

Linda

AMENDED

Executive Session - 6:00 p.m. Litigation

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
January 23, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Wasson

PLEDGE OF ALLEGIANCE

ROLL CALL

1 members present

CORRESPONDENCE

COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

Mayor resigns effective
e end of
meeting

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the minutes of January 9, 2003
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks # through # & electronic fund transfers in the total amount of \$

Payroll fund transfers in the total amount of \$

3. Motion is to approve the Memorandum of Understanding between the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac and Tukwila for planning, funding and implementation of a joint Human Services Application and Funding Program and authorize the City Manager to sign the Memorandum substantially in the form as submitted.

Motion is to approve the Contract for Flooring installation at the Des Moines Activity Center with Greater Seattle Floors, in the amount of \$27,725.00, plus tax, and authorize the City Manager to sign the contract substantially in the form as submitted.

5. Motion is to approve the interlocal agreement between the City of Auburn and the City of Des Moines for the use of the Auburn Police Range Facility by the City of Des Moines Police Department and authorize the City Manager to sign the interlocal substantially in the form as submitted.

approved
removed
by City Manager

removed
by Des Moines
passed 7-0

6. Motion is to approve the agreement with Wood/Harbinger, Inc. for the first phase of the design and engineering work for the Power Distribution System Project at the Marina for the amount of \$35,973, and authorize the City Manager to sign the agreement substantially in the form as submitted.

7. Motion is to approve the re-allocation of \$14,074 in unexpended Capital Improvement Program funds from the Woodmont Elementary School Soccer Field Project for the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center.

*NOTE: Items on the Consent Calendar are either routine or have been previously discussed. Any item may be removed by a Councilmember.

PUBLIC HEARING

Draft Resolution No. 03-002 Shoreline Permit for the Redondo Boat Launch Renovation Project
- File #LUA2002-008

SUMMARY: Administration has identified a need to renovate the existing Redondo boat launch facility to improve its safety and overall operation. The boat launch renovation project involves construction, improvements, and other work within 200 feet of a regulated shoreline area which is subject to enhanced reviews and approvals under the City's Shoreline Master Program and critical areas regulations. The purpose of this item is to describe and analyze the required applications for the proposed improvements so that Council can conduct a public hearing and take appropriate action.

OLD BUSINESS

1. Draft Ordinance No. 02-186 Dangerous Fences - 2nd Reading

SUMMARY: At the January 9, 2003 continued public hearing, staff made a presentation responding to the Council's requested changes. The Public Hearing is now closed. A motion passed unanimously to move the draft ordinance to a second reading on the January 23, 2003 agenda.

NEW BUSINESS

1. Draft Ordinance No. 02-177 - Mobile Home Park Regulations - 1st Reading

SUMMARY: On June 27, 2002 Administration requested Council direction on mobile home parks. Currently, the mobile homes in the City are nonconforming uses. Under the draft ordinance mobile home parks established before July 1, 1992 remain legal, nonconforming uses. The purpose of the draft ordinance would be to allow mobile home owners, with an approved site plan, the opportunity to locate in a Des Moines' mobile home park.

2. Draft Resolution No. 02-237 Amending Council Rule 12

SUMMARY: The purpose of this item is to amend the current City Council Rules of Procedure to more specifically identify the City Clerk's duties regarding the keeping of minutes and to require a specific action item section in the minutes be kept of each City council meeting.

removed
by MS
moved
Thomason
& Council
Shealer
passed 6-1

3. Councilmember Compensation

SUMMARY: The purpose of this item is to provide the City Council an opportunity to discuss Councilmember compensation. Mayor Wasson placed this item on the agenda at the request of Councilmember Steenrod.

4. Draft Resolution No. 03-013 Amendment of Council Rule 36, Videotaping of Council Meetings

SUMMARY: The Mayor has requested that the Council Rules of procedure be amended to restrict persons, other than the City's official videographer, from videotaping or photographing Council meetings to an area defined as behind a line projected parallel to the Council dais at the rear of the public comment table and not to block the view of the City Council dais. It is recommended that the Council discuss the draft resolution at the meeting of January 23rd, and pass the draft resolution in its current or amended form to a second reading for enactment on a future agenda.

5. Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure

SUMMARY: The Mayor has requested that the Council Rules of Procedure be amended to allow for suspension of Council rules. Suspensions of rules are not currently allowed under DMMC 4.12.030. Therefore, DMMC 4.12.030 must be amended.

NEXT MEETING DATE - Regular Meeting January 30, 2003

ADJOURNMENT

A G E N D A I T E M

SUBJECT: Activity Center Remodel
Flooring Installation Contract

ATTACHMENTS:

A. Draft Contract between City of Des Moines
and Greater Seattle Floors

B. 2003 Activity Center Capital Improvement
Plan Request

AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: January 17, 2003

CLEARANCES:

☒ Park & Recreation Director 

☒ City Attorney 

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation:

The purpose of this item is to request City Council approval of the Contract for Flooring Installation at the Des Moines Activity Center with Greater Seattle Floors.

Recommended Motion:

"I move to approve the Contract for Flooring Installation at the Des Moines Activity Center with Greater Seattle Floors, in the amount of \$27,725.00, plus tax, and authorize the City Manager to sign contract, substantially in the form as submitted."

Background:

City Council approved funding for the renovation of the Des Moines Activity Center which includes interior floor installation. To reduce construction contractor mark-up it was agreed that the city as owner would manage project elements totaling an estimated \$139,818.00 including tax and contingency. Updated cost estimates for these items are as follows: project architectural and inspection services \$19,750.00, parking lot gravel and asphalt work \$10,189.00, grease trap and water line installation \$4,500.00, roof repair \$9,097.00, flooring installation and ADA ramps \$35,165.00, kitchen equipment purchase \$ 37,741.00, interior and exterior painting \$4,000.00, fire alarm system \$12,647.00, permit and utility hook up costs of \$5,000.00 and remaining contingency of \$1,729.00.

Discussion:

Staff reviewed several flooring contractors' installation proposals and Greater Seattle Flooring was found to be the most appropriate and cost-effective, given the scope and complexity of the installation. Greater Seattle Floors will furnish all labor and materials required for the installation of owner-supplied hardwood flooring, in the multipurpose room, classroom, lobby, counseling room, as well as in the reception area of the Activity Center, in accordance with the City's approved specifications. Parks Maintenance staff will plane the flooring materials and prepare the floor surfaces prior to installation.

The flooring to be installed is a Malaysian hardwood product valued at \$4.75 per linear foot donated by Gallaher Lumber. The 1 1/8 inch thickness of the wood planks created construction and installation challenges, such as height of doors and transitions from room to room. However, due to its density the floor surface similar to a sprung wood floor will provide "give" that is highly desirable for exercising and dancing.

Greater Seattle Floors has extensive experience laying wood flooring and special expertise with gym flooring and installation of wood flooring over concrete surfaces.

Financial Impact:

This project was anticipated and is funded in the 2003 Activity Center Capital Improvement Plan.

Recommendation/Conclusion:

It is recommended that City Council approve the contract for flooring installation at the Activity Center with Greater Seattle Floors in the amount of \$27,725.00, plus tax.

Concurrence:

Administration and Parks, Recreation and Senior Services recommend approval of Contract with Greater Seattle Floors.

DRAFT
AGREEMENT BETWEEN THE CITY OF DES MOINES AND GREATER SEATTLE
FLOORS - PROJECT #310.049.000.594.00.63.00

THIS AGREEMENT, entered into as of this 24th day of January, 2003 is by and between the CITY OF DES MOINES, a Washington municipal corporation, hereinafter referred to as the "City," and Greater Seattle Floors, here in after referred to as the "Contractor."

In consideration of the covenants and conditions set forth below, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to retain Contractor to install owner supplied hardwood flooring at the Des Moines Activity Center, located at 2045 South 216th Street in Des Moines, Washington.

2. Scope of Work and Contract Documents. Contractor agrees to furnish all materials, labor, and other incidentals and to perform all services and work as described in this Agreement and the Contract Documents which consist of this Agreement, the Bid Proposal identified as Exhibit "A" dated January 22, 2003 and submitted by Greater Seattle Flooring, and all State, County, and Municipal regulations for construction.

Contractor shall provide all labor and materials necessary to:

- a) Contractor will install 3,625 square feet, owner supplied Apitong hardwood by gluing down and pinning with 2" split drive pins into concrete sub floor. Pins will be countersunk and then plugged with same material.
- b) Contractor will sand and finish flooring with three (3) coats VerMeister waterborne finish.
- c) Contractor is responsible for milling and truing up of material.

3. Performance Standards. Contractor's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently, competently and in a workmanlike manner in accordance with professional standards of conduct and performance and in accordance with the most current edition of the Uniform Building code and all laws, ordinances and regulations of the City of Des Moines, King County, and the State of Washington.

4. Project Schedule. Contractor agrees to complete all work as provided in this Agreement according to the attached Project Schedule, provided, however, that the parties may, in a written amendment signed by the parties, agree to modify the schedule as conditions require. Project start date to be: Monday, January 27th, 2003 with project to be completed February 14, 2003.

5. Compensation. In consideration for the complete and faithful performance of all work and services rendered under this Agreement, the Contractor shall be paid not more than \$27,725.00 plus WSST sales tax. Such payment shall be full compensation for work, services, labor, materials, supplies, equipment, and all other things necessary to complete the work specified in the attached Bid Proposal. Said amount shall be payment in full excepting changes and modifications necessitated and agreed upon between the City and the Contractor. Optional work requested by the City will be paid at a rate of \$65.00 per man-hour, plus cost of materials. The Contractor shall be entitled to receive full payment upon receipt of written notice from the City's designated project manager that all work has been performed to the satisfaction of the City. The City agrees that notification of satisfactory work shall not be unreasonably withheld.

6. Insurance. The contractor shall procure and maintain for the duration of the Agreement, 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, their agents, representatives, employees or subcontractors.

The Contractor shall provide a Certificate of Insurance evidencing:

- a) Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- b) Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable; and employer's liability.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Contractor. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on the behalf of the Contractor and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request a certified copy of the insurance policies. The Contractor's commercial general liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Contractor's insurance shall be primary insurance as respect the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension, or material change in coverage.

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

8. Independent Contractor. The services provided by the Contractor under this Agreement are provided as an independent contractor. Nothing in this Agreement 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 Agreement. 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.

9. Indemnification. The Contractor will indemnify and hold harmless the City, its agents, employees and volunteers, from and against any and all liability arising from injury or death to persons or damage to property resulting from acts, errors, omissions, or negligent acts of the Contractor, its agents, servants, officers, or employees. The Contractor, in addition to providing indemnification and holding the City harmless as set forth above, shall indemnify the City for all expenses incurred by the City in defending such claim or suit, including reasonable attorney fees; provided, however, that if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City, its employees, agents, or representatives, the indemnification applies only to the extent of the negligence of the Contractor, its employees, agents, or representatives.

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

11. Venue, Applicable Law and Personal Jurisdiction. All questions related to this Agreement should 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 Agreement, 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 Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

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

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

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

15. Time of Essence. The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule as attached hereto. The City understands, however, that the Contractor's performance must be governed by sound professional practices.

16. Concurrent Originals. This Agreement may be signed in counterpart originals.

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

CITY OF DES MOINES

Greater Seattle Floors

By _____
Tony Piasecki
Its City Manager
Dated _____

By _____
Tom Wells
Owner
Dated _____

APPROVED AS TO FORM:

Linda Marousek
City Attorney

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.	
		PROJECT STATUS:	
		Preliminary Estimate	X X X
PROJECT	Activity Center Remodel	Plans in Preparation	
		P.S.E. Complete	
LOCATION	2045 S 216th Street		
DESCRIPTION:	Remodel of former church building for Senior Services Programs use including commercial kitchen and meeting room wall construction, electrical, plumbing, flooring, parking lot improvements and HVAC system repairs.		

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
ADMINISTRATION	3,100	3,100						
DESIGN/ENG	20,000	20,000						
LAND								
BUILDINGS								
IMPROVEMENTS	258,218	258,218						
INSPECTION	4,000	4,000						
CONTINGENCY	14,315	14,315						
SALES TAX	13,857	13,857						
OTHER								
TOTAL	313,490	313,490						

FUNDING SOURCE	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
MCI-reprogrammed funds	52,654	52,654						
DM Legacy Foundation	34,000	34,000						
Haunted House Proceeds	226,836	226,836						
TOTAL	313,490	313,490						

OPERATING COSTS								
PERSONNEL								
SUPPLIES								
UTILITIES								
CAPITAL								
OTHER								
TOTAL								

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	MCI	PROJECT NO.	
		PROJECT STATUS:	
		Preliminary Estimate	X X X
PROJECT	Activity Center Remodel	Plans in Preparation	
		P.S.E. Complete	
LOCATION	21630 11th Avenue South		

JUSTIFICATION: Senior Services are being relocated due to flood damage to the Dining Hall at Des Moines Beach Park. The Activity Center will be remodeled to provide a temporary home for Senior programs and services.

SCOPE OF WORK:	Remodel of building located at 2045 S. 216th Street	
Drawing/Site Plan Attached	Design & Administration	\$ 23,100
	Construction	\$ 258,218
	Contingency	\$ 14,315
	Inspection	\$ 4,000
	Sales Tax	\$ 13,857
	Total	\$ 313,490

AGENDA ITEM

SUBJECT:

Joint Human Services Application
& Funding Program

AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Parks, Recreation, & Senior
Services

ATTACHMENTS:

Memorandum of Understanding

DATE SUBMITTED: January 9, 2003

CLEARANCES:

☒ Park & Recreation Director

☒ City Attorney

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

Recommended Motion:

1. "I move to adopt the Memorandum of Understanding between the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac, and Tukwila for planning, funding, and implementation of a joint Human Services Application and Funding Program."

Background:

The City of Des Moines annually funds selected human service providers for services to Des Moines residents. Many of these human service agencies provide services for residents of multiple cities, which require duplicated efforts by the agencies, and cities regarding preparation of grant applications, contract processes, quarterly reporting processes, and quarterly invoicing processes. The Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac and Tukwila wish to cooperate to make the most efficient use of their limited resources by streamlining the funding process by implementing a Joint Human Services Application and Funding Program.

The new process would allow for selected King County human service providers to submit one application for funding, one invoice for payment, and one quarterly report of performance measures and specific city demographics as opposed to completing nine applications, nine invoice requests and nine separate quarterly reports.

The city would continue to participate in this new process through automatic annual renewals of the Memorandum of Understanding. The city could terminate its participation in the process on 30 days written notice, but would remain responsible for its funding responsibilities through the end of the calendar year.

In 2002 Eastside Cities collaborated to initiate a similar Memorandum of Understanding with great success. Using their model, the above mentioned South King County cities would provide the same streamline process.

Discussion:

By consolidating the human services application and funding process, the Joint Human Services Application and Funding Program results in a more efficient use of Government resources and human service provider staffing and resources. The processing of fewer annual application forms, quarterly payment invoices and quarterly agency performance and demographic report forms would save significant staff time.

Alternatives:

Continue with the current application, contracting, reporting and invoicing process overseen by the senior services manager and Human Services Advisory Committee and the finance department. The human service providers would continue to complete the annual application for funding, return an annual contract to the City, submit quarterly invoices to the City, and submit quarterly service and performance measure reports to the City.

Financial Impact:

There is no additional cost for the proposed Joint Human Services Application and Funding Program. Rather there is a savings in staff time in the finance department in reviewing invoices and issuing quarterly checks along with a savings in senior services manager time in preparing annual applications, report forms and invoice request forms.

Recommendation/Conclusion:

It is recommended that the City Council approve the Memorandum of Understanding for Implementation of a Joint Human Services Application and Funding Program with the cities of Auburn, Burien, Covington, Federal Way, Kent, Renton, SeaTac and Tukwila.

Concurrence:

The cities of Auburn, Burien, Covington, Federal Way, Kent, Renton, SeaTac, Tukwila, and Des Moines staff and the Des Moines Human Services Advisory Committee recommend the Joint Human Services application.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITIES OF AUBURN, BURIEN, COVINGTON,
DES MOINES, FEDERAL WAY, KENT, RENTON,
SEATAC, AND TUKWILA FOR PLANNING,
FUNDING, AND IMPLEMENTATION OF A JOINT
HUMAN SERVICES APPLICATION AND FUNDING
PROGRAM.**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into pursuant to Chapter 39.34 RCW by the Cities of Auburn, Burien, Covington, Des Moines, Federal Way, Kent, Renton, SeaTac, and Tukwila, Washington hereinafter referred to as "Cities", to provide for planning, funding, and implementation of a joint human services application and funding program.

WHEREAS, the Cities engage in activities which support human service providers in King County; and

WHEREAS, the parties wish to make the most efficient use of their resources by cooperating to provide funding to support human service providers in south King County; and

WHEREAS, through the Interlocal Cooperation Act, the parties have the authority to engage in cooperative efforts which result in more efficient use of Government resources; and

NOW THEREFORE, and in consideration of the terms, conditions and performances made herein, it is agreed as follows:

1. Purpose of MOU: The purpose of the MOU is the set up a cooperative arrangement between the Cities to consolidate the human services application and funding process. Four nonprofit human services agencies, commonly funded by many of the Cities, have been designated by the Cities for calendar year 2003. Nonprofit agencies may be added or deleted each year as determined by the Cities for the cooperative program.

2. Joint Participation.

- a) Lead City. A Lead City will be designated by the Cities for each Nonprofit Agency, as shown in Exhibit A, to act as the fiscal and administrative agent for the Cities for that Nonprofit Agency. A Lead City is usually established by the amount of funding and/or support to the particular Nonprofit Agency. The responsibilities of the Lead City are described in Section 4.
- b) Participating City. A Participating City is a city participating in the cooperative funding of a Nonprofit Agency, who is not a Lead City. Participating Cities for each Nonprofit Agency are identified in Exhibit A. A Participating City shall review quarterly reports from the Nonprofit Agency.

If a Participating City becomes concerned with a Nonprofit Agency's services, it will promptly notify the Lead City. If a Participating City determines that a Nonprofit Agency is not performing satisfactorily for their city, the Participating City reserves the right to request the Lead City to withhold payments to the Nonprofit Agency for their share of funding. In the event that a claim or lawsuit is initiated by a Nonprofit Agency against any City for withholding payment, the City requesting the withholding of payment shall be responsible for settling or defending the claim or lawsuit. In addition, in the event of any settlement of or judgment on the claim or lawsuit, the City requesting that payment be withheld shall be fully responsible for the payment of such settlement of judgment and shall indemnify, defend, and hold harmless the other Cities for such settlement or lawsuit.

- c) Nonprofit Agency. For calendar year 2003, the Cities identified and agreed that they will coordinate to consolidate the human services application and funding process for the following four Nonprofit Agencies: Crisis Clinic, King County Sexual Assault Resource Center, Community Health Center, and the Part-Time Domestic Violence Planner through the King County Coalition Against Domestic Violence. Nonprofit Agencies may be added or deleted each year as determined by the Cities for the cooperative program.

3. Funding Arrangement.

- a) Allocation. Each Participating City shall provide to the Lead City no later than March 31st of each year, the total annual funding allocation ~~approved by~~ their City Councils for the Nonprofit Agency, as described in Exhibit A. No administrative costs shall be imposed by the Lead City to the other Participating Cities. Exhibit A will be updated each year to show the Nonprofit Agencies, Lead Cities, Participating Cities, and funding amounts for that calendar year.
- b) Return of Unspent Funds. Any monies that the Nonprofit Agency(s) does not spend during the calendar year shall be proportionately returned to each Participating City. On or before March 31st of the next calendar year the Lead City will provide the unspent funds to each Participating City.

4. Responsibilities of Lead City. A Lead City has been designated to act as the fiscal and administrative agent for the Cities for each Nonprofit Agency, as shown in Exhibit A. The responsibilities of the Lead City shall include the following:

- a) Send an invoice to each Participating City by January 30th of each year for their annual approved allocation to the Nonprofit Agency.
- b) Contract with the Nonprofit Agency each year, for the total funding allocated by the Participating Cities, detailing performance measures to be performed by the Nonprofit Agency for each City.
- c) Receive, review, and process the quarterly invoices and reports from the Nonprofit Agency. Quarterly reports shall describe services provided

specifically to each City. Disputes regarding billings will be resolved among the Participating Cities.

- d) Provide copies of quarterly reports to the Participating Cities, if the reports are not provided directly by the Nonprofit Agency.
- e) Provide the Nonprofit Agency with a funding application and technical assistance as required.
- f) Perform an annual monitoring visit of the Nonprofit Agency, to include the participation of another Participating City.
- g) Maintain accounts and records which properly reflect transactions related to this MOU.

5. Duration. This MOU shall become effective when it is approved by a majority of the Cities and shall remain in effect through December 31, 2003, with automatic extensions annually, unless terminated as described in section 6.

6. Termination. Any party may terminate its participation in the MOU without cause by giving the other Cities a thirty day written notice. The terminating party shall remain fully responsible for meeting its funding responsibilities and other obligations established by this MOU through the end of the calendar year in which such notice is given.

7. Notices. Notices to the Cities shall be sent to the following persons:

City	Contact
Auburn	Planner, currently Shirley Aird
Burien	Management Analyst, currently Lori Fleming
Covington	Administrative Specialist, Human Services, currently Victoria Throm,
Des Moines	Senior Services Manager, currently Sue Padden
Federal Way	Human Services Manager, currently Lydia Assefa-Dawson
Kent	Human Services Manager, currently Katherin Johnson
Renton	Contract Specialist, currently Dianne Utecht
SeaTac	Senior Project Coordinator, currently Soraya Lowry
Tukwila	Human Services Manager, currently Evelyn Boykan

8. Indemnification.

Each City agrees to indemnify the other Cities from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of such City, the City's employees, affiliated corporations, officers, and lower tier subcontractors in connection with this MOU.

Each City hereby waives its immunity under Title 51 of the Revised Code of Washington for claims of any type brought by any City agent or employee against the other Cities. This waiver is specifically negotiated by the parties and a portion of the City's payment hereunder is expressly made the consideration for this waiver.

9. Insurance. Each City shall procure and maintain in full force throughout the duration of the Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. In the event that a City is a member of a pool of self-insured cities, the City shall provide proof of such membership in lieu of the insurance requirement above. Such self insurance shall provide coverage equal to or greater that required of non-self insurance pool member Cities.

10. Oversight Committee. This Agreement shall be managed by an Oversight Committee made up of one representative of each City. The representative of each City shall be that person designated in section 7 of this Agreement. The Oversight Committee shall meet at least annually to discuss the terms of the Agreement and manage the services provided pursuant to the Agreement.

11. Applicable Law; Venue; Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

IN WITNESS WHEREOF, the undersigned have entered into this MOU as of this _____ day of _____, 2003.

CITY OF AUBURN

By: _____

Approved As To Form:

Title: _____

City Attorney

Date: _____

Attest: _____

CITY OF BURIEEN

By: _____

Title: _____

Date: _____

Attest: _____

Approved As To Form:

City Attorney

CITY OF COVINGTON

By: _____

Title: _____

Date: _____

Attest: _____

Approved As To Form:

City Attorney

CITY OF DES MOINES

By: _____

Title: _____

Date: _____

Attest: _____

Approved As To Form:

City Attorney

CITY OF FEDERAL WAY

By: _____

Title: _____

Date: _____

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City Attorney

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Attest: _____

Approved As To Form:

City Attorney

CITY OF SEATAC

By: _____

Title: _____

Date: _____

Attest: _____

Approved As To Form:

City Attorney

CITY OF TUKWILA

By: _____

Title: _____

Date: _____

Attest: _____

Approved As To Form:

City Attorney

EXHIBIT A
to
Memorandum of Understanding (MOU) between the Cities for planning, funding,
and implementation of a joint human services application and funding program.

CALENDAR YEAR 2003

Name of Nonprofit Agency	Participating Cities & Tentative Funding
Crisis Clinic for the telephone referral line	Auburn - Lead City - \$1,500 Burien - \$4,500 Covington - \$5,000 Des Moines - \$2,500 Kent - \$5,000 Federal Way - \$10,000 Renton - \$3,300 SeaTac - \$2,780 Tukwila - \$2,000 TOTAL - \$36,580
King County Sexual Assault Resource Center (KCSARC) for sexual assault services	Renton - Lead City - \$35,000 Auburn - \$26,500 Burien - \$7,500 Covington - \$3,500 Des Moines - \$4,000 Kent - \$20,000 Federal Way - \$30,000 SeaTac - \$7,200 Tukwila - \$14,000 TOTAL - \$147,700
Community Health Centers for comprehensive medical services for low and moderate income persons.	Kent – Lead City - \$58,450 Auburn - \$27,550 Covington - \$3,200 Federal Way - \$31,827 Renton - \$24,000 SeaTac - \$10,600 TOTAL - \$155,627
Part-Time Domestic Violence Planner through King County Coalition Against Domestic Violence for planning activities in South King County.	Kent – Lead City - \$15,000 Auburn - \$10,000 Renton - \$5,000 TOTAL - \$30,000

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement for use of the City of
Auburn Police Department Range Facility

ATTACHMENTS: Proposed Inter-local
Agreement for Outside Agency Use of the Auburn
Police Department Range Facility

FOR AGENDA OF: January 16, 2003

DEPT. OF ORIGIN: Police

DATE SUBMITTED: December 24, 2002

CLEARANCES:

[] Legal: *RSB*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AS*

Purpose and Recommendation

The purpose of this agreement is to seek renewal of an existing agreement for continued use of the City of Auburn Police Department's firing range facility in the form of an inter-local agreement between the City of Auburn and the City of Des Moines.

Suggested Motion: I move to approve the inter-local agreement between the City of Auburn and the City of Des Moines for the use of the Auburn Police Range Facility by the City of Des Moines Police Department.

Alternative Motion: I move to not approve the inter-local agreement between the City of Auburn and the City of Des Moines for the use of the Auburn Police Range Facility by the City of Des Moines Police Department.

Background

Officers of the Des Moines Police Department are required to be proficient and meet certain standards of training and proficiency in the use of various firearms. This requirement is to help insure public safety, the safety of the officers and to reduce potential liability. The City of Des Moines does not own or operate a range and historically the police department has relied on the use of outside facilities to meet its firearms training and qualification needs. The availability and capability of these ranges is becoming more difficult to meet these needs. The use of the Auburn range has been one site used to help meet these needs. Officers in the Des Moines Police Department currently use an array of firearms they must

be proficient with. These include the Glock model 22 and 27 .40 caliber pistols, the Mossberg 12 gauge pump shot gun, and the Colt model AR-15 .223 caliber rifle.

Discussion

The City of Des Moines has historically used range facilities of outside agencies or private companies to accomplish their firearms training and qualification needs. While the ownership and operation of our own range facilities would be ideal, acquisition of property and the building of a range facility in the current economic environment would be cost prohibitive. The Des Moines Police Department currently has a cadre of certified firearms trainers on staff to conduct its own training and qualification program but must rely on the use of other facilities to conduct the programs. While in the past, some agencies with facilities would try to "squeeze" us in to use their facilities this is no longer available to us. Agencies, if they are even open to allowing outside agencies to use their facilities, now charge a fee to help defray costs such as maintenance, utilities, and insurance.

Alternatives

The police department has in the past used various facilities to meet its firearms requirements. Recently we had use of the range facilities at the Washington State Criminal Justice Training Center (Police Academy) in exchange for our firearms trainers assisting with training new officers. This option is no longer open to us. Private ranges are available but do not allow the use of rifles or shot guns. Some other area agencies have range facilities but either do not have space available or also charge a fee.

Financial Impact

It is anticipated the Auburn range would be used four times each year normally in two day intervals or about eight (8) days annually. The City of Auburn charges agencies one hundred (\$100.00) dollars per day for use of their range facility. The impact to the City of Des Moines would be around eight hundred (\$800.00) annually. This expense is already provided for in the 2003 budget submitted by the police department.

Recommendation

It is the recommendation of the Des Moines Police Department to approve the proposed inter-local agreement with the City of Auburn.

AGREEMENT FOR OUTSIDE AGENCY USE OF THE AUBURN POLICE DEPARTMENT RANGE FACILITY

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington, hereafter referred to as CITY" and _____, whose address is _____, hereinafter referred to as "OUTSIDE AGENCY."

W I T N E S S E T H:

WHEREAS, the City owns and operates a firearms range facility within the city limits of Auburn, King County, Washington; and

WHEREAS, the OUTSIDE AGENCY has officers for whom the range facility would be of use and benefit in their training; and

WHEREAS, it is mutually beneficial to both parties hereto that this agreement be executed providing for use of the range facility by OUTSIDE AGENCY.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Scheduling for Use.** For the term of this agreement, officers of the OUTSIDE AGENCY may use the Auburn range facility on a scheduled basis. Such use can be scheduled by giving the range facility manager notice thereof, with the number of persons involved, at least thirty (30) days in advance of the intended use. The range facility manager shall have authority to schedule such use in a manner that does not conflict with other uses of the range facility and may waive the thirty (30) day notice requirement.

2. **Requirements for Use.** For purposes of Section 1 above, only those weapons approved by the CITY range will be authorized for use at the Auburn range

facility. All OUTSIDE AGENCY officers, including team members of the Valley Cities Special Response Team, using the range facility shall be subject to and abide by all range rules and regulations, a copy of which is attached hereto as Attachment "1" and incorporated herein by this reference, and all future amendments thereto implemented by the CITY for the range facility. Copies of range facility rules will be handed out to all officers using the facility and all officers shall follow all directions and requests given by the range facility manager. The CITY may refuse entry to or use of the range facility by any officer(s)/person(s) who fail to abide by such rules and regulations.

3. **Payment of Fee.** In consideration for the use of the range facility, the OUTSIDE AGENCY shall pay to the CITY the sum of One Hundred (\$100.00) Dollars for each day of anticipated use for the next calendar year or for the remaining calendar year. Each OUTSIDE AGENCY will be entitled to use of the range facility for one day during a calendar year for each One Hundred (\$100.00) Dollars paid. Payment of the fee for use of the range facility shall be made prior to the OUTSIDE AGENCY'S first use in a calendar year.

4. **Exemption.** Those cities that are members of the Valley Cities Special Response Team (SRT) shall not be charged for use of the range facility by the Cities' SRT members.

5. **Hold Harmless and Indemnification.** The CITY shall not be responsible for any accidents, losses, damage or injuries suffered by OUTSIDE AGENCY, its officials, employees, officers and agents while using the range facility, except for losses arising out of the CITY'S sole negligence. For and in consideration of the use of the Auburn Police Department's Pistol Range, OUTSIDE AGENCY does hereby promise to indemnify, defend and hold harmless the CITY, its officials, officers, employees and agents from and against any and all claims, demands, and/or causes of action of any kind or character whatsoever arising out of or relating to the OUTSIDE AGENCY'S use of the range facility, including but not limited to, all claims by any of OUTSIDE

AGENCY'S personnel, employees or agents for personal injury, death or damage to their persons or property. The CITY retains the right to participate in any suit if any principle of governmental or public law is involved. Hold harmless provisions shall not apply to losses arising out of the CITY'S sole negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

6. **Liability Insurance Required.** The OUTSIDE AGENCY shall be required to file with the City Clerk's Office, as a condition of the use of the range facility, evidence, which is acceptable to the CITY, reflecting combined single limit liability insurance coverage of One Million Dollars or more per occurrence and evidence that the CITY is named as an additional insured on OUTSIDE AGENCY'S liability insurance policy. In the event OUTSIDE AGENCY is a member of a self-insured pool, a letter confirming coverage as provided above must be submitted by the insured pool to the CITY.

7. **Term of Agreement.** The term of this agreement shall commence on the date here signed and shall be terminated three years from the date here signed.

8. **Termination of Agreement.** Either party may terminate this Agreement by providing no less than sixty (60) days written notice of its intention to terminate. In the event such termination occurs, the fee paid for the calendar year's use shall be refunded for each of the dates paid by OUTSIDE AGENCY for officer use.

9. **Automatic Renewal.** This agreement will be automatically renewed for an additional three-year term unless the CITY receives written notice of OUTSIDE AGENCY'S intent to terminate at least sixty (60) days prior to the end of the three-year term.

10. **Closure of the Range Facility.** If for any reason, including a decision by the CITY that it no longer desires to operate the range facility, closes the range facility to use by OUTSIDE AGENCIES, a refund will be provided in the same manner as set forth in Paragraph 8 above. Further, in the event of closure, OUTSIDE AGENCY

understand and agrees by its signature hereon that there shall be no cause of action of any type whatsoever against the CITY for such closure.

CITY OF AUBURN

**CITY OF _____
(OUTSIDE AGENCY)**

PETER B. LEWIS
MAYOR

BY: _____
TITLE: _____

ATTEST:

ATTEST:

Dani Daskam
City Clerk

CITY CLERK

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

CITY ATTORNEY

Range Appendix A

Range Unit

The Auburn Police Department Range Unit consists of a Range Commander, Range Master, Range Officers, and Range Safety Officers. Additional Collateral duties are Range Maintenance Officer, Armorer, and Supply Officer.

Range Days:

The Auburn Police department has established range days on the First and Third Fridays of each month. The First Friday is for remedial training from 0900 until 1300. From 1300-1630 the range is open for individual practice, qualification, or individual instruction. The Third Friday is primarily for officer qualifications, individual practice, and individual instruction.

Range Scheduling

Range scheduling is coordinated through the Range Commander. Agencies interested in utilizing the Auburn Firing Range must complete a contract prior to the use of the range. This contract contains range operating procedures, protocols, sign in/out procedures, and safety instructions.

Range Operations

1. Prior to starting range operations, the following procedures must be completed:

- A. The range must be scheduled with the Range Commander.
- B. The range sign in sheet must be completed.

- 1. Only CJTC range officers and range safety officers are authorized to sign out the range.
- 2. The keys to the range shack, watershed gate, range flag, and range key will then be released to the signing authority.

- C. Valley Communications must be notified that range operations will be commencing.
- D. A range sweep must be conducted. This can be accomplished by driving north on the range road and looking down into the ravine directly north of the backstop and the hillside to the north. Then walking down the roadway on the east side of the range and walking north until you can visually inspect the eastern portion of the ravine and hillside.
- E. Placing the "Range Operations in Progress Contact Range Staff Prior to Proceeding" near the roadway leading to the impact area and raising the red range flag.

- F. Complete a range safety brief for those personnel intending on using the range.
2. Before closing the range the following procedures must be completed.
- A. All brass and live ammunition must be pick up off of the range.
 - B. The barricade and the flag must be removed.
 - C. The range safety officer must notify Valley Communications that range operations have been completed and request an on-duty Range Officer or Auburn Police Sergeant respond to clear the range.
 - D. Once range clearance has been granted, return the range keys and flag to the Auburn Police Department and sign back in the range.
3. Night Operations require additional safety measures. Prior to signing out the Auburn Police Department Range for night operations, the range must be schedule 3 weeks in advance.
- A. The Range Master will ensure that surrounding residential areas are notified that a night fire will be conducted no later than 1 week prior to the scheduled range usage.
 - B. The Range Master will ensure that an Auburn Police Range Officer is assigned to that night operation.

Range Safety

The Auburn Police Department is committed to the safe firearms training, use, and maintenance. To ensure that safety is maximized, the following rules and principles shall be briefed and followed:

- A. All guns are always loaded.
- B. Never point your weapon at anything you are not willing to shoot.
- C. Keep your finger off of the trigger until your sights are on target and you are willing to shoot.
- D. Be sure of your backstop and what is beyond.
- E. All weapons are to be carried muzzle towards the ground and oriented towards the backstop.
- F. All clearing of weapons are completed on the firing line.
- G. All handguns will be holstered prior to moving away from the firing line unless otherwise directed by the range safety officer.
- H. All personnel on the range have the authority to stop training if they see an unsafe act.
- I. If a cease fire is called, all firing stops immediately and weapons are holstered and/or placed on safe.
- J. All personnel are required to wear eye and ear protection.
- K. All personnel are familiar with the left and right limits.

- L. There is no eating, smoking, or drinking on the firing range. We advise that prior to engaging in these functions wash your hands and face to remove lead residue.
- M. There is no firing above the back stop. The only exception to this rule is Shotgun familiarization with bird loads.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement with Wood/Harbinger, Inc. to provide engineering and design services for the "Power Distribution System Project" at the Marina.

ATTACHMENTS:
Draft Agreement

FOR AGENDA OF: January 16, 2003
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: January 10, 2003

CLEARANCES:

☒ Marina

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this action is to gain council approval for the first phase of the design and engineering effort needed for the "Power Distribution System Project" at the Marina.

Suggested Motion: "I move that the City Council approve the agreement with Wood/Harbinger, Inc. for the first phase of the design and engineering work for the "Power Distribution System Project" at the Marina for the amount of \$35,973, and authorize the City Manager to sign the agreement substantially in the form as submitted."

B. Background

The majority of the existing system of power lines, transformers, and switchgear was installed when the Marina was built in 1969-70. The system was designed for smaller boats with a minimum amount of appliances that require electricity. The maximum design capacity for the majority of the slips was 15 amps. Over the years, many of the services were modified to provide 30 amps, but the transformers and the primary distribution wires were not resized to accommodate the additional loads.

The "Power Distribution System Project" was approved by Council as part of the Marina Comprehensive Master Plan in June of 2001. This project was reviewed, updated and presented to Council again as part of the Marina's CIP in December of 2002. At that time Council approved this project as submitted. The goal of this project is to replace the medium voltage power distribution system and rewire all of the docks in the Marina. The components of the system would be upgraded to meet the current electrical codes and the design capacity of the new equipment and wires will be sufficient to meet the present and projected future needs of the

Marina's customers.

Wood/Harbinger, Inc was one of seven firms that responded to the Marina's request for qualifications. A committee composed of the Harbormaster, the Assistant Harbormaster, the Chief Building Official and the City Electrical Inspector reviewed the submittals and interviewed four of the firms. The Committee chose Wood/Harbinger, Inc. because of their extensive experience in waterfront electrical projects and because of their approach to this project. The Committee also negotiated the scope of work in the Study Phase of the design effort for which the staff is seeking Council approval for at this time. This is the first step in this project.

C. Discussion

The "Power Distribution System Project" is a multi-year project. The first phase involves an analysis of the existing power distribution system and the engineering and design of the new system. In the second phase, the new medium-voltage system would be constructed, which includes the primary and secondary underground distribution wire, the transformers and the switchgear. In subsequent phases, new wiring, distribution panels and individual service centers would be installed on each of the docks. Currently the staff is planning to complete the first and second phases in 2003, and rewiring K, L, M and N Docks by 2006. The staff believes that the new system can be built "parallel" to the old system and the docks can cut over to the new system as they are completed, with a minimum of service interruption for the facility.

With this action, the staff is requesting Council's approval for the very first step, which is a study of the existing power distribution system. The goal of this study is to accomplish the following:

- Inventory current distribution equipment and determine exact locations of underground wiring.
- Determine current demand.
- Develop projections for future demand.
- Identify critical code related issues.
- Determine the capacity needed for future projects listed in the Marina Master Plan and how to design for that capacity now to avoid costly retrofits in the future.
- Determine if additional distribution equipment will be necessary on the docks, and if so, identify the issues that will need to be resolved in the design phase to accommodate the equipment.
- Prepare a budget for the engineering and design of the total project.
- Refine the cost estimates for the actual construction of the new system.

The results of the Study Phase will be presented in a written report. The information in the report, and the decisions that are made based on the report will be the basis for the design effort that will follow in the next phase.

There are two benefits to doing the Study Phase before proceeding with the design of the new system. First, there are two distinct approaches to rewiring the floats. The first is send 240 volt power to the docks through several large wire runs from the distribution panels to the sub-panels on the floats and then distribute the power to the individual slips from the sub-panels. This is the way the power is distributed now. The second is to send 480-volt power to step-down

transformers on the docks through one smaller wire run and then distribute 120/240 power to sub-panels. The second approach has definite safety advantages because it will eliminate the problem of voltage-drop, which is the primary cause of over-heating in wiring and electric appliances. The second approach also eliminates several wire runs from the shore-side distribution panels to the docks. During the study phase Wood/Harbinger would work with the Marina staff to determine if the second approach would be feasible, and what impact placing step-down transformers on the docks would have on operations.

The second benefit to the Study Phase is that issues critical to the success of the design of the system will be identified before the design effort begins. These issues include compliance with the current electrical codes, determining what additional capacity will be needed when the large covered moorages are expanded and when additional facilities like the new dry stack unit are added. Another task that would be necessary to any design effort would be the inventory of the existing equipment and determining the exact location of the buried power lines. This task would be completed in this phase also.

Although many of these tasks would normally be included in the design phase, the Marina staff concurs with Wood/Harbinger's opinion that doing this study as a separate step will be more cost effective because determining the best power distribution alternative and identifying as many critical issues as possible without doing any preliminary design work will save money in the total design effort.

D. Alternatives

Approve the agreement with Wood/Harbinger and proceed with the Study Phase of the design effort.

Delete the Study Phase from the total design effort and proceed with the design of the new system.

E. Financial Impact

\$750,000 has been budgeted for the first and second phases of this project. The first phase includes this study, (which will cost \$35,973), and the design and engineering of the new system, which is estimated to cost approximately \$100,000 to \$125,000. During CIP process the Marina staff obtained another cost estimate for the "Power Distribution System Project" from Cross Engineers, Inc, (Tacoma, WA). In that estimate, the total cost for design services was \$155,000. At this point it appears that the total cost for the Study Phase and the Design Phase will be within the staff's expectations.

F. Recommendation

The staff recommends approving the agreement with Wood/Harbinger, Inc. for the Study Phase of the Marina "Power Distribution System Project".

G. Concurrence

**CONTRACT FOR DESIGN AND ENGINEERING SERVICES
BETWEEN THE CITY OF DES MOINES AND WOOD/HARBINGER, INC. CONSULTING
ENGINEERS**

THIS CONTRACT is made and entered into this ___ day of January, 2003, by and between the CITY OF DES MOINES, Washington, hereinafter called the "City", and WOOD/HARBINGER, INC. CONSULTING ENGINEERS, hereinafter called the "Consultant".

WHEREAS, the City has requested assistance in providing design and engineering services for the MARINA POWER DISTRIBUTION PROJECT, hereinafter called the "Project", including but not limited to charges for, payments received by, and work products prepared by Wood/Harbinger, Inc. Consulting Engineers, the firm that contracted with the City to serve as "Consultant" on the Project; and

WHEREAS, Consultant has agreed to provide design and engineering services and is qualified to provide and perform the services described in this Agreement;

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 Consultant shall provide the services identified in Attachment A – Study Phase Fee Proposal. All work is to be done in accordance with City of Des Moines, County and State laws, which are by this reference incorporated herein and made part hereof, and Consultant shall perform any additions to the work provided under this Contract and every part thereof.

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

3. *Ownership and Use of Records and Documents.* Consultant shall provide the City with reproducible IBM compatible Microsoft Word disc format copies of all original documents, drawings, designs, and reports developed under this Agreement, which shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, Consultant shall bear no responsibility for its disclosure, inadvertent, or otherwise.

All data, documents, and files created by Consultant under this Agreement may be stored at the Consultant's office in Bellevue, Washington. Consultant shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying, and updating as necessary until such time as the City is capable of storing such information in the City's offices. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

Any use or reuse of the documents, data, and files created by Contractor for the City on this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

4. Compensation. In consideration for the complete and faithful performance of the Contract, the Consultant shall be paid as follows: Excepting reimbursables, additional services pre-approved by the owner, and/or changes and modifications necessitated or agreed upon as provided in the Contract, the City Council has authorized payment to Consultant of no more than \$35,973. The Consultant shall submit invoices in a timely manner, in a form as directed by the City's 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 Attachment A.

5. Term. The term of this Contract shall be ninety, (90), days from the date of execution. This Contract may be extended upon written agreement of both parties. Within 10 day of execution of this contract the City and Consultant 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 Consultant to maintain the schedule, unless changes are agreed upon by both parties. This Contract may be terminated by the City on thirty (30) days notice for the Consultant's failure to perform services outlined in the schedule.

6. Performance Standards. Consultant'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.

7. 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 Consultant will not, in whole or in part, now or at any time, disclose that information without the express written consent of the City Attorney.

8. Assignment. This Contract may not be assigned or otherwise transferred by either party hereto.

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

10. Independent Consultant. The services provided by the Consultant under this Contract are provided as an independent Consultant. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither the Consultant nor any employee of the Consultant 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 Consultant.

11. Indemnification / Hold Harmless. Consultant shall defend, indemnify and hold the City, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the negligence of the City.

12. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, 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 Consultant, its agents, representatives, or employees.

a) Minimum Scope of Insurance

Consultant 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 Consultant's profession.

b) Minimum Amount of Insurance

Consultant 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 \$1,000,000 each occurrence, \$2,000,000 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 Consultant'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 Consultant's insurance and shall not contribute with it.
2. The Consultants 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

Consultant 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 Consultant before commencement of the work.

13. 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.

14. **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 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.

15. **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.

16. **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.

17. **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Contract.

18. **Concurrent Originals.** This Contract may be signed in counterpart originals.

19. **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 _____

WOOD/HARBINGER, INC

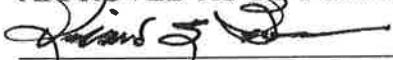
By _____
Its _____

3025 112th Ave. NE, Suite 200

Bellevue, WA 98004-8002

Dated _____

APPROVED AS TO FORM:



City Attorney



January 16, 2003

Mr. Joe Dusenbury
Harbor Master
City of Des Moines
22307 Dock Avenue South
Des Moines, WA 98198-4627

Subject: Study Phase Fee Proposal; Modified 1/16/03

Dear Mr. Dusenbury:

Thank you for this opportunity to provide engineering services to upgrade the City of Des Moines Marina electrical infrastructure and master plan. You will find attached the breakdown of these fees and the intended scope of work for the study phase of this effort. This proposal is for the effort to become clearly familiar with the critical details and conditions of your existing facilities.

During our kickoff meeting, it was determined that it would be in the best interest of the City of Des Moines to have Wood/Harbinger provide an adjusted approach that will meet your Phase-1 and the Long Term needs of the Des Moines Marina. This new approach requires that a detailed study of the facility be completed over the first four to six weeks of the overall effort. With this study, we will evaluate the docks, the uplands, and the structures for code issues, deterioration, and conformance to the comprehensive master plan for the future development of the marina. For the purposes of pier evaluation, we will assume that the detailed investigation of structures and code related issues have been performed by the Marina. The result of your structural findings assumes that the existing structures will remain. The results of the code related effort to date assumes the existing electrical installation will be replaced.

We have assembled a team comprised of Mr. Simmons; to evaluate the entire facility for code conformance, Mr. Bartram; to evaluate the structural impacts to the existing and planned facilities resulting from the recommended corrective actions and Wood/Harbinger staff; to evaluate the power distribution systems and gather the evaluation results that will make up the final report.

The intent of this effort is to familiarize the Team with the Des Moines Marina, develop documentation of existing conditions, evaluate utility billing history, and identify critical code related issues. It is not the intent of this effort to solve design and planning issues.

The report will include the following:

- Documentation showing the actual layout of the power distribution system and up-to-date conditions of the docks.
- Recommended corrective actions for the systems concerned.
- Determine current demand.
- Develop projections for future demand.
- Identify critical code related issues.
- Determine the capacity needed for future projects listed in the Marina Master Plan.
- Determine if additional distribution equipment will be required on the docks, and if so, identify the code related issues that will need to be resolved in the design phase to accommodate the equipment.
- Cost estimates to implement the recommendations. Prepare cost estimate for the engineering and construction of the total project.

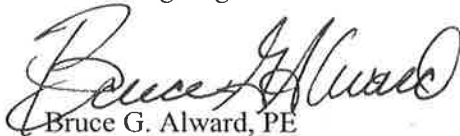
The total fee for the study phase effort is \$35,973.00 (Thirty-Five Thousand Nine-Hundred and Seventy-Three dollars) and will be billed on a percent complete lump sum basis. Expenses are included in the lump sum fee for this phase of effort.

Thank you again for selecting the Wood/Harbinger Team for this effort. We look forward to working with you and your staff and if you have any questions or need additional information, please contact Peter Lekhakul or me at 425-822-9499 or you can reach me at my home by dialing 206-842-0694 any time.

If the letter is acceptable to you, please sign and return one copy and retain the other copy for your records.

Sincerely,

Wood/Harbinger, Inc.
Consulting Engineers



Bruce G. Alward, PE
Vice President, Electrical Division

Accepted by
City of Des Moines Marina

Joe Dusenbury
Harbor Master

A G E N D A I T E M

SUBJECT:

*Draft Ordinance No. 02-186
Dangerous Fences*

ATTACHMENTS:

1. Draft Ordinance No 02-186
2. Minutes from 01-09-2003 hearing
3. Minutes from 11-21-2002 hearing

AGENDA OF: January 23, 2003

DEPT OF ORIGIN: Community Dev.

DATE SUBMITTED: January 16, 2003

CLEARANCES:

☒ COMM DEV

☒ LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

PURPOSE AND RECOMMENDATION:

The attached ordinance proposes to regulate razor wire and other dangerous fencing. Motions consistent with staff recommendation are provided below:

Motion 1:

"I move to adopt Draft
Ordinance No. 02-186."

BACKGROUND:

At the November 21, 2002 public hearing, the City Council heard staff's presentation of an ordinance regarding the dangers of razor wire to the safety of people, pets, and wildlife. Due to time constraints, the City Council unanimously made a motion to continue the hearing to January 9, 2003.

At the January 9, 2003 continued public hearing, staff made a presentation responding to City Council's requested changes. As there was no public comment, the Mayor closed the public hearing. A motion passed unanimously to move the draft ordinance to a second reading on January 23, 2003.

DISCUSSION:

At the January 9 hearing, Council requested that staff make two minor changes to the draft ordinance. Accordingly, staff has revised the language to strike the "and" from the phrase "and/or" on page 3, paragraph 2, and also strike "non-dangerous" from page 3, paragraph 4.

Councilmember Thomasson requested that staff provide a reason for the 10' setback indicated on page 3, paragraph 4. Staff contacted other cities with similar ordinances, and most jurisdictions do not have this type of setback requirement. Staff feels that it is necessary to have a setback from public sidewalks, and has recommended 10' because it is a common setback within the City.

ALTERNATIVES:

The City Council may:

1. Adopt the draft ordinance as written.
2. Adopt the draft ordinance with amendments by the City Council.
3. Do not adopt the draft ordinance.

FINANCIAL IMPACT:

Property owners of dangerous fences that are in violation of this proposed ordinance would be required to remove dangerous portions of the fence at their own cost. It is anticipated that the cost of removal of razor wire and similar materials will be insignificant, however, installing a new type of security system will vary depending on the security needs of the site. The property owners will be encouraged to contact the Police Department for a security survey. A security survey is a free service offered by the city to help people determine the best way to protect their property.

There will be no financial impact to the City of Des Moines.

RECOMMENDATION/CONCLUSION:

Administration recommends that the Council adopt the draft ordinance as written.

CONCURRENCE:

The following departments have been involved in the draft ordinance:

- Community Development Department
- Legal Department
- Police Department

The Police Department has expressed concerns about a total ban on razor wire due to security issues. Community Development and the Police Department will work together to develop other options using the types of fencing allowed within the ordinance.

COMMUNITY DEVELOPMENT'S THIRD DRAFT 01/16/2003

DRAFT ORDINANCE NO. 02-186

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to dangerous fences, and adding new sections to chapters 18.04 and 18.40 DMMC.

WHEREAS, there is razor wire and barbed wire fencing located within the City, and

WHEREAS, razor wire can be an effective method of securing commercial property, and

WHEREAS, razor wire is also being used to secure residential property within the City, and

WHEREAS, citizens of Des Moines have voiced concern over the presence of razor wire fencing, and

WHEREAS, coiled barbed wire fencing poses a similar threat, and

WHEREAS, razor wire and materials of similar design pose a danger to wildlife and domestic pets, and

WHEREAS, razor wire and coiled barbed wire also create a safety hazard for human beings, and

WHEREAS, existing regulations do not address dangerous fences, and

WHEREAS, an environmental checklist for this ordinance was prepared and was reviewed by the responsible SEPA official of the City of Des Moines, and a Determination of Non-Significance was issued on October 23, 2002 under the State Environmental Policy Act, RCW 43.21C, (SEPA) and the Administrative Guideline and local ordinance adopted to implement SEPA, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for November 21, 2002, to consider the textual code amendments contained in this ordinance, and

ATTACHMENT 1

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the 21st day of November, 2002, and all persons wishing to be heard were heard, and

WHEREAS, by motion regularly passed, the Des Moines City Council continued the public hearing to January 9, 2003, and

WHEREAS, the public hearing was continued to the 9th day of January, 2003, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

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

Sec. 1. Four new sections are added to chapter 18.04 DMMC to read as follows:

(1) "Barbed wire" means twisted wires strands of fence wire armed with barbs or sharp points at regular intervals.

(2) "Dangerous fence" means a fence which is designed to be able to or is likely to inflict injury or harm. The term includes, but is not limited to, fences constructed of or including barbed wire or razor wire.

(3) "Electric fence" means an above-ground wire fence that is designed to carry an electric current that will produce a mild shock when a person or animal comes into contact with the wire.

(4) "Razor wire" means tense steel coil around which a tape of razor sharp spikes are attached; also called concertina wire.

Sec. 2. A new section is added to chapter 18.40 DMMC to read as follows:

Dangerous fences--Restrictions. Dangerous fences are subject to the following restrictions:

(1) Fences containing razor wire, coiled barbed wire, or material(s) of similar design are prohibited in all residential zones, except that the Community Development Director may approve such dangerous fences in residential zones for jails, detention facilities and other methods of court-ordered personal confinement, through the building permit process. Only those fences to be used for the purposes set forth in this paragraph will be allowed under such permit.

(2) Electric fences are not permitted in the City except when used to contain grazing animals in an area zoned to allow such a use. Electric fences must be set back at least five (5) feet from the property line and/or must be enclosed by additional fencing or other barriers which prevent access to the electric fence by small children on the adjacent property.

(3) A barbed wire fence may be a maximum of 5' in height and may contain four (4) strands of taut parallel barbed wire.

(4) A ~~non-dangerous~~ fence or wall may incorporate a maximum of three (3) strands of parallel barbed wire a maximum of 2' in height on top of the fence, so long as the orientation is either straight up or angled in toward the enclosure. If such fence is not located within 10 feet of the marginal line of any sidewalk or pedestrian way, the orientation of the barbed wire strands may be angled out toward the exterior of the enclosure. No portion of the fence may overhang any property line.

(5) In residential zones, all permitted dangerous fences shall comply with height and setback restrictions for all fences as set forth

Ordinance No. _____
Page 4 of ____

in DMMC 18.40.150. For properties where both codes apply, the more restrictive code shall prevail.

(6) All fences not in compliance with this section shall, within sixty (60) days of notification from the City, be removed by the owner or, upon failure to remove the fence, the Community Development Director is empowered to cause the removal of the fence, the cost of which shall be billed to the owner.

Sec. 3. Severability - Construction.

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

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

NEW SECTION. **Sec. 4. 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 _____, 2002 and signed in authentication thereof this _____ day of _____, 2002.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____
Page 5 of ____

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD:U:\CELESTE\ORDINANCES\RAZORWIRE

**EXCERPT
DES MOINES CITY COUNCIL MINUTES
January 9, 2003**

CONTINUED PUBLIC HEARING

Draft Ordinance No. 02-186 Dangerous Fences - 1st Reading

Land Use Planner II Carlson reminded Council that a Public Hearing was held on November 31, 2002 meeting. At that hearing Council heard staff's presentation of the draft ordinance regarding the dangers of razor wire to the safety of people, pets and wildlife. Public testimony was taken at that meeting, but due to time constraints, Council has continued the hearing. She further advised that at the direction of Council staff has added a definition for electric fencing so that buried fences will be excluded from the proposed regulations, has exempted commercial zoned property from the regulations, and has also clarified the language in the definition of barbed wire.

Councilmember Thomasson requested, and Council concurred, the following revisions to the draft ordinance:

Page 3 (4) first line: Strike the words "non-dangerous"

Page 3 (2) 2nd sentence, and/or: Strike the word "and"

Upon questioning by Councilmember Thomasson, Land Use Planner II Carlson advised that the 10 foot measurement in section 2 (4) was taken from another city's ordinance.

As there were no public who wished to address the Council, Mayor Wasson declared the hearing CLOSED.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to move Draft Ordinance No. 02-186 to a 2nd reading at the January 23, 2003 Council meeting.

Councilmember Thomasson advised that he may wish to change the 10 foot measurement in Section 2 (4) to 3 or 5 feet at the next reading.

VOTE ON MOTION: Motion passed unanimously.

**EXCERPT
DES MOINES CITY COUNCIL MINUTES
November 21, 2002**

PUBLIC HEARING

Draft Ordinance No. 02-186 Dangerous Fences - 1st Reading

City Manager Piasecki introduced the subject. As staff had notified the people who currently have razor wire on their property of the hearing only a few days ago, he suggested that Council allow written comments and continue the hearing to a later date.

Mayor Wasson opened the hearing.

Assistant Planner Carlson said that the proposed ordinance was written in response to Council's direction due to a citizen's request. She informed Council that the Code currently did not address any dangerous fences. The proposed ordinance would ban razor wire fencing and regulate electric fences and barbed wire fences. Assistant Planner Carlson confirmed that Council had received the letter submitted by the owner of Midway Motors (Exhibit 1). She said that, if the proposed ordinance passed, property owners would be required to remove the dangerous fencing at their own expense within sixty days. Assistant Planner Carlson confirmed that the ordinance did not address buried fences.

City Attorney Marousek said that the exclusion of buried fences could be clarified in the definition section of the draft ordinance.

Upon request, Assistant Planner Carlson said that she would provide Councilmember Steenrod with a copy of DMMC 18.40.150.

Councilmember Steenrod said that Council must consider the issue carefully as the fencing was also a visual deterrent to crime.

City Manager Piasecki confirmed that Council could restrict the use of dangerous fencing in specific zones.

Upon questioning, Assistant Planner Carlson explained that the proposed ordinance was based upon the ordinances of four different cities and contained the commonly addressed items.

Councilmember Thomasson noted that the draft ordinance did not contain a process for a hearing or compensation. He said that the existing fences could be argued to be a non-conforming use.

City Attorney Marousek said that she would research the issue.

Councilmember Petersen stated his belief that the fencing was not a deterrent to an experienced thief.

City Attorney Marousek read the rules for conducting a public hearing.

ATTACHMENT 3

Speakers

Vernena Bergin, 21628 28th Avenue South

Ms. Bergin spoke in opposition to the proposed ordinance. She said that the purpose of a fence was to keep people out and the purpose of razor wire was to keep people from going over. She stated that her razor wire has protected her tenants from crime. Ms. Bergin said that common sense goes a long way. She informed Council that she had received a permit and signed for the razor wire when she initially got it. Ms. Bergin said that electric fences would not kill anyone but only shock them. She said that anyone caught in a fence had no business being there in the first place.

Phil Yohann, 1300 South 250th

Mr. Yohann said that he was the concerned citizen who had originally brought the issue to Council. He said that his only concern was with the razor wire surrounding the RV lot at Huntington Park. Mr. Yohann informed Council that he has extricated three cats, including one that died, from the razor wire within the last seven years. Mr. Yohann voiced agreement with Councilmember Petersen's comment that anyone could cut the wire to get into the property. He reiterated that his only concern was with razor wire in a residential area. Razor wire used in commercial areas was a different issue.

Robert Back, 23840 16th Lane South

Mr. Back asked that a clear definition of barbed wire be included in the ordinance. As an owner of horses enclosed with an electric fence, Mr. Back said that he was satisfied with how the proposed ordinance was written. He wanted to be sure that if his fence became dangerous due to exposed nails, he would not have to fix it right away. Mr. Back thanked Council for addressing his concerns.

Mayor Wasson called for additional speakers three times.

None responded.

MOTION was made by Councilmember Thomasson, seconded by Mayor Pro Tem Benjamin and passed unanimously to continue the hearing to January 9, 2003.

A G E N D A I T E M

SUBJECT:

Revision of mobile home park regulations

AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Community Development 

DATE SUBMITTED October 31, 2002

ATTACHMENTS:

1. Draft Ordinance 02-177

CLEARANCES:

[X] LEGAL



APPROVED BY THE CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation:

Suggested Motion:

"I move to pass Draft Ordinance 02-177 on to second reading."

The purpose of this ordinance is to allow mobile home owners, with an approved site plan, the opportunity to fill their parks.

Background:

On June 27, 2002 Administration requested direction on mobile home parks. Currently, the mobile homes in the City are nonconforming uses. DMMC 14.48.270 required mobile home owners existing before July 1, 1992 to provide the city a site plan, prepared by a registered engineer showing the number of mobile homes on site, their location, lot dimensions, the location and size of all road, sewers, etc. This site plan was supposed to be part of the business license application.

Although the legislation was adopted, these provisions were never required under the business license process. Except for the mobile home parks in the Woodmont/Redondo area, staff has no site plans for any mobile home park in the city. Without this baseline Community Development staff is unable to adequately enforce the provisions of this chapter.

At this meeting Council directed staff to prepare an ordinance revision DMMC 14.48

Discussion:

After much debate among staff, Administration now recommends minor changes to this chapter. These changes include:

- Minor changes to the definition section of the chapter to provide more current language
- Requires annual inspection of mobile home parks for compliance with provisions of this chapter
- Includes language detailing failure to remedy corrections found at the annual inspection as a basis to revoke the business license
- Requires all fire lanes to be clearly marked and remain free of parking
- Requires all outdoor storage areas in and around mobile homes to be adequately screened acceptable to the Community Development Department
- Clarifies language requiring mobile home park owners to be responsible for collection and disposal of solid waste
- Allows the required site plan to be prepared by an engineer or surveyor or in a form acceptable to the Community Development Department
- Allows owners until June 30,2003 the opportunity to provide the required site plan

Under this draft ordinance mobile home parks established before July 1,1992 remain legal, nonconforming uses. Because of the enforcement and regulation issues, RV's remain prohibited uses.

Alternatives:

The Council has three options concerning this ordinance:

1. Adopt the draft ordinance as recommended by Administration
2. Direct staff to revise the draft ordinance based on Council discussion
3. Do not adopt the draft ordinance

Financial Impact:

There is no negative impact to the city in adopting this draft ordinance

Recommendation/Conclusion:

Administration recommends adoption of draft ordinance 02-177

Concurrence:

None

COMMUNITY DEVELOPMENT'S FIRST DRAFT 9/12/02

DRAFT ORDINANCE NO. 02-177

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON
relating to revision of mobile home park regulation code
and amending DMMC 14.48.

WHEREAS, the mobile home park regulation code was
established to provide orderly operation of these
facilities, and

WHEREAS, there is a need to require a high quality of
management of these parks to ensure that the occupants of
these parks and the community as a whole are protected from
potentially adverse impacts, and

WHEREAS, revisions to DMMC 14.48 will allow for
enhanced monitoring of these parks while providing mobile
home owners the opportunity to maintain the economic
viability of these parks, and

WHEREAS, well maintained mobile home parks provide
safe and affordable housing for many households priced out
of the conventional housing market, and

WHEREAS, it has been determined that textual code
amendments to Title 14 are a Type V land use action, and

WHEREAS, the City Council finds it is in the best
interest of the public health, safety and general welfare
to revise these regulations; now therefore:

**THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS
FOLLOWS:**

Sec. 1 DMMC 14.48 and sections
143,144,145,146,147,148,149(part),149(A),149(B),149(C),
149(D),149(E),149(F),149(G),149(H),149(I),149(J),149(K),149
(L),149(M),149(N),149(O),150,151,152,153,154,155,156,,157,1
59,160,161 of ordinance 938 and section 1 of ordinance 978
are each amended to read as follows:

Chapter 14.48
MOBILE HOME PARK REGULATION CODE
Sections
14.48.010 Short title.
14.48.020 Findings and policy.
14.48.030 Definitions.

14.48.040 General requirements.
14.48.050 Business license required.
14.48.060 Density requirements.
14.48.070 Development standards - Compliance.
14.48.080 Development standards - Lots.
14.48.090 Development standards - Lot coverage.
14.48.100 Development standards - Setbacks.
14.48.110 Development standards - Parking spaces.
14.48.120 Development standards - Streets and
access.
14.48.130 Development standards - Building
heights.
14.48.140 Development standards - Landscaping -
Recreation space.
14.48.150 Development standards - Drainage.
14.48.160 Development standards - Sewers.
14.48.170 Development standards - Utilities.
14.48.180 Development standards - Lighting.
14.48.190 Development standards - Recreation
areas.
14.48.200 Development standards - Screening.
14.48.210 Development standards - Garbage and
recycling.
14.48.220 Development standards - Skirting.
14.48.230 Adoption of mobile home regulations by
reference.
14.48.240 Smoke detectors.
14.48.250 Furnace controls - Power switch.
14.48.260 Tie downs.
14.48.270 Site plan required - Preexisting parks.
14.48.280 Preexisting mobile home parks.
14.48.290 Administration.
14.48.300 Inspections.
14.48.310 Repealed.
14.48.320 Mobile/manufactured home installation.
14.48.330 Permits for accessory structures.
14.48.340 Park administration.

14.48.010 Short title.

This chapter shall be known and may be cited as
the "mobile home park regulation code." [Ord. 938
§ 143, 1992.]

14.48.020 Findings and policy.

(1) The city finds that properly planned and
operated mobile home parks:

- (a) Promote the safety and health of the residents of such parks and of other nearby neighborhoods; and
 - (b) Encourage economical and orderly development of such parks and other nearby neighborhoods.
- (2) It is, therefore, declared to be the policy of the city to eliminate and prevent health and safety hazards and to promote the economical and orderly development and utilization of land by providing for planning and operating mobile home parks and by providing for the standards and regulations necessary to accomplish these purposes. [Ord. 938 § 144, 1992.]

14.48.030 Definitions.

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

(2) "Factory-built housing" means any structure designed primarily for human occupancy which is either entirely or substantially prefabricated or assembled at a place other than a building site, meets the requirements of the Uniform Building Code, and bears the insignia of the Washington State Department of Labor and Industry. Factory-built housing may also be called industrialized, modular, sectional, or sectionalized construction.

(3) "Mobile/manufactured home" means a factory-assembled structure or structures designed for human occupancy and equipped with the necessary service connections and constructed so as to be readily movable as a unit or units upon running gear. The support system of a mobile home shall be constructed so that the mobile home may be placed thereon and may be moved from time to time at the convenience of the owner. Mobile homes must bear the insignia of the state Department of Labor and Industries and built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974. The terms mobile home and manufactured home are considered to be interchangeable in the context of this chapter. A commercial coach, recreational vehicle, or motor home are not a mobile/manufactured home.

(4) "Mobile home park" means an approved residential development as shown in the records of the community development department, and designed and approved in accordance with either the subdivision or the planned unit development regulations of the city, together with certain service/utility buildings and uses providing for the enjoyment and benefit of the residents of the mobile home park in which individual spaces are provided for the placement of a mobile home for dwelling unit purposes. Lots for mobile homes may be either rented or purchased.

(5) "Leasable" space means that area within the mobile home park designated on an approved site plan as lots for locating mobile home units with full utility hook-ups.

(5-6) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use with or without motive power of such size and weight as not to require a special highway movement permit and certified as approved as such by the State Department of Labor and Industries. Recreational vehicles shall include but are not limited to campers, motor homes, travel trailers, and camping trailers.

(6 7) "Recreational vehicle storage area" means a surfaced area enclosed by appropriate fencing provided for the storage of recreational vehicles. All recreational vehicle storage within the mobile home park shall occur in this designated area.

(7 8) "Service building" means a building for the purpose of housing mobile home park community facilities.

(8 9) "Utility building" means an accessory structure intended for the storage of typical outdoor equipment incidental to the occupants of the mobile home, i.e., lawn mower, lawn chairs, barbecue, etc. Utility buildings are limited to one per mobile home lot. [Ord. 938 § 145, 1992.]

14.48.040 General requirements.

(1) Mobile homes are a permitted use in mobile home parks only. Mobile home parks shall be developed in accordance with the requirements of

either Title 17 DMMC or chapter 18.52 DMMC together with the requirements of this chapter.

(2) No recreational vehicle shall be occupied for residential or commercial purposes anywhere in the city except in the case of temporary uses as authorized by the city manager or their designee; provided, that under no circumstances shall a recreational vehicle be occupied more than 30 days. Under no circumstances shall a recreational vehicle be parked overnight on a public street.

(3) Mobile/manufactured homes shall be used for residential purposes only, except for home occupations as defined in Title 18 DMMC.

(4) No space shall be rented or sold for any purpose within a mobile/manufactured home park except for a permanent residence.

(5) No person, company, or corporation shall establish a new mobile/manufactured home park, or enlarge the size of or increase the allowed density of an existing mobile/manufactured home park, without first complying with the provisions of this chapter.

(6) Where there is a conflict between the requirements of either Title 17 DMMC, chapter 18.52 DMMC, and this chapter, the most stringent provisions shall control.

(7) The provisions of this chapter shall not apply to factory-built housing. [Ord. 938 § 146, 1992.]

14.48.050 Business license required.

All persons who rent or sell lots in a mobile home park for mobile homes and/or who sell mobile homes therein, shall possess a valid business license from the city. In addition to meeting all requirements of chapter 5.04 DMMC, relating to business licenses, the mobile home park shall be inspected by the Seattle-King County department of public health prior to issuance of a business license by the city clerk. The applicant shall remedy all unsanitary conditions found by the health department. Failure to remedy such conditions shall be grounds for denial or revocation of the business license by the city manager. All mobile home parks shall be inspected by the community development department

annually for compliance to this chapter. Failure to remedy corrections in a timely manner shall be ground for denial or revocation of the business license by the city manager. [Ord. 938 § 147, 1992.]

14.48.060 Density requirements.

(1) Mobile home parks shall be not less than three acres in size. The maximum site area of a mobile/manufactured home park, or combination of adjacent parks, shall be 10 acres. Parks shall be considered to be "adjacent" to one another unless they are separated by an unrelated land use, and not merely by a public or private street, easement, or buffer strip.

(2) The number of mobile homes in the mobile home park shall not exceed the allowable number of dwelling units in the zone district in which the mobile home park is located. [Ord. 938 § 148, 1992.]

14.48.070 ~~Development standards~~— Compliance.

In addition to the requirements of either Title 17 DMMC or chapter 18.52 DMMC, mobile home parks shall comply with the following development standards and requirements. [Ord. 938 § 149(part), 1992.]

14.48.080 ~~Development standards~~— Lots.

(1) Every mobile home lot shall be at least 2,400 square feet with a 40-foot frontage.

(2) Each mobile home lot shall be identified with an individual site number, each number a minimum of four inches tall in a logical numerical sequence, subject to approval by the building official, displayed in a uniform manner throughout the mobile home park and readily identified from the roadways within the park. In addition, these numbers must be shown on the official ~~plat~~ site plan for the mobile home park. Site numbers shall not be mounted on the mobile homes.

(3) Every mobile home lot shall have a pad hard surfaced with concrete or asphaltic concrete of minimum thickness of four inches. It shall be of a size not less than that of the mobile home to be parked on the lot. [Ord. 938 § 149(A), 1992.]

14.48.090 ~~Development standards~~ - Lot coverage.
All impervious surfaces, including but not limited to mobile homes, service/utility buildings, carports, patios, driveways, and streets shall not exceed 50 percent of the lot area. [Ord. 938 § 149(B), 1992.]

14.48.100 ~~Development standards~~ - Setbacks.

- (1) Minimum front yard setbacks for all structures shall be 10 feet.
- (2) Minimum rear yard setbacks for all structures shall be 15 feet.
- (3) Minimum side yard setbacks for all structures shall be 10 feet.
- (4) Corner lots shall observe a minimum 15-foot setback from all streets and alleys.
- (5) The minimum clearance between mobile homes shall not be less than required by the fire code.
- (6) The clearance between mobile homes and any service/utility building(s) situated on the same lot shall not be less than required by the Uniform Fire Code.
- (7) Eaves may project up to a maximum of 18 inches into any required setback area. [Ord. 938 § 149(C), 1992.]

14.48.110 ~~Development standards~~ - Parking spaces.

- (1) A minimum of two off-street parking spaces per mobile home shall be provided on the lot on which the mobile home is located.
- (2) In addition to occupant parking, guest and service parking shall be provided within the boundaries of the park at a ratio of one parking space for each two mobile/manufactured lots, and shall be distributed for convenient access to all lots and may be provided by a separate parking area. Clubhouse and community building parking facilities may account for up to 50 percent of this requirement.
- (3) Setbacks for mobile/manufactured home units shall not be calculated for purposes of meeting the minimum parking requirements. All off-street parking spaces shall conform to the dimensional requirements contained in chapter 18.44 DMMC.
- (4) Vehicles over 8,500 pounds gross license weight and recreational vehicles shall not be

parked or stored on the individual lots or on any street. A separate storage area shall be provided with appropriate fencing and visual screening as determined by the community development department. [Ord. 938 § 149(D), 1992.]

14.48.120 ~~Development standards~~ — Streets and access.

(1) Access to and from the mobile home park shall be from a minor arterial or collector street. Access to mobile home lots shall be from interior streets only. No individual access to any mobile home lot shall be from streets adjacent to the exterior of the mobile home park.

(2) All streets shall be constructed to city standards contained in chapter 12.28 DMMC.

(3) Pedestrian sidewalks shall be of concrete pavement a minimum of five feet wide on both sides of all streets.

(4) Driveways providing entrance or exits to the mobile home park shall be no closer than 150 feet from an intersection, measured from the existing or proposed right-of-way, whichever is the greater.

(5) All streets and access roads so designated either in the subdivision or PUD review process shall be completed prior to occupancy of any mobile home. [Ord. 938 § 149(E), 1992.]

(6) All fire lanes shall be clearly marked and no parking shall be allowed in these areas.

14.48.130 ~~Development standards~~ - Building heights.

The maximum building height shall be 25 feet.
[Ord. 938 § 149(F), 1992.]

14.48.140 ~~Development standards~~ - Landscaping - Recreation space.

(1) At least 15 percent of the gross area within the mobile home park shall be set aside as active recreation space. The 15-foot buffer area required by subsection (2) of this section shall not be counted towards meeting the 15 percent requirement.

(2) A 15-foot minimum buffer area around the perimeter of the mobile home park is required. The buffer area shall contain perimeter screening

of dense evergreen plantings, a minimum of five feet in height when installed, which will grow to a minimum of eight feet in height within five years.

(3) The developer shall furnish to the city a performance bond or other suitable security in a form approved by the city attorney and in an amount approved by the community development department to insure installation of the landscaping prior to any construction in the mobile home park. [Ord. 938 § 149(G), 1992.]

14.48.150 ~~Development standards~~ - Drainage. Drainage and runoff plans shall be approved by the public works director. [Ord. 938 § 149(H), 1992.]

14.48.160 ~~Development standards~~ - Sewers. Each mobile home shall be connected to sanitary sewers. A valid side sewer permit shall be obtained prior to any connection to any sewers. [Ord. 938 § 149(I), 1992.]

14.48.170 ~~Development standards~~ - Utilities. Every mobile home shall be permanently connected to electric power, water supply, sewage disposal, gas, cable television, and telephone service lines in compliance with applicable municipal codes. All utilities shall be placed underground in accordance with the provisions of chapter 17.36 DMMC. [Ord. 938 § 149(J), 1992.]

14.48.180 ~~Development standards~~ - Lighting. Artificial lighting shall be provided sufficient to illuminate walks, driveways, and parking areas to ensure the safe movement of pedestrians and vehicles at night. Artificial lighting shall be high pressure sodium lamps or equivalent. These exterior lights shall be such as will turn on and off automatically with dawn and dusk. Lighting shall be directed away from adjacent properties. [Ord. 938 § 149(K), 1992.]

14.48.190 ~~Development standards~~ - Recreation areas. Playground facilities or play area shall be conveniently situated, containing a minimum of

five percent of the total gross area of the park and shall be restricted to such use. Such an area shall further be placed within the mobile home park so as to be properly protected from streets, highways, roadways, and parking areas. Such playground space may be provided in one or more locations within the mobile home park. [Ord. 938 § 149(L), 1992.]

14.48.200 ~~Development standards~~ - Screening.

(1) An ornamental wall, fence, or screen planting acceptable to the community development department ~~and~~ not less than six feet and not more than ten feet in height shall be erected and maintained along the side and rear boundaries of a mobile home park. Where, in the opinion of the community development department, it is unreasonable to require a wall or fence due to the nature of the existing topography or other existing conditions that might render such a wall or fence ineffective, the department, at its discretion may waive or modify the requirements as specified in this section. [Ord. 938 § 149(M), 1992.]

(2) All outdoor storage in and around mobile homes shall be screened as prescribed in 18.41.040 except that a five-foot deep landscape area shall not be required. All screening shall be approved by the community development department.

14.48.210 ~~Development standards~~ - Solid waste and recycling.

(1) The storage, collection, and disposal of solid waste in the mobile home park shall be conducted so as to prevent health hazards, rodent harborage, insect breeding areas, accidents, fire hazards, and air pollution. It shall be the responsibility of the mobile home park owner to ensure safe and sanitary storage, collection and disposal of refuse as required in DMMC 7.04.090.

(2) Community-type containers will be required and shall be located not more than 150 feet from any mobile home lot.

(3) These collection areas shall be screened according to the provisions of chapter 18.41 DMMC.

(4) Recycling facilities shall be provided as determined by the community development department. [Ord. 938 § 149(N), 1992.]

14.48.220 ~~Development standards~~ - Skirting. Skirtings are required and shall be constructed of nonflammable material. Every mobile home skirt shall be provided with a door or easily removed portion thereof through which an inspector may gain access to the crawl space under the unit. [Ord. 938 § 149(O), 1992.]

14.48.230 Adoption of mobile home regulations by reference.
Chapter 296-150B WAC (Standards for Mobile Homes, Commercial Coaches, and Recreational Vehicles), as presently constituted or as may be subsequently amended, is adopted and shall be applicable within the city. [Ord. 938 § 150, 1992.]

14.48.240 Smoke detectors.
Smoke detectors, of a type approved by the building official, shall be installed in all newly set mobile homes. [Ord. 938 § 151, 1992.]

14.48.250 Furnace controls - Power switch.
All furnace controls and power switches shall be placed on the exterior of the furnace enclosure. [Ord. 938 § 152, 1992.]

14.48.260 Tie downs.
All mobile homes shall be equipped with tie downs of a type that has been approved by the building official. [Ord. 938 § 153, 1992.]

14.48.270 Site plan required - Preexisting parks.
The owners of mobile home parks existing before July 1, 1992, shall provide the city with a site plan, prepared by a ~~registered civil engineer~~ professional surveyor or engineer and/or in a form acceptable to the community development department showing the number of mobile homes presently on the site, their location, and the dimensions of all lots and the location and size of all roads, sewers, water lines, all other utilities and other structures on the property.

The site plan shall be submitted in conjunction with the application for a business license as required by DMMC 14.44.050. [Ord. 938 § 154, 1992.]

14.48.280 Preexisting mobile home parks.

All mobile home parks existing before July 1, 1992, and which were in compliance with existing city or county codes at the time of their establishment, shall be legal, nonconforming uses and are entitled to the number of mobile homes which was permitted by the applicable ordinance in effect at the time the mobile home park was established, the number of individual spaces which are provided for placement of a mobile home for dwelling unit purposes existing on July 1, 1992, and the privilege of locating in such spaces mobile homes of a size suitable to the dimensions of the individual spaces which are provided for mobile home placement; provided:

- (1) The owner of the mobile home park shall provide the city community development department by ~~December 28, 1992~~ June 30, 2003, a plan or schematic of the mobile home park drawn to scale, showing the location and dimension of each space for the placement of mobile homes;
- (2) All other provisions of this mobile home park regulation code shall be applicable; and
- (3) No increase in density and no increase in the number of mobile homes are allowed unless all of the provisions of this chapter are met. [Ord. 978 § 1, 1992: Ord. 938 § 155, 1992.]

14.48.290 Administration.

The community development director or his/her designee shall enforce the terms of this chapter according to the provisions of this title. [Ord. 938 § 156, 1992.]

14.48.300 Inspections.

- (1) No person may occupy or allow or suffer another person to occupy a mobile/manufactured home before the same has been inspected and approved by the State Department of Labor and Industries, and the installation has been approved by the building official.

(2) The installer/owner shall request an inspection after all aspects of the installation, other than installation of the skirting, have been completed. If the inspection is not completed within 10 business days, the tenant or owner may occupy the mobile/manufactured home at his or her own risk. Occupancy before inspection does not imply city approval. [Ord. 938 § 157, 1992.]

14.48.310 Authority to issue permits for and inspect installation of mobile/manufactured homes.

Repealed by Ord. 946. [Ord. 938 § 158, 1992.]

14.48.320 Mobile/manufactured home installation. No person may install a mobile home unless that person owns the mobile home, is a licensed mobile home dealer, or is a contractor registered under chapter 18.26 RCW, as presently constituted or as may be subsequently amended. [Ord. 993 § 16, 1992: Ord. 938 § 159, 1992.]

14.48.330 Permits for accessory structures. Building permits shall be required pursuant to chapter 14.08 DMMC for all accessory structures on a mobile/manufactured home lot, including but not limited to awnings, porches, steps, decks, storage sheds, and carports. [Ord. 938 § 160, 1992.]

14.48.340 Park administration.

(1) The owner(s) of a mobile/manufactured home park shall be responsible for the development and maintenance of the park in strict conformity with this chapter, the building site plan, and all other applicable laws and ordinances.

(2) A mobile/manufactured home park shall have internal rules and regulations governing, at a minimum, the following:

(a) A requirement that all tenants comply with state inspection codes at the time a mobile/manufactured home is installed or modified.

(b) A requirement that all tenants comply with zoning code restrictions relating to the use of their mobile/manufactured home and lot.

(c) A requirement that all landscaping, buffer areas, recreational areas and facilities, storage areas, streets, walkways, and other common areas and facilities be continuously maintained to at least the minimum standard required by the city and approved by the enforcing agency at the time of initial occupancy.

(3) A mobile/manufactured home park shall have a full time resident manager on site who shall be the agent of the owner with authority to communicate directly with city officials regarding compliance with codes and requirements and who shall be responsible for the enforcement of park rules and regulations. [Ord. 938 § 161, 1992.]

NEW SECTION. Sec. 2 Severability-Construction

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

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

NEW SECTION. Sec. 3. 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 _____, 2002 and signed in authentication thereof this ____ day of _____, 2002.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendment to City Council Rules
Of Procedure, Rule 12.

ATTACHMENTS: Draft Resolution No. 02-237.

FOR AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 11/07/02

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AP

PURPOSE AND RECOMMENDATION

The purpose of this item is to amend the current City Council Rules of Procedure to more specifically identify the City Clerk's duties to keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, and to require a specific action item section in the minutes kept of each City Council meeting.

It is recommended that the City Council review the attached draft resolution and pass Draft Resolution No. 02-164 in its current or amended form to a second reading for adoption at a subsequent regular Council meeting in accordance with DMMC 4.12.030.

MOTION: "To place Draft Resolution No. 02-237, which amends Council Rule 12 regarding the City Clerk's duties, allowing for a specific action items section, on a subsequent regular Council meeting agenda for adoption."

BACKGROUND

During recent Council discussion regarding amendment to Council Rule 23, requiring minutes at Council committee meetings, it was recommended that minutes taken at Council meetings include a specific action items section. This resolution amends Council Rules of Procedure Rule No. 12 to provide that a specific action items section be added to the minutes of each of each Council meeting.

DISCUSSION

Adding a specific action items section to the Minutes of each Council meeting would simplify tracking of action items that need follow up.

ALTERNATIVES

No alternatives considered.

FINANCIAL IMPACT

Not considered.

CONCLUSION

This draft resolution is responsive to a request of the City Council to amend the Council Rules regarding the minutes taken at future Council meetings.

CITY ATTORNEY'S FIRST DRAFT 10/30/02

DRAFT RESOLUTION NO. 02-237

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, amending Rule 12 of the Des Moines City Council *Rules of Procedure* for City Council meetings to add a specific identification action item section to the City Council minutes, and amending Rule 12 of section 1 of Resolution No. 525.

WHEREAS, the DMMC 4.12.030 expressly provides that "The rules may be amended or new rules may be adopted by an affirmative vote of at least a majority of the whole membership of the council," and

WHEREAS, DMMC 4.12.030 further provides that "(A) any such amendments or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the council agenda under the order of new business," and

WHEREAS, DMMC 4.12.030 also provides that "A vote of the council to adopt such a resolution shall occur at a subsequent regular meeting," and

WHEREAS, the City Council finds it in the public interest to amend Rule 12 of the City Council *Rules of Procedure* to more specifically identify the City Clerk's duties to keep minutes of City Council meetings as required by the Revised Code of Washington and Robert's Rules of Order, and to add a requirement for a specific action item section in the City Council minutes; now therefore,

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

Rule 12 of the Des Moines City Council *Rules of Procedure* and Rule 12 of section 1 of Resolution No. 525 are hereby amended as follows:

Rule 12. The City Clerk shall be ex-officio Clerk of the Council and shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, and including a specific action item section, and shall perform such other and further duties in the meeting as may be required

Resolution No. _____

Page 2 of _____

by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council.

ADOPTED BY the City Council of the City of Des Moines, Washington this _____ day of _____, 2002 and signed in authentication thereof this _____ day of _____, 2002.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:02/237

A G E N D A I T E M

SUBJECT: Councilmember Compensation

ATTACHMENTS: DMMC 4.08 and
RCW 35A.13.040

AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 10, 2002

CLEARANCES:

[] _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this item is to provide the City Council an opportunity to discuss Councilmember compensation. Mayor Wasson placed this item on the agenda at the request of Councilmember Steenrod.

Suggested Motion:

I move to direct staff to prepare an ordinance changing the compensation the Mayor and Councilmembers receive as follows: _____.

Background:

DMMC 4.08 and RCW 35A.13.040 governs the compensation the Mayor and Councilmembers receive for their service to the City. Per DMMC 4.08.020(1) and (2), Councilmembers receive \$250.00 per regular and special meeting attended while the Mayor receives \$350.00 per regular and special meeting attended. The total number of meetings for which the Mayor and Councilmembers may be compensated may not exceed 36 in a calendar year. DMMC 4.08.020(3) provides that Councilmembers may have their compensation reduced to a specific amount for a fixed period of time upon written request to the Finance Director.

RCW 35A.13.040 provides the authority for City Councils to establish compensation rates by ordinance. It also provides that City Council's may not change the rate of their own compensation but that any change will take effect after the next election and only for those positions (if elected in staggered years) for which an election was held.

Discussion:

It is Council's prerogative to set compensations rates. Council can direct staff to set the rates at whatever level Council feels is appropriate. Any new rates will take effect January 1, 2004 for those Council positions that are up for election in the fall of 2003.

Alternatives:

Council compensation rates are at the discretion of the Council.

Recommendation:

None.

Chapter 4.08

MAYOR – CITY COUNCIL COMPENSATION

Sections

4.08.010 Definitions.

4.08.020 Compensation – Mayor and councilmembers. (Effective beginning January 1, 2000)

4.08.020 Compensation – Mayor and councilmembers. (Effective beginning January 1, 2001)

4.08.025 Compensation – Mayor pro tem serving as presiding officer.

4.08.030 Compensation – Councilmember serving as a delegate or representative. (Effective beginning January 1, 1998)

4.08.040 Travel expenses – Reimbursement.

4.08.010 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) “Attendance” at a regular or special council meeting means being physically present at the city council meeting at any time between the roll call and adjournment.

(3) “Special council meeting” means a city council meeting, other than a regular city council meeting as defined in DMMC 4.04.020, that is called by the mayor or any three councilmembers by written notice delivered to each councilmember or each councilmember’s residence at least 24 hours before the time specified for the proposed meeting. [Ord. 1040 § 1, 1993; Ord. 418 § 1, 1977.]

4.08.020 Compensation – Mayor and councilmembers. (Effective beginning January 1, 2000)

(1) Except as provided in subsections (2) through (5) of this section, each member of the city council shall receive as compensation the sum of \$250.00 for attendance at each regular and special council meeting.

(2) Except as provided in subsections (3) through (5) of this section, the councilmember elected mayor shall receive as compensation the sum of \$350.00 for attendance at each regular and special council meeting.

(3) A councilmember may have their compensation reduced to a specific amount for a fixed period of time upon written request to the finance director.

(4) No councilmember shall receive compensation for attendance at more than a total of 36 regular and special council meetings per calendar year.

(5) No councilmember shall receive compensation for attendance at more than one regular or special council meeting per day. [Ord. 1152 § 3, 1995; Ord. 569 § 1, 1983; Ord. 418 § 2, 1977.]

4.08.020 Compensation – Mayor and councilmembers. (Effective beginning January 1, 2001)

(1) Except as provided in subsections (2) through (5) of this section, each member of the city council shall receive as compensation the sum of \$250.00 for attendance at each regular and special council meeting.

(2) Except as provided in subsections (3) through (5) of this section, the councilmember elected mayor shall receive as compensation the sum of \$350.00 for attendance at each regular and special council meeting.

(3) A councilmember may have their compensation reduced to a specific amount for a fixed period of time upon written request to the finance director.

(4) No councilmember shall receive compensation for attendance at more than a total of 36 regular and special council meetings per calendar year.

(5) No councilmember shall receive compensation for attendance at more than one regular or special council meeting per day. [Ord. 1253 § 1, 1999: Ord. 1152 §§ 1 – 3, 1995: Ord. 569 § 1, 1983: Ord. 418 § 2, 1977.]

4.08.025 Compensation – Mayor pro tem serving as presiding officer.

In the absence of the mayor the mayor pro tem shall act as presiding officer at meetings of the city council. When so acting, the mayor pro tem shall receive as compensation the same compensation the mayor receives for the meeting at which the mayor pro tem presides. [Ord. 1152 § 4, 1995: Ord. 720 § 1, 1987.]

4.08.030 Compensation – Councilmember serving as a delegate or representative. (Effective beginning January 1, 1998)

If a member of the city council attends a meeting as a city representative to an organization in which either (1) the city is a dues-paying member, or (2) any other meeting authorized by motion of the council during the time that a regular or special meeting of the city council is held, the member shall be compensated at the rate he or she would have received for attendance at the meeting of the city council. [Ord. 1152 § 6, 1995: Ord. 718 § 1, 1987: Ord. 418 § 3, 1977.]

4.08.040 Travel expenses – Reimbursement.

Each member of the council shall be reimbursed for the use of a private vehicle at the same monetary rate per mile the Internal Revenue Service allows for the first 15,000 miles of business travel and shall further be reimbursed for actual and necessary expenses

[Legislature Home](#)[About Us](#)[E-Mail Lists](#)[Search](#)[Help](#)[RCW TITLES >> TITLE 35A >> CHAPTER 35A.13 >> SECTION 35A.13.040](#)[Print Version](#)[35A.13.035](#) << [35A.13.040](#) >> [35A.13.050](#)**RCW 35A.13.040****Compensation of councilmen -- Expenses.**

The salaries of the councilmen, including the mayor, shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not become effective until the expiration of the term then being served by the incumbent: PROVIDED, That compensation of councilmen may not be increased or diminished after their election nor may the compensation of the mayor be increased or diminished after the mayor has been chosen by the council.

Until councilmen of a newly-organized council-manager code city may lawfully be paid as provided by salary ordinance, such councilmen shall be entitled to compensation in the same manner and in the same amount as councilmen of such city prior to the adoption of this council-manager plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, the first councilmen shall be entitled to compensation as follows: In cities having less than five thousand inhabitants -- twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants -- a salary of one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants -- a salary of four hundred dollars per calendar month. A councilman who is occupying the position of mayor, in addition to his salary as a councilman, shall be entitled, while serving as mayor, to an additional amount per calendar month, or portion thereof, equal to twenty-five percent of the councilmanic salary: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the compensation provided herein shall not be construed as fixing the usual compensation of such officers. Councilmen shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance.

[1979 ex.s. c 18 § 25; 1967 ex.s. c 119 § [35A.13.040](#).]

NOTES:

Severability -- 1979 ex.s. c 18: See note following RCW [35A.01.070](#).

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendment of Council Rule 36,
Videotaping of Council Meetings

ATTACHMENTS: 1. Draft Resolution No. 03-013
2. Attorney General Opinion
Dated November 30, 1998
3. Correspondence

FOR AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 1/13/03

CLEARANCES:

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

RECOMMENDATION

It is recommended that the Council discuss Draft Resolution No. 03-013 at the regular session of January 16, 2002, and pass Draft Resolution No. 03-013 in its current or amended form to a second reading for enactment on a future calendar.

MOTION: "To pass Draft Resolution No. 03-013 to a second reading for enactment on a future calendar."

BACKGROUND

The Mayor has requested that the Council *Rules of Procedure* be amended to restrict persons, other than the City's official videographer, from videotaping or photographing Council meetings to an area defined as behind a line projected parallel to the Council dais at the rear of the public comment table and not to block the view of the City Council dais. The attached resolution reflects the requested amendment to the rules.

Council rules may be amended or new rules may be adopted by an affirmative vote of at least a majority of the whole membership of the Council. Proposed amendments or new Council rules require two meetings. As provided in DMMC 4.12.030, amendments or new rules must be submitted in resolution form at a regular meeting, during which such item is to be placed on the agenda as a new business item.

A final vote of the Council to adopt any resolution containing new rules or amendments to the rules shall occur at a subsequent regular meeting of the City Council. *Id.*

DISCUSSION

A 1998 Attorney General Opinion (copy attached) states that, for meetings subject to the Open Public Meetings Act, the “legislative body may impose restrictions on the use of [video or audio] recording devices, but only to the extent necessary to preserve the orderly conduct of the meeting.” To regulate video recording, the Council must make a finding that this amendment is necessary to preserve order.

CITY ATTORNEY'S FIRST DRAFT 01/13/02

DRAFT RESOLUTION NO. 03-013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, amending Rule No. 36 of the City Council Rules of Procedure.

WHEREAS, the DMMC 4.12.030 expressly provides that "new rules may be adopted by an affirmative vote of at least a majority of the whole membership of the council", and

WHEREAS, DMMC 4.12.030 further provides that "(A)ny such amendments or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the council agenda under the order of new business", and

WHEREAS, DMMC 4.12.030 also provides that "A vote of the council to adopt such a resolution shall occur at a subsequent regular meeting", and

WHEREAS, the City Council finds that this amendment is necessary to preserve order because _____

and

WHEREAS, the City Council finds it in the public interest to amend the current Council Rules to amend Rule 36; now therefore,

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

Sec. 1. The Des Moines City Council amends Rule 36 of its Rules of Procedure to read as follows:

Rule 36. All regular meetings of the City Council held in the Des Moines City Service Center at 21630 11th Avenue South are recorded on video tape and such tapes are cablecast within the City. Video taping or photographing of City Council meetings by any person other than the Official City videographer must be made from an area defined as behind a line projected parallel to the council dais at the rear of the public comment

Resolution No. ____

Page 2 of ____

table and shall not block the view of the City
Council dais by the official City video camera,
except with consent of the presiding officer.
(Res. 772, 1994).

ADOPTED BY the City Council of the City of Des Moines,
Washington this ____ day of _____, 2003 and signed in
authentication thereof this ____ day of _____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-013



Opinion

CHRISTINE O. GREGOIRE

ATTORNEY GENERAL OF WASHINGTON

[Index](#)[Search](#)[AGO Homepage](#)

PUBLIC MEETINGS - OPEN PUBLIC MEETINGS ACT - COUNTIES - RECORDING OFFICIAL PROCEEDINGS - Authority of county to restrict video and/or sound recording of county meetings.

1. A county does not have authority to ban video or sound recording of a meeting required to be open to the public by the Open Public Meetings Act (RCW 42.30); the county could regulate recording only to the extent necessary to preserve order at the meeting and facilitate public attendance.
2. A county has authority to ban video or sound recording of any lawful executive session of a public meeting.
3. If a meeting is not an "open public meeting" as defined in RCW 42.30, but is required to be an open meeting by some other statute, the extent of the county's authority to restrict recording of such a meeting would depend on the language and the intent of the controlling statute.
4. If a county officer conducts a "private meeting" as may be defined in law, the county has authority to restrict or prohibit the recording of such meetings.

November 30, 1998

The Honorable Randall K. Gaylord
 San Juan County Prosecuting Attorney
 350 Court Street
 P.O. Box 760
 Friday Harbor, WA 98250

Cite As:**AGO 1998 No. 15**

Dear Mr. Gaylord:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

May a county legislative body prohibit an individual from using a video or audio recording device to record a meeting or hearing conducted by county officials? If such recording cannot be prohibited, may the legislative body impose restrictions on the use of such recording devices?

BRIEF ANSWER

A county is subject to the Open Public Meetings Act which generally requires that meetings of the governing body be open to the public and that no conditions precedent to attendance by the public, except for orderly conduct, may be imposed. Therefore, a county legislative body may not ban the use of recording devices from the open portion of a meeting held pursuant to the Open Public Meetings Act. The county legislative body may impose restrictions on the use of recording devices, but

only to the extent necessary to preserve the orderly conduct of the meeting.

Executive sessions held pursuant to the Open Public Meetings Act are not open to the public, and the county legislative body may ban the use of recording devices at executive sessions. The county legislative body may ban the use of recording devices at public meetings that are not subject to the Open Public Meetings Act or to some other state statute that limits county authority. A county legislative authority may ban the use of recording devices to record conversations at private meetings not open to the public.

ANALYSIS

1. Introduction

You have asked about the power of a county legislative body to prohibit or regulate private video or audio taping of meetings and hearings conducted by county officials. We begin with the principle that a county's legislative authority is limited by laws enacted by the Legislature. In AGO 1991 No. 17, we summarized this principle as follows:

The general rule is that municipal corporations are limited to those powers expressly granted to them by the Legislature and to powers necessarily or fairly implied in or incident to the powers expressly granted. *Chemical Bank v. WPPSS*, 99 Wn.2d 772, 792, 666 P.2d 329 (1983); *City of Spokane v. J-R Distributors, Inc.*, 90 Wn.2d 722, 585 P.2d 784 (1978). At least as to matters of local concern, however, this general rule does to [sic] apply to cities and counties that have adopted charters pursuant to article 11, sections 4 and 10, of the Washington Constitution, respectively, or to cities operating under the Optional Municipal Code, Title 35A RCW. These cities and counties have legislative power akin to that of the state, except that their actions cannot contravene any constitutional provision or legislative enactment. Thus, such a city or county has broad legislative power except when restricted by enactments of the state. *King Cy. Coun, [sic] v. Public Disclosure Comm'n*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980); *Winkenwerder v. Yakima*, 52 Wn.2d 617, 622, 328 P.2d 873 (1958); *La Mon v. Westport*, 22 Wn. App. 215, 217- 18, 588 P.2d 1205 (1978); *Chemical Bank v. WPPSS*, 99 Wn.2d 772, 792-93, 666 P.2d 329 (1983).

AGO 1991 No. 17 at 2. Thus, state law constitutes a limit on county legislative authority. Your question does not specify a particular type of meeting or hearing so our response is necessarily general and discusses broad categories. The first category is meetings held pursuant to the Open Public Meetings Act, RCW 42.30.

2. Open Public Meetings

The purpose of the Open Public Meetings Act is to allow the public to view the decisionmaking process of government. *Cathcart v. Andersen*, 85 Wn.2d 102, 107, 530 P.2d 313 (1975). RCW 42.30.030 provides:

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

(Emphasis added.) This basic command that all meetings of the governing body of a public agency be open to the public applies to a county, because a county falls within the definition of public agency. RCW 42.30.020(1) defines “public agency” to mean:

- (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;
- (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
- (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies[.]

(Emphasis added.) The requirement for open meetings is reinforced by the Legislature's declaration of policy in RCW 42.30.010 which provides:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Emphasis added.) In addition, RCW 43.30.910 provides that: “The purposes of this chapter are hereby declared remedial and shall be liberally construed.”

Although, RCW 42.30.030 requires that meetings of the governing body of a county be open to the public, the Open Public Meetings Act does not specifically address the issue of recording by video or audio tape. However, other sections of the law lead us to the conclusion that such recording may not be prohibited. RCW 42.30.040 prohibits the imposition of conditions precedent to attending an open public meeting. RCW 42.30.040 provides:

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

(Emphasis added.) While RCW 42.30.040 does not specifically address taping, it prohibits a governing body from requiring, as a condition of attendance at the meeting, that a member of the public refrain from taping the meeting. In fact the only condition that can be imposed on a person attending an open public meeting is

orderly conduct. RCW 42.30.050 provides:

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

(Emphasis added.) These provisions of the Open Public Meetings Act persuade us that a county legislative body may not ban recording devices from open meetings conducted pursuant to that law.

Our conclusion that recording may not be prohibited is consistent with RCW 9.73.030(1), which prohibits an individual, partnership, corporation, association, or the state and its political subdivisions from recording:

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(Emphasis added.) RCW 9.73.030(1)(b) does not apply because conversations at an open meeting conducted pursuant to the Open Public Meetings Act are not private. In fact, the law requires the conversations to be public. Thus, if a member of the public used a small hand-held tape recorder to secretly tape an open meeting conducted pursuant to the Open Public Meetings Act, the individual would not be violating RCW 9.73.030(1).

We have found no Washington decisions on point. However, courts from other jurisdictions have considered this question. In *Belcher v. Mansi*, 569 F. Supp. 379 (D. R.I. 1983), the court considered a policy adopted by the city school committee in Rhode Island. The policy prohibited the use of electric or mechanical devices to tape record a school committee meeting without the approval of the school committee. *Belcher*, 569 F. Supp. at 380. Like Washington's Open Public Meet Act, Rhode Island's Open Meeting Law "mandate[d] that the public be allowed to attend each and all of the Committee's meetings, except for those sessions dealing with a limited number of specified topics". *Id.* at 381 (*referring to* R.I. Gen. Laws § 42-46-5). Rhode Island's law also had a declaration of policy similar to RCW 42.30.010, which states:

"It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy."

Belcher, 569 F. Supp. at 382 (quoting R.I. Gen. Laws § 42-46-1). Based on the Rhode Island Open Meeting Law, the court concluded that the school committee could not ban tape recording devices. The court said:

In the court's judgment, a determination that the Act requires the Committee to allow members of the press and public to tape record its meetings follows inexorably from the policy set forth at R.I. Gen. Laws § 42-46-1, previously quoted.

Belcher, 569 F. Supp. at 382; *see also Nevens v. City of Chino*, 233 Cal. App. 2d 775, 44 Cal. Rptr. 50 (1965); *Mitchell v. Board of Educ. of the Garden City Union Free Sch. Dist.*, 113 A.D.2d 924, 493 N.Y.S.2d 826 *regional reporter? (1985); *Sudol v. Borough of North Arlington*, 348 A.2d 216 (N.J. Super. 1975).

In addition to these decisions we have found Attorney General's Opinions from other states that reach the same conclusion. *See* Op. Att'y Gen. 96-OMD-143 (Ky. 1996) [1]; 13 Op. Att'y Gen. 196 (Okla. 1981) [2]; Op. Att'y Gen. 24 (S.C. 1988) [3]; 66 Op. Att'y Gen. 318 (Wis. 1977) [4]; Op. Att'y Gen. 87 (Fla. 1991) [5].

The memorandum accompanying your letter suggests several rationales for banning recording devices from open meetings conducted under the Open Public Meetings Act. We have considered these justifications and do not find them persuasive. First, it might be argued that a ban on recording devices does not prohibit a person from attending the meeting but only from recording the meeting. We are not persuaded by this argument. If a person attending a meeting began to use a small hand held tape recorder in defiance of the ban, the governing body would have to enforce its prohibition. This could be done by confiscating the recorder or, if the person refused to surrender the device, by ejecting the person from the meeting. In effect, a ban on recording devices is a condition on attendance at the meeting: A person may only attend if he or she agrees not to record the meeting. Assuming the use of the recording device is not disruptive, the law prohibits the imposition of this requirement as a condition of attendance at the open meeting.

A second suggested rationale for banning recording devices is to avoid questions regarding the official records. RCW 42.32.030 requires that minutes of regular and special meetings be kept and open for public inspection. This rationale does not overcome RCW 42.30.040 and .050 which prohibit conditions precedent to attending an open meeting, except for orderly conduct. In addition, we see no problem arising between the official and unofficial records of meetings and agree with the court in *Belcher v. Mansi* which rejected a similar argument stating:

[K]eeping of an official record of the meeting by the Committee does not mean that unofficial records cannot and should not be kept. There is no evidence that informal records could or would be confused with official ones, and common sense argues strongly to the contrary. Moreover, the official records here in question—the Committee minutes—are summary in nature and do not, in any way, constitute a complete report of the proceedings. Thus, unofficial records may well be invaluable if the public is to taste the full flavor of the proceedings.

Belcher, 569 F. Supp. at 383 (footnote omitted).

A third suggested basis is that the presence of recording devices will inhibit free discussion between the members of the governing body or persons appearing before the governing body. Again, this does not overcome the general prohibition on conditions precedent to attendance. Moreover, we are not persuaded by this argument. As the court in *Belcher v. Mansi* stated:

While preserving public participation in certain facets of the Committee's meetings is an important consideration, defendants' assertion has no factual support on the record and is belied by common sense. If an individual is willing to stand up and talk in the sometimes volatile setting of a thronged public meeting, at which members of the press are customarily present, that person has little to fear (and much to gain) from the presence of a tape recorder. In any event, the argument, even if it has some marginal value, will not be allowed to defeat the salutary ends which are served by allowing Committee meetings to be taped, at least without convincing evidence to support the proposition.

Belcher, 569 F. Supp. at 383.

Having concluded that a county legislative authority may not ban recording devices from the open portion of a meeting held pursuant to the Open Public Meetings Act, we turn to the second part of your question: Whether a county legislative body may impose restrictions on the use of recording devices, short of prohibiting them entirely. The answer to this question is yes, but the power to impose restrictions is very limited in scope. As we previously noted, RCW 42.30.050 states:

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting

Orderly conduct is the only condition that may be imposed on one attending an open public meeting. Applying this principle to your question we conclude that the use of recording devices may be restricted only to the extent that it is necessary to ensure that the open public meeting is not disrupted.

This conclusion is consistent with the court decisions and Attorney General's Opinions that have addressed this issue. *See Belcher*, 569 F. Supp. at 384 [6]; 13 Op. Att'y Gen. 196 (Okla. 1981) [7]; Op. Att'y Gen. 96-OMD-143 (Ky. 1996) [8].

We do not, in this opinion, undertake to set out a list of permissible restrictions. This would be a function of a number of factors including the size of the meeting room and the kind of recording device being used. One might reasonably require that a large video camera be placed in a particular part of the room so it does not interfere with public access to the meeting. Other kinds of restrictions such as requiring a person to tape the entire meeting and provide a copy of the tape to the governing body would not be permissible. This is because these restrictions are not related to preserving the orderly conduct of the meeting.

To summarize, a county legislative body may not prohibit the use of recording devices in the open portion of a meeting held pursuant to the Open Public Meetings Act, but may impose restrictions to the extent necessary to ensure the orderly

conduct of the meeting.

3. Executive Sessions

The type of meeting next considered is an executive session held pursuant to Open Public Meetings Act. Although RCW 42.30.030 requires meetings to be open to the public, RCW 42.30.110(1) provides that “[n]othing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting”. (Emphasis added.) A governing body may only hold executive sessions on certain topics such as the acquisition of real estate. RCW 42.30.110(1)(b). The question is whether a county legislative body can prohibit the tape recording of executive sessions. In our judgment, the answer to this question is yes.

We reach this conclusion because the public is excluded from an executive session when the presiding officers follow the statutory procedure set out in RCW 42.30.110 (2) which provides:

Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

(Emphasis added.) Since the public is excluded from executive sessions, there is no right to tape record those sessions. The discussions at executive sessions are intended to be private. The conclusion is reinforced by RCW 42.32.030, which governs minutes taken at meetings. RCW 42.32.030 provides: “The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection.” (Emphasis added.) Thus, minutes of regular and special meetings must be taken and available for public inspections. This is not true of executive sessions.

Our conclusion is consistent with cases and Attorneys General Opinions that discuss this subject. In *Dean v. Guste*, 414 So. 2d 862 (La. 1982), the question was whether a member of the school board could tape record an executive session of the board. The board had adopted a policy that prohibited tape recording executive sessions. The court upheld the ban. It noted that the law permits taping by persons attending public meetings and then concluded:

There is no similar provision relating to the recordation of executive sessions. We interpret the legislature's silence on this matter to mean that each public body should have the prerogative to allow or prohibit the use of tape recorders at closed meetings.

Dean, 414 So. 2d at 866; *see also Zamora v. Edgewood Independent Sch. Dist.*, 592 S.W.2d 649, 650 (Tex. 1979) [9]; 66 Op. Att’y Gen. 318 (Wis. 1977) [10].

4. Other Public Meetings

We turn next to meetings that fall outside the Open Public Meetings Act. Although it is broad in scope, not all meetings are governed by the act. By its terms, RCW 42.30.030 only applies to the meetings of governing bodies of public agencies. *See* RCW 42.30.020(1), (2). There are also some kinds of meetings that are excluded from the act. RCW 42.30.140 provides that the Open Public Meetings Act does not apply to:

- (1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or
- (2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or
- (3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or
- (4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

The meetings described in RCW 42.30.140 are not governed by the Open Public Meetings Act. They may, nevertheless, be open to the public based on the requirement of some other state statute [11] or county ordinance or on a voluntary basis by the entity conducting the meeting. Meetings that fall outside the Open Public Meetings Act are not subject to the act's strong policy of open meetings set out in RCW 42.30.010. Moreover, the ban on conditions precedent to attendance, except for orderly conduct, does not apply to such meetings. RCW 42.30.040-.050. In this circumstance, we believe that the county legislative body has the authority to ban the use of recording devices. [12]

5. Private Meetings

Finally we turn to meetings that are private. [13] Here, the analysis is similar to executive sessions of meetings held pursuant to the Open Public Meetings Act. There is no right to record a private meeting. Indeed, RCW 9.73.030(1)(b) prohibits the taping of private conversations unless all participants agree. *See* AGO 1994 No. 18. This puts the decision about recording into the hands of the participants at the meeting or the county legislative body which could adopt a policy on this issue. For example, in *Op. Att'y Gen. 92-241* (Ark. 1992), the Arkansas Attorney General concluded that departmental faculties are not governing bodies subject to the state's Freedom of Information Act and that no other law required department faculty meetings to be public. The Attorney General looked to other applicable regulations

of the University stating:

The second part of your inquiry focuses on whether a faculty member may be prohibited from taping such departmental faculty meetings. Assuming, as an initial matter, that the FOIA is inapplicable to such meetings based on the foregoing discussion, the issue becomes whether another state statute guarantees the right to record such a meeting. I am unaware of any such statute. Applicable regulations of the University may address the issue, however, and should therefore be consulted as well. The University Handbook, for example, indicates that each college and school faculty shall make its own rules of procedure, provided that they not be in conflict with the rules and regulations of the Campus Faculty (Handbook, at 30). While there appears to be no similar provision in the Handbook with regard to departmental faculties, such a regulation may support the proposition that a particular departmental faculty can decide for itself whether to permit recording of its own meetings.

Op. Att'y Gen. No. 92-241 (Ark. 1992). Thus, we conclude that the county legislative body may ban the use of recording devices in private meetings of county officials.

We trust the foregoing opinion will be of assistance to you.

Very truly yours,

CHRISTINE O. GREGOIRE

Attorney General

WILLIAM B. COLLINS

Sr. Assistant Attorney General

Footnotes

[1] "It is, therefore, the decision of the Attorney General that a regulation, rule, or policy of a public body which uniformly prohibits the tape recording of a public meeting is arbitrary, capricious, restrictive, and unreasonable and a person should be permitted to tape record a public meeting so long as that person and his or her taping equipment do not interfere with the orderly conduct of the public meeting."

[2] "It follows that barring members of the press from using their professional tools, tape recorders and cameras, in public meetings would frustrate the underlying purposes and objectives of the Open Meeting Act."

[3] "[I]t is the opinion of this Office that, under the Freedom of Information Act, recording a public meeting of a public body by means of a home video camera would be permitted, assuming that such recording is done in a manner non-disruptive to the public meeting."

[4] "I would read Wisconsin's 'open meetings' law, absent any support from decisions such as *Nevens* and *Sudol*, to allow for recording open meetings."

[5] "A municipality may not prohibit a citizen from video taping the meetings of the city council through the use of nondisruptive video recording devices."

[6] "There may well be reasonable restrictions which could lawfully be imposed, e.g., those designed (i) to preserve the orderly conduct of a meeting by controlling noise levels, spatial requirements and the like . . .".

[7] "While members of the press cannot lawfully be prevented from using tape-recorders and cameras while covering the meetings of trustees of public trusts, nevertheless . . . all public bodies have the inherent power to maintain decorum and order in their meetings."

[8] "[A] person should be permitted to tape record a public meeting so long as that person and his or her taping equipment do not interfere with the orderly conduct of the public meeting."

[9] "The need for some subjects to be discussed in closed sessions is apparent and the Legislature recognized the importance thereof. To permit such private proceedings to be recorded against the desires of the majority of the Board would, we think, weaken or at times destroy the privacy required by an executive session."

[10] "While it is my opinion that a Dentistry Examining Board member has a right to tape-record an open meeting of the Board in a nondisruptive fashion, I do not believe he has such right as to a meeting of the Board convened 'in closed session' under sec. 19.85(1), Stats. The Legislature, in conferring on governmental bodies the power to hold closed meetings for certain carefully defined purposes, clearly intended that no one should have the right to report a closed meeting under circumstances that might mean that its private and secret nature could be violated."

[11] For example, at the state level RCW 34.05.449(5) requires adjudicative hearings to be open to public observation even though RCW 42.30.140(2) provides that meetings of quasi-judicial bodies related to quasi-judicial matters are excluded from the Open Public Meetings Act.

[12] We caution that the county's authority to ban recording devices must be exercised carefully. If the meeting is open to the public based on a state statute other than the Open Public Meetings Act, the county legislative body's authority would be limited by that state statute. As with the Open Public Meetings Act, the county legislative body could not prohibit recording devices if the state statute provided otherwise. Moreover, the county's authority to ban recording devices may be subject to constitutional limitation. *See, e.g., Blackstone v. Alabama*, 30 F.3d 117 (11th Cir. 1994); *Thompson v. City of Clio*, 765 F. Supp. 1066, 1070 (M.D. Ala. 1991); *CBS, Inc., v. Lieberman*, 439 F. Supp. 862, 865-66 (N.D. Ill. 1976).

[13] We do not, in this opinion, undertake to explain when a particular meeting is a private meeting.

Denis Staab

From: Brett Fish [bzdiving@yahoo.com]
Sent: Monday, January 13, 2003 1:59 PM
To: dwasson@cityofdesmoines.com
Cc: citycouncil@cityofdesmoines.com; Linda Marousek Des Moines City Attorney; 'Tony Piasecki City Manager Des Moines'
Subject: Video taping and the Press

*City of Des Moines
Mayor Don Wasson
Des Moines City Council Members
January 12, 2003*

Subject: Video Taping and the press:

Dear Mayor Wasson and City Council Members,

I've heard that there may be a rule change proposed regarding the location of where video taping and the press may be positioned within the chambers. This seems a bit drastic as I am part of the press but essentially a guest of the City and happy to film from a location you designate that is out of the way. The spot at the east wall provides a good overall view of everyone and does not block the public access or Councilmembers and staff. I can also assist the city videographer Dick Thomas with his second videocamera, not essential, but it certainly gives a more professional look to your proceedings. I'm always happy to assist him.

You need only ask if my current spot is uncomfortable in some way for you. It was chosen and is preferred simply because it is out of the way and secondarily it is the best overall view for a one camera operation.

Creating a law to govern this subject when a simple request would be sufficient seems a bit heavy handed. You may not want to set it in stone when you have special presentations or other important guests. Simple is better, again, even as press, I am the City's guest.

I would ask, regardless of whether you put the force of law behind this or not, that space be provided elsewhere that does not block the city videographer, the public or staff from safe passage. The back of the room usually has a large table in the way with chairs jammed up against it leaving no room to set up. The ramp area near the agenda and sign up podium is OK but can block staff and the public to some degree when there is a large audience. It is however, a workable position and hopefully suitable for your concerns.

Thank you for your considerations in this matter,

Brett Fish

"Man did not weave the web of life, he is merely a strand in it. Whatever he does

01/14/2003

to the web he does to himself. ["Great Wall of SeaTac"](#) [Miller Creek History](#)

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amending DMMC 4.12.030, Allowing
Suspension of Council *Rules of
Procedure*

ATTACHMENTS: 1. Draft Ordinance No. 03-014
2. Robert's Rules of Order
3 Mayor's Recommended Changes

FOR AGENDA OF: 1/23/03

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 1/13/03

CLEARANCES:
[X] Legal 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

RECOMMENDATION

It is recommended that the Council discuss Draft Ordinance No. 03-014 at the regular session of January 23, 2003, and pass Draft Ordinance No. 03-014 in its current or amended form to a second reading for enactment on a future calendar.

MOTION: "To pass Draft Ordinance No. 03-014 to a second reading for enactment on a future calendar."

BACKGROUND

The Mayor has requested that the Council *Rules of Procedure* be amended to allow for suspension of Council rules. Suspensions of rules are not currently allowed under DMMC 4.12.030. Therefore, DMMC 4.12.030 must be amended.

ALTERNATIVES

Two alternatives are presented. One alternative permits suspension by majority vote. However, the City Attorney recommends that suspension be permitted only by 2/3 vote, since Robert's Rules of Order requires a 2/3 vote.

CITY ATTORNEY'S FIRST DRAFT 01/13/03

DRAFT ORDINANCE NO. 03-014

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to City Council *Rules of Procedure*, allowing incidental suspension of rules contained in the City Council *Rules of Procedure* by amending DMMC 4.12.030.

WHEREAS, DMMC 4.12.030 currently provides only for amendments, not suspensions, of existing City Council *Rules of Procedure*, and

WHEREAS, this amendment to DMMC 4.12.030 allows for the suspension of a Council rule for the meeting at which the vote to suspend is taken, and

WHEREAS, the City Council finds it in the public interest to amend DMMC 4.12.030 allowing for incidental suspensions of Council rules; now therefore,

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

Sec. 1. DMMC 4.12.030 and section 3 of Ordinance No. 765 as amended by section 1 of Ordinance No. 821 as amended by section 1 of Ordinance No. 855, are each amended to read as follows:

Rules of Procedure—Amendment/Suspension. The rules adopted under the procedure set forth in this chapter shall not be suspended (~~but~~) except by a [majority vote] [2/3 vote] of the Councilmembers present. Such suspension shall remain in effect only for the meeting at which the vote to suspend is taken. The rules adopted under the procedure set forth in this chapter may be amended or new rules may be adopted by an affirmative vote of at least a majority of the whole membership of the Council. Any such amendments or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the Council agenda under the order of new business. A vote of the Council to adopt such

a resolution shall occur at a subsequent regular meeting.

NEW SECTION. Sec. 2. Severability - Construction.

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

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

NEW SECTION. Sec. 3. 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 ____, 2003 and signed in authentication thereof this ____ day of ____, 2003.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

subject to appeal. But the point can be put at issue before the assembly by making the motion despite the chair's opinion and, when he *rules* the motion out of order, appealing from the chair's decision.

The chair's announcement of the result of a vote also is not a ruling and is not subject to appeal. If a member doubts the correctness of such an announced result, however, he should call for a "Division" (see 29).

Form and Example

A member desiring to appeal rises and, without waiting to be recognized, addresses the chair as follows:

MEMBER A: I appeal from the decision of the chair.
(Second.)

The chair, after stating clearly the exact question at issue, and the reasons for his decision if he thinks an explanation necessary, states the question on the appeal as follows:

CHAIR: The question is: "Shall the decision of the chair stand as the judgment of the assembly [or "club," "society," "board," etc.]"

Or:

CHAIR: The question is, "Shall the decision of the chair be sustained?"

The question should not be on "sustaining the chair," because the *decision*, not the presiding officer, is in question.

The vote is taken so that the affirmative will be in favor of sustaining the chair's decision, as follows:

CHAIR: As many as are in favor of sustaining the chair's decision, say *aye*. . . . Those opposed to sustaining this decision, say *no*. . . .

After the result of the vote is announced, business is resumed in accordance with the situation existing after the action on the appeal.

§25. SUSPEND THE RULES

When an assembly wishes to do something that it cannot do without violating one or more of its regular rules, it can adopt a motion to *Suspend the Rules* interfering with the proposed action—provided that the proposal is not in conflict with the organization's bylaws (or constitution), local, state, or national law, or the fundamental principles of parliamentary law.

Standard Descriptive Characteristics

The incidental motion to *Suspend the Rules*:

1. Can be made at any time that no question is pending. When business is pending, *Suspend the Rules* takes precedence over any motion if it is for a purpose connected with that motion. It yields to the motion to *Lay on the Table* and to all privileged motions when these motions are in order at the time according to the order of precedence of motions—except that if it relates to the priority of business it does not yield to a *Call for the Orders of the Day*. It also yields to incidental motions arising out of itself.
2. Can be applied to any rule of the assembly except

bylaws* (or rules contained in a constitution or corporate charter). No subsidiary motion can be applied to *Suspend the Rules*.

3. Is out of order when another has the floor.
4. Must be seconded.
5. Is not debatable.
6. Is not amendable.
7. Usually requires a two-thirds vote (see below, however). In any case, no rule protecting a minority of a particular size can be suspended in the face of a negative vote as large as the minority protected by the rule.
8. Cannot be reconsidered (see below regarding its renewal).

Further Rules and Explanation

OBJECT AND EFFECT OF THE MOTION. The object of this motion must usually be to suspend one or more rules contained in the parliamentary authority (rules of order), the special rules of order, or the standing rules of the assembly. ** A motion to "take up a question out of its proper order," or to consider one before a time to which it has been postponed, is an application of the motion to *Suspend the Rules* (see 14, 40).

In making the incidental motion to *Suspend the Rules*, the particular rule or rules to be suspended are not mentioned; but the motion must state its specific purpose, and its adoption permits nothing else to be done under the suspension. Such a motion, for instance, may be "to suspend the rules and take up the report of the Building

* Regarding the suspendibility of rules in the nature of rules of order when placed within the bylaws, see page 17.

** For the classes of rules that an organization or an assembly may adopt, see 2.

Committee," or "to suspend the rules and agree to [that is, to adopt without debate or amendment] the resolution . . ." When the purpose of a motion to *Suspend the Rules* is to permit the making of another motion, and the adoption of the first motion would obviously be followed by adoption of the second, the two motions can be combined, as in "to suspend the rules and take from the table (33) the question relating to . . ." The foregoing is an exception to the general rule that no member can make two motions at the same time except with the consent of the assembly—unanimous consent being required if the two motions are unrelated (see also pp. 107-108 and 270-271).

If a motion to *Suspend the Rules* is adopted and its object is to allow consideration of business that could not otherwise have been considered at the time, the chair should immediately recognize the member who moved the suspension of the rules, to make the appropriate motion that will bring up the desired business. Or, if no further motion is necessary (for example, if the two motions were combined as indicated above, or if the question is one that was postponed), the chair should announce the business as pending.

RENEWAL OF THE MOTION. If a motion to suspend the rules is voted down, it cannot be renewed by moving to suspend the rules for the same purpose at the same meeting, unless unanimous consent is given. It can, however, be renewed for the same purpose after an adjournment, even if the next meeting is held the same day. Any number of motions to suspend the rules for different purposes can be entertained at the same meeting.

RULES THAT CANNOT BE SUSPENDED. Rules contained in the *bylaws* (or constitution) cannot be sus-

pended—no matter how large the vote in favor of doing so or how inconvenient the rule in question may be—unless the particular rule specifically provides for its own suspension, or unless the rule properly is in the nature of a rule of order as described on page 17.

Rules *protecting absentees or a basic right of the individual member* cannot be suspended, even by unanimous consent or an actual unanimous vote. For example, the rule requiring previous notice of a proposed amendment to the bylaws protects the absentees, and its suspension would violate their rights. Further, the rule requiring officers to be elected by (secret) ballot protects a minority of one from exposing his vote, which he may do if he votes against, or objects to, suspending such a rule (see *Voting by Ballot*, p. 405).

At a regular meeting of an organization that has an established order of business, the assembly cannot, even unanimously, vote to *dispend* with that order of business (in the sense of voting, in advance of the time when it adjourns, that the order of business shall not be gone through at all at that meeting). If the assembly, by a two-thirds vote, adopts a motion “to dispend with the regular order of business and proceed to”^{*} a certain subject, it has in effect voted to *pass* all classes in the order of business which normally would precede that subject (see 40). In such a case, when the matter taken up out of its proper order has been disposed of, even if it has consumed as much time as the usual meeting, the chair must return to the regular order of business and call for the items in sequence, unless the assembly then votes to adjourn. (see 21).

^{*}This usage should be avoided.

RULES WHOSE SUSPENSION REQUIRES A TWO-THIRDS VOTE. The *rules of order* of a society, as contained in the manual established by the bylaws as the parliamentary authority, or as included in any special rules of order adopted by the organization (see 2), are rules of parliamentary procedure, the suspension of which requires a two-thirds vote. Some societies call all their rules “standing rules.” But by whatever name a rule is called, if it relates to parliamentary procedure, it requires previous notice and a two-thirds vote for its amendment; hence, it requires a two-thirds vote for its suspension.

RULES THAT CAN BE SUSPENDED BY A MAJORITY VOTE. An ordinary^{*} *standing rule*, as the term is used in this book, is a rule that does not relate to parliamentary procedure as such and refers, for example, to such matters as the hour for beginning meetings (in cases where the dates of regular meetings are established by the bylaws). Standing rules are adopted, as any ordinary motion, by a majority vote, and are amended by a two-thirds vote without previous notice or by a majority vote with such notice; they therefore can be suspended by a majority vote as they do not involve the protection of a minority of a particular size. Through an incidental main motion adopted by a majority vote, a standing rule can be suspended for the duration of the current session.

SUSPENSION OF RULES BY UNANIMOUS CONSENT. Frequently, when the matter is clearly not controversial, time may be saved by asking unanimous consent rather

^{*}In conventions the term *standing rule* is used in a special sense which may include parliamentary rules adopted by the convention (see pp. 612 ff.).

than by making a formal motion to suspend the rules. A member who has obtained the floor can say, for example, "Madam President, I ask unanimous consent to offer the courtesy resolutions before we receive the report of the special committee." The chair then asks if anyone objects and, if so, she proceeds to take a vote on suspending the rules, just as if a formal motion had been made.

Form and Example

The usual form of this motion is:

MEMBER A (obtaining the floor): I move that the rules be suspended [or "to suspend the rules"] which interfere with . . . [stating the object of the suspension]. (Second.)

Or:

MEMBER A (obtaining the floor): I move to suspend the rules and take up . . . (Second.)

When the object is to adopt a motion without debate or amendment, the form is:

MEMBER A (obtaining the floor): I move to suspend the rules and adopt [or "agree to"] the following resolution: "*Resolved*, That . . ." (Second.)

If such a motion does not receive the required two-thirds vote, the main motion can be taken up only in the normal way. A member moving to suspend the rules can briefly give sufficient information to enable the members to vote intelligently on his undebatable motion. (For the manner of taking a two-thirds vote, see pp. 45 and 48-49.) In announcing an affirmative result, the chair says, for example,

CHAIR: There are two thirds in the affirmative and the rules are suspended for the purpose of . . . The chair recognizes Mrs. Watkins.

§26. OBJECTION TO THE CONSIDERATION OF A QUESTION

The purpose of an *Objection to the Consideration of a Question* is to enable the assembly to avoid a particular original main motion altogether when it believes it would be strongly undesirable for the motion even to come before the assembly.

Standard Descriptive Characteristics

An *Objection to the Consideration of a Question*:

1. Takes precedence over original main motions (and over an *unstated* subsidiary motion, except *Lay on the Table*), but the objection can be raised only before there has been any debate or any subsidiary motion has been stated by the chair; thereafter consideration of the main question has begun and it is too late to object. It yields to the motion to *Lay on the Table*, to all privileged motions, and to incidental motions arising out of itself.
2. Can be applied to original main motions (p. 97) and to petitions and communications that are not from a superior body. It cannot be applied to incidental main motions. No subsidiary motion can be applied to it alone, but while it is pending the main question can be laid on the table, and the objection then goes to the table with the main question.
3. Is in order when another has the floor, until considera-

Mayor's Changes to Draft Ordinance No. 03-014

Sec. 1. DMMC 4.12.030 and section 3 of Ordinance No. 765 as amended by section 1 of Ordinance No. 821 as amended by section 1 of Ordinance No. 855, are each amended to read as follows:

Rules of Procedure - ~~Amendment~~ (Temporary Suspension).

The rules adopted under the procedure set forth in this chapter ~~shall not be suspended but~~ may be temporarily suspended at any meeting of the council ~~amended or new rules may be adopted by an affirmative a majority vote of at least a majority of the whole membership of the council all members present.~~ Temporary suspension of the rules shall be submitted as a motion by any Councilmember at any regular meeting. ~~Any such amendments or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the council agenda under the order of new business. A vote of the council to adopt such a resolution shall occur at a subsequent regular meeting.~~

NEW SECTION. Sec. 2. 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 the other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

NEW SECTION. Sec. 3. 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 _____, 2003, and signed in authentication thereof this ____ day of _____, 2003.

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

January 9, 2003

The regular meeting of the Des Moines City Council was called to order at 7: p.m. by Mayor Wasson in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember White.

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Community Development Director Judith Kilgore, Land Use Planner II Celeste Carlson and City Clerk Denis Staab.

AGENDA REVISION

Mayor Wasson announced that due to the large number of citizens who have signed up to speak under Comments from the Public, he is removing New Business Items 1, 2, 3 and 4. He noted that after the urgent business of Council is concluded the rest of the meeting will be devoted to Comments from the Public.

BOARD & COMMITTEE REPORTS

Ad-hoc Mt. Rainer Pool Committee

Mayor Pro Tem Benjamin presented a check for the Mt. Rainier Pool Fund to City Manager Piasecki, from the congregation of Christian Faith Center. He thanked them for their support on behalf of the City and the Ad-hoc Mt. Rainier Pool Committee.

ADMINISTRATION REPORTS

Mt. Rainier Pool Fund

City Manager Piasecki announced that with the contribution from the Christian Faith Center, the Save the Pool Fund now stands at \$18,200. He noted that members of the Ad-hoc Pool Committee still have several thousand dollars in pledges to collect.

City Manager Piasecki noted that the Mt. Rainier Pool Fund is still accepting donations. Checks should be sent to the City Hall address, made out to the City of Des Moines with a memo that it is for the Pool fund.

Economic Development Conference

City Manager Piasecki reported attending a recent EDC Forecast Conference. He reported that the forecast does not look good for the Puget Sound region. He advised that he has prepared copies of the articles from the four speakers and will put copies in Council's boxes to review.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of December 12 and 19, 2002.

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

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #83551 through #83681 & electronic fund transfers in the total amount of \$227,766.04

Payroll fund transfers in the total amount of \$377,386.24

3. Motion is to authorize the City Manager to sign the Contract for Professional Services to provide public defense services in the Des Moines Municipal Court, substantially in the form as submitted.

MOTION was made by Councilmember White, seconded by Councilmember Petersen and passed unanimously, to approve the Consent Calendar as read.

CONTINUED PUBLIC HEARING

Draft Ordinance No. 02-186 Dangerous Fences - 1st Reading

Land Use Planner II Carlson reminded Council that a Public Hearing was held at the November 31, 2002 meeting. At that hearing Council heard staff's presentation of the draft ordinance regarding the dangers of razor wire to the safety of people, pets and wildlife. Public testimony was taken at that meeting, but due to time constraints, Council has continued the hearing. She further advised that at the direction of Council staff has added a definition for electric fencing so that buried fences will be excluded from the proposed regulations, has exempted commercial zoned property from the regulations, and has also clarified the language in the definition of barbed wire.

Councilmember Thomasson requested, and Council concurred, the following revisions to the draft ordinance:

Page 3 (4) first line: Strike the words "non-dangerous"

Page 3 (2) 2nd sentence, and/or: Strike the word "and"

Upon questioning by Councilmember Thomasson, Land Use Planner II Carlson advised that the 10 foot measurement in section 2 (4) was taken from another city's ordinance.

As there were no public who wished to address the Council, Mayor Wasson declared the hearing CLOSED.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to move Draft Ordinance No. 02-186 to a 2nd reading at the January 23, 2003 Council meeting.

Councilmember Thomasson advised that he may wish to change the 10 foot measurement in Section 2 (4) to 3 or 5 feet at the next reading.

VOTE ON MOTION: Motion passed unanimously.

COMMENTS FROM THE PUBLIC

Allen Edmiston, 27005 15th Avenue South

Mr. Edmiston informed Council that people scuba diving at the Redondo boardwalk area have no place to change clothes other than in public. He requested that scuba divers be allowed to use the Highline College classroom facilities for changing.

Mr. Edmiston noted that the latch on one of the gates at the Redondo boardwalk is not functioning which could be a danger to children who might fall down the stairs into the water. He also noted that there is no gate at all on the other stairs.

Mr. Edmiston remarked that the ditch by the street in front of Woodmont Elementary School creates a dangerous situation. He also noted that the walkway to the school needs to be improved with a sidewalk.

Bob McMurtrie, 1125 South 27th Street

Mr. McMurtrie stated that he is opposed to the 3rd runway. He questioned how much analysis has been conducted regarding the monstrous retaining wall that is to hold all the fill. He stated that nothing has been built like this and questioned how stable it might be in a major earthquake especially after heavy rains. He thanked Councilmembers who have supported the fight against the third runway, noting he has concerns over his child breathing fumes from jet aircraft. He stated that he will move out of the community if the 3rd runway is built and requested Council not cut funding to the Airport Communities Coalition.

Councilmember Sheckler announced that if Mr. McMurtrie will leave information with the City Clerk on how to contact him, he has information regarding the retaining wall that he will be glad to share.

Dan Caldwell, 19547 2nd Avenue South

Mr. Caldwell stated that other communities with attributes similar to Des Moines, such as Kirkland, are thriving, while downtown Des Moines is turning into a ghetto. He noted that Council needs to work on an improved image to the downtown area. He felt part of the answer is to stop the 3rd runway and feels that the battle is almost won. He requested that Council work for the common good of the community and put money back in the budget to fight the 3rd runway.

Molly Nordhaus, 815 South 216th #63

Ms. Nordhause addressed Council urging them to reinstate funding to fight the 3rd runway. She noted that no efforts for economic development will help if the 3rd runway is built.

Jim Essman, 1108 South 244th Place

Mr. Essman reported that as the current President of the Board of Director of Huntington Park, the majority of Huntington Park residents oppose the construction of the 3rd runway. He noted that it took the Port 20 years to provide funds for noise impacted schools after the construction of the 2nd runway. He stated that the 3rd runway would adversely impact the quality of life in Des Moines. He encouraged Council to continue to fund the fight through ACC.

Stan Scarvie, 204 South 206th

Mr. Scarvie informed Council that the decision to stop funding the 3rd runway fight is destructive to any proposed economic development in Des Moines. He noted that no amount of economic development could even begin to offset the negative impacts of a 3rd runway. He felt that to say the battle is over, is wrong. He stated that the battle is both political and legal and that the Council needs to continue funding the fight through ACC. He felt that airport expansion will exploit the community and only the Port will benefit. He advised that we need to protect what Des Moines has now before any economic development can occur. He reminded Councilmembers that they were elected to protect the citizens interests.

Mayor Wasson cautioned the audience against comments being made other than from the speakers table or he may be forced to clear the room.

Mayor Wasson requested City Manager Piasecki address issues raised by Mr. Scarvie in a letter to the editor written this week regarding payment of legal fees.

City Manager Piasecki advised that at the December 19, 2002 meeting, there was check on the list of checks that the City Council had in front of them. This is the routine way of the Council for authorizing all the payments that the City needs to make when it makes payment for goods and services. The last item on the claims and voucher list from December 19th, was a request for reimbursement for legal fees by three Councilmembers. It was processed as a regular payment, it was put on the claims and vouchers at his direction, and he did inform all the Councilmembers that it was there. The Mayor subsequently pulled it off the Agenda. It was suppose to be on the agenda tonight, however there will not be time to deal with that issue. He stressed that the manner in which this was done, is a matter of routine in the way the City goes about paying bills in the City of Des Moines.

Mayor Wasson also noted that it was erroneous statement that the Council had never discussed the item. This was an item of discussion during an Executive Session held earlier in the meeting of December 19, 2002.

Mayor Pro Tem Benjamin complained about the audience noise being distracting to conducting the meeting.

Adjournment - 8:13 p.m.

MOTION was made by Mayor Wasson, seconded by Mayor Pro Tem Benjamin, to adjourn the meeting. Motion FAILED 5 to 2 with Mayor Wasson and Mayor Pro Tem Benjamin voting YES.

Mayor Wasson again cautioned the audience to control their comments or he will be forced to clear the room.

COMMENTS FROM THE PUBLIC CONTINUED

Austin Warriner, 24439 11th Avenue South

Mr. Warriner addressed Council stating that he believes the metropolitan area needs another airport, not a 3rd runway at Seatac. He requested Council put the ACC funding back into the budget to continue the fight.

Councilmember Steenrod stated that she was interested in what everyone has to say and she requested the audience be courteous and allow Council an opportunity to hear everyone.

Lala Klenman, 24804 9th Place South

Ms. Klenman stated that several of the new Councilmembers, in particular Mayor Pro Tem Benjamin, had campaigned being against the 3rd runway, but she noted their voting record does not reflect that. She felt that the City should not stop the fight now. She requested that funding of ACC be restored and that the Council should not withdraw membership in RCAA. She suggested that Council should show the voters that they meant what they said in their campaign speeches and brochures.

Dave Kaplan, 2614 South 226th, B303

Mr. Kaplan noted that the following items that he feels the Council has accomplished in the past year. On the positive side he noted:

- Kept Mt. Rainier Pool open for a few extra months
- Placed an emphasis on economic development

On the negative side he cited the following:

- Economic development appears to be business, any business, at any cost including mini casinos
- Fired a competent, hard working City Manager without cause
- Agreed to a Union Contract with language that sets a bad precedent
- Balanced the 2003 budget by cutting police officers and using one time monies for on-going expenses rather than making tough long term funding of certain services that can be supported
- In spite of the budgetary shortfall, took on the expense and added costs of funding the Mt. Rainier Swimming Pool
- Went ahead with construction of the sports park in spite of the fact it will cost an additional \$25-50 thousand for maintenance costs
- Failed to build the dry stack storage at the Marina to pay for the land that was purchased for that purchase
- Created a Finance & Economic Development Committee that wants to micro-manage the City
- Failed to hold Water District #54 accountable for the fact it has not filed its Comprehensive Plan
- Without public input, dropped ACC funding on what appears to be the eve of a victory over the port of Seattle

Len Oebser, 20724 8th Avenue South

Mr. Oebser strongly urged Council to reconsider and reinstate funding to ACC. He stated that ACC has diligently fought the Port and this is not the time to quit the fight. He noted that while the cost has been high, it is nothing compared to what will happen to the City if the Port ignores environmental concerns, among many others.

Marilyn Ayres, 728 South 231st

Ms. Ayres expressed strong concern regarding the risk of airplanes dropping out of the sky should the 3rd runway be built. She noted that the Boeing Company may leave Everett and this would provide a perfect answer to an additional airport. She urged Council to restore funding to ACC.

Mark Proulx, 26202 14th Avenue South

Mr. Proulx spoke against the 3rd runway as it poses additional threats to the area's water supply, salmon habitat, property values, intolerable noise and decreased air quality. He noted by stopping funding to ACC the Council has failed in its duty to the welfare of the citizens and there is no excuse for that.

ED Pina, 24219 7th Avenue South

Mr. Pina stated that he has lived here since 1957 when the 2nd runway was built and the Port promised there would not be a 3rd runway. Mr. Pina commented that ACC has been instrumental in placing many environmental restrictions on the Port. He noted that Port is currently in Court trying to get these restrictions reduced. He felt it is important to continue funding ACC to keep the fight going. He reminded Council that they have an obligation to defend the citizens of Des Moines.

Frank Jovanovich, 22431 10th Avenue South

Mr. Jovanovich stated that he was Mayor of Des Moines about 10 years ago when the fight against the 3rd runway began. He expressed strong objection to removing the funding to ACC and urged the funds be restored to help retain a decent City.

Jim Bartlemay, 23510 10th Avenue South

Mr. Bartlemay stated that he feels the fight against the 3rd runway is the most critical issue facing Des Moines. There will be huge impacts on schools, environment, traffic and property values. He encouraged Council to restore funding to ACC. He noted that the last 2 years in the fight have been the most productive in using environmental laws and fighting scientific battles in Court and this not the time to stop. He felt that the Port is reaching a point where they will be unable to pay the costs involved in the installation of the 3rd runway to meet all the environmental laws of the State. He also felt that an independent study should be conducted to determine whether there really is a need for a 3rd runway and that Council should inform the Port that we will fight back when we are attacked.

Robert Stephens, 815 south 216th

Mr. Stephens advised that another reason for not needing a 3rd runway is that the number of flights has decreased and there is no evidence that it will come back very soon. He also noted that delays at the airport due to weather problems is less than 4%. He felt there is no reason for a 3rd runway and that Des Moines should be in the forefront to see that it is stopped. He requested that funding be restored to ACC to continue the fight.

Ben Stark, 1310 South 230th

Mr. Stark noted that a 1997 State funded HOK study documents expectations for blight for Des Moines which would include decreased property values, increase in rental housing, increase in social services and crime. He noted that depressed property values brings decreased tax revenues. He advised that this is already happening just from the threat of a 3rd runway. He felt that Council must budget a minimum of \$150,000 to continue the fight with ACC.

Craig Martinson, 1247 South 230th

Mr. Martinson addressed Council and informed them his home has been devaluated by 14% due to being located close to the proposed 3rd runway. He stated that he is prepared to fight the 3rd runway and requested that Council reinstate the funding to ACC.

Gene Achziger, 28708 Soundview Drive South

Mr. Achziger noted that we are close to finding out if the efforts to fight the 3rd runway will payoff. He advised that he believes the battle can be won. He stated the Port very well may get the permits to build the runway, but may have to abandon the project due to the huge costs. He noted that the efforts of CASE, RCAA and ACC have achieved numerous partial victories which bode well for the citizens whether the 3rd runway is built or not. The Port is being required to protect our drinking water, pay fair prices for the land that they take, and to mitigate the damages it is proposing to the environment and quality of life. In conclusion he stated to abandon the fight now, we will abandon all the partial victories and surrender unconditionally to the Port. He feels if that happens then all the money will have been wasted. He felt we must continue the fight if for no other reason than to protect property values.

Mary Paynter, 27220 10th Avenue South

Ms. Paynter noted that several speakers have referenced the declining business climate in Des Moines. She advised that she is here to support reinstating funding to ACC. She feels this is one of the biggest bargains in ages. She noted that the \$150,000 comes out to about \$5 per citizen and she for one is willing to pay much more than that. She urged Council to restore the funding and continue the fight against the 3rd runway.

Dolores Hodgkin, 23456 28th Avenue South

Ms. Hodgkin requested Council not give up the fight on the 3rd runway and reinstate the money to ACC.

Tom Slattery, Highline School District Board Member, 15675 Ambaum Blvd.

Mr. Slattery stated that ACC offers more than a vehicle to protect the families and their futures from the negative impacts of the Airport. The coalition provides a great way to collaborate on common needs. He noted now is not the time to abandon the potential that ACC offers for the future. He noted that no final decision has been made regarding the 3rd runway. He noted that the \$150,000 is relatively small compared to prior costs. He urged Council to protect their past investment and to continue to provide funding. He feels that all individuals in elected positions have a duty to ensure a healthy environment for constituents. All issues under appeal are all about healthy streams and drinking water for the community. The citizens of Des Moines have as much, or more, to lose than all the other cities by abandoning the ACC at this juncture. He cited a long term danger of the negative impacts of the airport and short term danger of alienating neighboring communities, and a long range danger of isolation from the collective strength of the airport communities. He noted this is the worst time to abandon the efforts against the 3rd runway.

Joe Coomer, 16857 Des Moines Memorial Drive

Mr. Coomer stated that, in his opinion, fighting the 3rd runway is an exercise in futility. He felt that most citizens believe the issue is a lost cause and do not wish to spend any more money fighting the Port. He advised that he has concerns regarding the finances of ACC. He noted that ACC informed him they have no balance sheets, year end reports or other financial reports available for review and therefore he questioned their financial spending picture. He concluded by noting that he supports Council removing the funding for ACC.

Rose Clark, Deputy Mayor, City of Burien and Co-Chair of ACC

Ms. Clark advised that ACC has had exceptional audits. She stated that the 3rd runway fight is a legal fight and is an effort to protect the communities from a political solution that was hammered out between the Port and the Puget Sound Regional Council, with the aid of regional political leaders. She noted there are a host of environmental impacts associated with the 3rd runway. She stated that poor environmental standards by the Port of Seattle on their property are causing flooding, loss of habitat and a host of other environmental hazards. She advised that the financial costs to repair this damage could destroy the City of Burien's budget and she imagines the same will be true for Des Moines. She feels to pay a little now through ACC is better than paying a lot later. She noted that the Port is now appealing environmental conditions and standards in Court, as they feel they cannot afford to pay for them.

Phil Emerson, 18403 2nd Avenue South, Burien

Mr. Emerson noted that after the Pollution Control Hearings Board decision came out with 16 stipulations on the Port's 401 Permit, the Port said that they cannot build a runway with those conditions, it is financially impossible. He felt this is a win. He requested Council continue funding the fight to preserve the win.

Bret Fish, 801 SW 168th, Normandy Park, representing Citizens Against Seatac Expansion (CASE)

Mr. Fish encouraged Council to reconsider its position and reinstate funding to ACC. He felt if the fight stops now, we will blow everything.

Bob Pond, 23116 30th Avenue South

Mr. Pond informed Council that his neighborhood is getting better and he is anxious for Council to pass legislation to regulate motels, such as King's Arms. He noted that since the King's Arms motel has been closed there has been much less police presence necessary.

9:04 p.m. Mayor Wasson called for a 10 minute break.

Gary Goodwin, 21933 4th Place South

Mr. Goodwin informed Council that he works for the FAA and is strongly against the 3rd runway. He encouraged Council to reinstate funding to ACC and advised that the FAA is reconsidering their position of supporting the proposed 3rd runway. In conclusion he questioned Council as to what will be next, a conveyor belt?

Al Waln, 815 South 216th #

Mr. Waln commended the Council for their decision not to spend any more money to opposed the 3rd runway. He stated that it is already being built. He stated that an adequate and safe functioning airport is vital to the economic welfare of all of the community. He encouraged Council not to tax the citizens to fight the 3rd runway.

Kathleen Quong Vermeire, 20209 2nd Avenue SW, Normandy Park

In reference to the letter to the Editor in the Des Moines Highline Times regarding the payment of Councilmember's attorney fees, Ms. Vermeire expressed hope that the Councilmember's who will benefit financially from the approval of the payment will recuse themselves from voting.

In regards to the 3rd runway, Ms. Vermeire expressed the opinion that Des Moines' needs to continue the fight against the 3rd runway. She felt neighboring cities, citizens and elected officials need to work together. She advised that headway has been made, and that if it was not

for the help of ACC the Port of Seattle would not have been fined by the Dept. of Ecology, twice, for damaging Miller Creek. She reminded Council that once the environment has been lost it, is gone.

Bill Whisler, 418 SW 185th Place, Normandy Park

Mr. Whisler, as a long time user of the Mt. Rainier Pool, thanked Council for their efforts in helping to keep the Pool open.

Eric Faison, 133 South 309th Street, Federal Way City Councilmember

Mr. Faison reminded Council that the City of Federal Way represents about 40% of the total population of ACC and has stood behind Des Moines politically and have done so despite objections of numerous citizens in Federal Way who felt the City should settle with the Port. He advised that the Federal Way City Council felt that working cooperatively with neighbors was an important thing to do. He cautioned Council that its hasty decision to withdraw support from the 3rd runway fight, will call into question support in Federal Way whether to continue participation in ACC. He stated that it is important for neighboring communities to work together whether it is in regards to roads, boundaries, or airport issues, as everyone is affected and the communities are much stronger together than separate. He suggested Council reconsider funding and support of ACC. He noted that he fears if Des Moines does not reconsider, there may be other situations where the cities cannot work cooperatively.

John Burdick, 816 South 216th

Mr. Burdick noted that there are a lot of good arguments about why we should not have the 3rd runway. However, he feels the fight has been lost on the two major points on the permitting and it is now down to arguing about environmental concerns. He feels that even if the Port loses on the environmental issues, the 3rd runway will still be built. He does not feel that spending another \$150,000 will change anything and therefore feels it should not be spent.

John Wiltse, 244 SW 192nd Street, Normandy Park Mayor

Mr. Wiltse thanked Mayor Pro Tem Benjamin for his leadership role in pulling together a coalition of cities that helped fund the Mt. Rainier Pool. He noted this is an example of the type of cooperation that the ACC has experienced over the last several years. He stated that finally results are being seen. He advised that the City of Normandy Park is committed, along with Burien, Federal Way and Tukwila, and now is not the time for the City of Des Moines to quit.

NEXT MEETING DATE - Regular Meeting January 16, 2003

ADJOURNMENT

MOTION was made at 9:39 p.m. by Councilmember Thomasson, seconded by Councilmember Sheckler to adjourn. Motion passed 6 to 1 with Councilmember Steenrod voting NO.

Respectfully submitted,

Denis Staab
City Clerk

A G E N D A I T E M

SUBJECT:
Transfer of CIP funds for Phone and Data
System at Des Moines Activity Center

AGENDA OF: January 23, 2003

DEPT. OF ORIGIN: Parks, Recreation, & Senior
Services

ATTACHMENTS:
A. Phone & Data Systems Comparison Chart

DATE SUBMITTED: January 17, 2003

B. 2002 Capital Improvement Plan
Woodmont Elementary School Soccer
Field Renovation Project

CLEARANCES:

[✓] Park & Recreation Director

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this item is to request the re-allocation of funds from the 2002 Capital Improvement Plan from the Woodmont Elementary School Soccer Field Project for the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center.

Recommended Motion:

\$14,074 for
"I move to approve the re-allocation of \$14,074 in unexpended 2002 Capital Improvement Plan funds from the Woodmont Elementary School Soccer Field Project for the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center."

*and as a result,
net. adjust in CIP*

Background:

The City of Des Moines is in the process of renovating the Des Moines Activity Center to house Senior Services and multiple contracted services such as the nutrition program, health and wellness counseling and transportation services provided by other agencies. Multiple line phone and data/computer service is needed to provide adequate communications to the building serving the needs of staff, volunteers and participants.

The senior center currently has an AT & T Partner system which was originally installed in 1995. This system is independent of the City phone and data network system. The Partner system supports three outside telephone lines and five extensions. The three outside lines are dedicated to handling the number of calls received daily at the senior center. Two of the five extensions are connected to City Hall's main system via off premise extensions that enable them to utilize the City's voice mail system and have a four-digit dialing to other City departments.

Senior Center staff and volunteers use computers daily for registration, data entry, record keeping, senior outreach and communication. The senior center currently has six computer terminals used by office staff and volunteers. Our computers are not linked to the city's data network system except for full time staff email.

Discussion:

The senior center has been using separate phone and computer data systems because of their location away from City Hall and because of the cost of connecting the senior center to the city phone and data network system. The computers and printers are new and up to date but do not link the center to the city's data network system. The relocation of the senior center to Des Moines Activity Center presents the opportunity to finally link senior center phone and computer data network systems to the rest of the City. Currently the senior center program is the only city program not linked into the city phone and data network systems. Impact on city staff includes the inability to communicate via computer with senior center staff except via email, the slow down of communication, reports, budget requests, etc. due to the extra steps involved to get the data to the appropriate city department. As our goal this year has been to focus on efficiency measures for all city departments, the T-1 phone and data network system is well worth the additional start up costs to make the senior center more efficient and effective in working with the public and other city departments.

Financial Impact:

There are additional expenses in the initial costs to set up of the T-1 System for Des Moines Activity Center. The funds for these initial costs (\$15,000.00 unexpended funds from the Woodmont Elementary School Soccer Field Renovation Project) are available in the City's 2002 Capital Improvement Plan. Monthly phone and data network system costs will actually be a little less than the senior services budget is currently paying for phone, voice mail, and data systems in Des Moines Beach Park. The monthly cost for these services is budgeted in the 2003 Senior Services budget. See Attachment A.

Recommendation/Conclusion:

It is recommended that City Council approve the re-allocation of unexpended 2002 Capital Improvement Plan (CIP) funds in the amount of \$14,074.00 from the Woodmont Elementary School Soccer Field Project to the 2003 Capital Improvement Plan Des Moines Activity Center Project for the purchase of a phone and data network system.

Concurrence:

For many years the city has planned to connect Senior Services data systems with the city's system. Administrative Department, Parks, Recreation and Senior Services Department as well as the city's Computer Systems staff recommend the T-1 phone and data network system as the best alternative to connect communication systems.

Attachment A

PHONE & DATA SYSTEMS COMPARISON CHART FOR DES MOINES ACTIVITY CENTER

PHONE SERVICES	# OF PHONES	VOICE MAIL	LINK TO CITY SYSTEM	MONTHLY COSTS	ISSUES	SET UP COST
T-1 System (Electra Elite48 System)	Up to 48	Utilizes city's main voice mail system for all extensions.	Yes, All lines	Contract options: 1. \$282/mth-1 year. 2. \$254/mth-3 years. 3. \$220/mth-5years	1. Initial costs higher. 2. Fully linked to City voice and data network.	\$14,074 T-1 card- \$1,850 T-1 install-\$680 Electra Elite 48 System- \$7,600 Data Connection Hardware-\$3,275 Sales Tax-\$669
Partner System	Up to 8	Included. A separate voice mail from the City system	No. Dial 7 #'s for ALL calls from all extensions	\$340/mth- DSL Line for computers & 3 outside lines	1. Email only, no access to City data system. 2. 7 digit dialing for all calls. 3. No direct dial to City extensions. (currently have this capability) 4. No voice mail connection to City.	\$4,828 ACS 5 slot carrier-\$166 ACS R5 control unit-\$1,067 PXM 12 mailbox card-\$737 Labor Voice Tech Zone 3-\$880 Display Handsets-\$1,633 Sales Tax -\$345

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.	
PROJECT	Woodmont Elementary School Soccer Field Renovation Project	PROJECT STATUS:	
		Preliminary Estimate	_____
		Plans in Preparation	_____
		P.S.E. Complete	_____
LOCATION	26454 16th Avenue South		

DESCRIPTION: Woodmont Elementary School proposed improvements include renovation of one turf soccer field as part of a multi-phased facility master plan.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
ADMINISTRATION	1,700	1,700					
DESIGN/ENG	20,000	20,000					
BUILDINGS							
IMPROVEMENTS	115,166	115,166					
INSPECTION	9,000	9,000					
CONTINGENCY (10%)	14,870	14,870					
SALES TAX	11,264	11,264					
BOND ISSUANCE							
TOTAL	172,000	172,000					

FUNDING SOURCE	TOTAL	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
MCI	50,000	50,000					
Federal Way School Dist. Confirmed	57,000	57,000					
King Co. Confirmed	50,000	50,000					
DMMSC Confirmed	15,000	15,000					
TOTAL	172,000	172,000					

OPERATING COSTS							
PERSONNEL							
SUPPLIES							
UTILITIES							
CAPITAL							
OTHER							
TOTAL			7,000	7,000	7,000	7,000	7,000

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	General Government	PROJECT NO.	
PROJECT	Woodmont Elementary School Soccer Field Renovation Project	Preliminary Estimate	<u> X </u>
LOCATION	26454 16th Avenue South	Plans in Preparation	<u> </u>
		P.S.E. Complete	<u> </u>

JUSTIFICATION:

At City Council direction school field improvement projects have been created to foster new partnerships between the city, school districts, and citizen groups in Des Moines. Projects could include the acquisition, development or renovation of parks, sports fields, trails and recreation centers. Matching contributions could include in-kind donations of land, labor or facilities.

Woodmont Elementary School soccer field renovation in partnership with Federal Way School District and Des Moines Midway Soccer Club is proposed in this request.

The proposed sports field enhancements will improve a dangerous playing field, increasing facility safety, maintenance efficiency, accessibility, and maximize usable hours. The final design, plans, specifications, and estimates, site clearing and preparation, and construction will begin in 2002.

Maintenance costs for the project would be \$7,000 annually (not including utilities.)

**SCOPE OF WORK:
Drawing/Site Plan
Attached**

<u>Renovation Improvements</u>	
Turf Soccer Field- Woodmont Elem.	\$115,166
Sales Tax @ 8.8%	\$11,264
Design, Permits & Administration @ 12%	\$21,700
Inspection	\$9,000
Contingency	<u>\$14,870</u>
TOTAL	\$172,000