION OF CONTRACT

9.01 SUSPENSION OF WORK

A. The City or the Engineer may order suspension of all or any part of the work if:

1. Unsuitable or other conditions that are beyond the reasonable control of the Contractor exist or arise that prevent satisfactory and timely performance of the work;
2. The Contractor fails to comply with written directives by the City or the Engineer to correct deficiencies in its performance of the work;
3. If the Contractor believes that suspension of performance of all or any part of the work is occasioned by any wrongful act or omission of the City, the Contractor shall notify the Engineer in writing within 10 calendar days following the beginning of the suspension of the Contractor's intent to seek an equitable adjustment in the Contract Time or the Contract price;
4. If the Contractor believes that the suspension of performance of all or part of the Work has continued for an unreasonable period of time, the Contractor shall give written notice to the Engineer of its intention to seek an equitable adjustment in the Contract Time or the Contract price. In the event that an equitable adjustment is allowed, no adjustment shall be allowed for any time lost or costs incurred more than 10 calendar days before delivery of the written notice to the Engineer.

B. If the Engineer agrees that the suspension is for reasons set forth in Subsection 1 above, an equitable adjustment will be made in the Contract Time but not the Contract price. If the Engineer agrees that the suspension is for reasons set forth in Subsection 2 above, no equitable adjustment shall be made in the Contract Time or the Contract price. If the Engineer agrees that the suspension is for the reasons set forth in Subsections 3 or 4 above, the Contract Time and the Contract price shall be subject to an equitable adjustment.

9.02 TERMINATION FOR DEFAULT

A. The City may terminate this Contract for default, effective seven days following delivery of written notice of default to the Contractor, if the Contractor:

1. refuses or fails to supply enough properly skilled laborers or conforming materials to complete the Work in a timely manner;
2. refuses or fails to prosecute the Work with such diligence as will ensure its physical completion by the Physical Completion Date;
3. performs work which deviates from the requirements of the Contract and refuses or fails to correct the non-conforming work;

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4. fails to make prompt payment to Subcontractors and/or suppliers for labor or materials;
5. fails to comply with laws, ordinances, rules, regulations or orders of a public authority having jurisdiction; or
6. otherwise fails to follow written directives of the City or the Engineer or is in default of a material provision of the Contract.

B. If the Contractor abandons the Work for any cause other than failure of the City to make monthly progress payments for work properly performed, or if the Contractor refuses to comply with requirements of the Contract, the City has the additional right to notify the Contractor's performance bond surety and require the surety to complete the Work in accordance with the Contract.

9.03 TERMINATION FOR CONVENIENCE OF THE CITY

A. The City may by written notice terminate this Contract at any time in whole or in part, without cause, and except where termination is due to the Contractor's default, the City shall pay the Contractor that portion of the Contract price corresponding to the Work completed to the City's satisfaction, together with reasonable costs, as determined in the sole discretion of the Engineer, necessarily incurred by the Contractor in terminating the remaining portion of Work, less any payments made before termination. In no event shall the City be required to pay the Contractor any amount in excess of the Contract price. The City shall not be required to pay the Contractor any amount for lost anticipated profits on Work that is not performed as a result of termination.

9.04 RESPONSIBILITY OF THE CONTRACTOR AND SURETY

A. Termination of this Contract shall not relieve the Contractor of any responsibilities under the Contract for work performed. Nor shall termination of this Contract relieve the sureties of their obligations under the bonds required or permitted.

END OF DOCUMENT

Opinion of Probable Cost
 Conceptual Design

Bid Schedule A:						
Item No.	Description	Approx. Quantity	Unit	Order of Magnitude		Notes
				Unit Cost (\$)	Extended Cost	
A-1	Mobilization and Demobilization	1	LS	\$ 72,000	\$ 72,000	15% of Items A-2 & A-3 (Rounded)
		15%	Allowance			
A-2	Demolition	1	LS	\$ 6,600	\$ 6,600	
	Pile Removal	6	EA	\$ 1,100	\$ 6,600	
A-3	Timber Float System and Appurtenances	1	LS	\$ 467,500	\$ 467,500	
	New Guide Piling	12	EA	\$ 5,000	\$ 60,000	
	Floats	1	LS	\$ 400,000	\$ 400,000	Including cover and utilities
	Miscellaneous On-Site Connections	1	LS	\$ 7,500	\$ 7,500	Gangway, Fence, Power Boxes
A-4	As-Built Documents	1	LS	\$ 5,000	\$ 5,000	1% of Items A-2 & A-3 (Rounded)
	As-Built Documents	1%	Allowance			
				Subtotal	\$ 551,100	
				Bidding Contingency	5% \$ 27,600	
				Construction Contingency	5% \$ 27,600	
				Bid Schedule A Subtotal	\$ 606,300	
				Washington State Sales Tax	9.50% \$ 57,600	
				Bid Schedule A Total	\$ 663,900	
Bid Schedule B:						
Item No.	Description	Approx. Quantity	Unit	Order of Magnitude		Notes
				Unit Cost (\$)	Extended Cost	
B-1	Calculations and Shop Drawings	1	LS	\$ 54,000	\$ 54,000	8% of Bid Schedule A Total (Rounded)
	Calculations and Shop Drawings	8%	Allowance			
				Subtotal	\$ 54,000	
				Design Contingency	10% \$ 5,400	
				Bid Schedule B Total	\$ 59,400	
				Total Bid Price	\$ 724,000	ROUNDED
				A&E Design Services	0% \$ -	Note 1
				Environmental Permitting	0% \$ -	Note 1
				Construction Administration including City Staff	0% \$ -	Note 1
				Total Cost	\$ 724,000	ROUNDED
Notes						
1	City Admin & Prof. Svcs not included for construction costs					

