Linda

AMENDED

NEED HESD Levy resolution for 3/27

Executive Session - 7:10 p.m. Real Estate Matters

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
March 13, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

ROLL CALL all 7 there

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.

Michael Daniels - driveway
Les Findley - Huntington Park
mayor done
Tom Rough - Pacific Ridge
Dave Kaplan - Marina Rates - economic development - revenues
Tom Steady
Lynn Voss

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the regular meeting minutes of January 23, and February 6 and 27, 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 #84403 through #84547 & electronic fund transfers in the total amount of $292,929.21
      Payroll fund transfers in the total amount of $344,140.99

Peterson & Steenrod recuse item 5.6

3. Draft Ordinance No. 03-059 - Title: An Ordinance of the City of Des Mines, Washington relating to boards and committees, revising provisions governing the Senior Services Advisory Committee residency requirements, and amending DMMC 4.44.020.
   TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft Ordinance No. 03-059.

passed all 7-0

4. Motion is to enter into an interlocal agreement with the Highline School District for the transfer of a surplus ball field drag to Mt. Rainier High School and to authorize the City Manager to sign the interlocal agreement substantially in the form as submitted.
5. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT, which provides for acquisition by the City, for $32,750.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project and to authorize the City Attorney

to present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

6. Motion is to purchase 1,589 square feet of land and improvements from Callow Limited Partnership in the amount of $139,883 plus closing costs and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.

7. Motion is to approve the Consultant Agreement for Landscape Architecture, Civil Engineering and Project Construction Observation Services with Cosmopolitan Engineering Group, Inc., in the amount of $42,000 and authorize the City Manager to sign the contract substantially in the form as submitted, and to authorize the City Manager to approve change orders in amounts not to exceed 10% in total.

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

motion to suspend 26.6 failed

PUBLIC HEARING

Draft Ordinance No. 03-065 Planning Agency Duties - 1st Reading

Passed to 2d reading

SUMMARY: In 2001 the duties of the Planning Agency were expanded to include approval of preliminary subdivisions, preliminary modified subdivisions, preliminary alterations or vacation of subdivisions, preliminary alterations or vacations of short subdivisions with public dedication, preliminary alteration or vacation of binding site plans with public dedication, preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication, preliminary binding site plan with more than four lots, and preliminary townhouse development with more than four lots. The purpose of the draft ordinance is to rescind those expanded duties and return the duties to the City Council.

OLD BUSINESS

NEW BUSINESS

1. Draft Ordinance No. 02-237 Amending Council Rule 12 Minutes - 1st Reading

Passed to 2d reading

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.

2. Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure - 1st Reading

tabled 5-2

SUMMARY: Councilmember Wasson 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 Des Moines Municipal Code 4.12.030. Therefore, DMMC 4.12.030 would need to be amended.

3. Draft Ordinance No. 03-036 Marina Rates - 1st Reading
   SUMMARY: The purpose of this Agenda Item is to obtain Council approval for changing the moorage rates at the Marina.

4. Discussion: Utility Tax Rate
   SUMMARY: Mayor Steenrod requested that the City utility tax rate be placed on the agenda for Council discussion.

NEXT MEETING DATE - Regular Meeting March 27, 2003

ADJOURNMENT

continued to ~~passed~~

NEW BUSINESS
Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Utility Tax Rate Discussion

ATTACHMENTS:

Schedule of 2003 Budget Balance Strategies

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: March 11, 2003

CLEARANCES:
[ ] pk

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation
The Mayor has requested that the City utility tax rate be placed on the agenda for discussion.

Background
Ordinance No. 916 adopted November 21, 1991 provided for a 2% utility tax rate to fund the increased cost of law enforcement for the 1992 budget.

Ordinance No. 1004 adopted January 28, 1993 raised the utility tax rate to 4% providing for a 2% utility tax to fund airport defense expenses.

Ordinance No. 1005 adopted January 28, 1993 raised the utility tax rate to 6% providing for an additional 2% utility tax to fund the operations and maintenance of three parks previously owned by the county.

Ordinance No. 1023 adopted March 25, 1993 reduced the utility tax rate from 6% to 5%.

Ordinance No. 1249 adopted November 29,1999 raised the utility tax rate from 5% to 6% in response to the budget shortfall for 2000 as a result of Initiative 695.

For the 2003 budget, a total of $2,284,000 was estimated for utility tax revenues.

A 1% reduction in utility taxes equates to approximately $380,667.

Discussion

If utility taxes were reduced, the General Fund would need to utilize additional fund balance to maintain a balanced budget or, alternatively Council could decide to reduce service levels. The 2003 budget was balanced utilizing reserves, fund balance, and one-time revenues. The further use of fund balance and reserves greatly impacts our ability to fund current services and programs for the year 2004 budget.

If Council so chooses to reduce the utility tax rate and amend the 2003 budget, two Ordinances will be brought forward for their approval and adoption. The first Ordinance would amend the utility tax rate. The second Ordinance would amend the budget. The process to amend the budget requires a Council majority plus one.

Alternatives

None.

Recommendation

Staff does not recommend Council take action to reduce the utility tax rate without identifying another funding source, reducing service levels, or authorizing use of fund balance to equal the reduction in utility tax revenues.

Concurrence

None.

Schedule of 2003 Budget Balancing Strategies

Deferred Expenditures:	
Replacement of Patrol Cars	$120,000
Computer Replacements	62,875
Equipment Replacements	312,000
Total	$494,875

Expenditure Reductions:	
Salary/Benefits	$346,362
Overtime	20,450
Travel/Training	24,922
Communications	10,775
Office Supplies	12,110
Off-Site Storage	10,000
Janitorial	18,470
Cable Consultant	10,000
City Currents	13,100
Total	$466,189

Staff Position Changes/Cuts:	
Eliminate Receptionist	$42,652
Eliminate File Clerk	36,655
Reclass CSO Position to PT Jail Transport	29,993
Eliminate Dare Officer	78,000
Reclass Planning Mgr to Land Use Planner	22,907
Tsf 40% Assistant Planner/GIS to SWM	28,773
Share .5 Parks Mtc Worker with Marina	26,395
Eliminate Senior Maintenance Worker	61,000
Tsf 25% of PW Superintendent to SWM	19,987
	$346,362

New Revenue Options:	
Business License Fee on External Businesses	$11,700
Animal License Increase of $5	7,000
Admissions Tax at 5%	1,300
Metropolitan Park District Levy/$0.75 per $1,000 AV	1,371,245
Metropolitan Park District Levy/$0.50 per $1,000 AV	914,000
City B & O Tax	350,000
Property Tax Lid Lift to $1.60 per $1,000 AV	548,553
Total	$3,203,798

Other Proposed Cuts (Not Adopted):	
Fuel Change to Regular	$2,125
Municipal Court Advertising, Supplies	3,003
Municipal Court Court Clerk Reduced to 75%	18,637
Municipal Court Court Clerk Reduced to 35%	18,260
Executive Travel	4,125
Finance Armored Car Services	3,300
Finance Sales Tax Audit Services	5,000
Finance Staff Accountant #1	46,026
Finance Staff Accountant #2	22,226
Finance Overtime	1,430
Record Services Overtime	1,200
Record Services Archive Services	4,500
Legal Prosecutor Supplies	300
Legal Professional Services	9,000
Legal Travel	2,500
Legal Dues & Registrations	1,533
All City Buildings – Add'l Reduction in Custodial Services	8,900
Police Community Services Officer #2	57,445
Police Narcotics Officer #1	47,395
Police Evidence Room Staff	24,406
Police Uniforms, Laundry	10,940
Police Training Overtime, Holiday Cash-Out, Overtime	16,489
Police Narcotics Officer #2	50,855
Police Internet Task Force Detective	56,550

Police S. County Enforcement Unit Position	63,179
Police Patrol Officer	56,469
Police Patrol Officer	58,571
Police Patrol Officer	64,058
Police Traffic Unit Net Reduction	208,312
Community Info Svs Reduce Remaining Cable Consultant	10,000
Comm Dev Miscellaneous Travel, Training, Dues, etc	18,378
Comm Dev Reduce Sierra Support	5,000
Human Services	12,025
Parks & Recreation Brochures, Postage, Advertising	11,300
Parks & Recreation Armored Car Services	3,300
Parks & Recreation Americorp Funded Workers	2,000
Parks & Recreation Reduce Rec Attendant Hours	43,084
Parks & Recreation Cut Special Events	27,000
Parks & Recreation Cut Capital Outlay & Small Tools	8,000
Parks & Recreation Reduce Customer Service Position to .5	19,948
Parks & Recreation Operating Rentals	6,000
Parks & Recreation Park Maintenance Position	52,810
Parks & Recreation Downtown Banner Program	4,500
Parks & Recreation Park Annuals Program	3,000
Parks & Recreation Part-Time Maintenance Workers	26,709
Parks & Maintenance Maintenance Supplies	5,000
Parks & Maintenance Utilities	12,349
Senior Services Program Attendant	11,707
Street Fund Maintenance Worker	49,906
Street Fund Add'l Street Lights Utility Costs	65,000
Total	$1,263,750

NEW BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

tabled
5.2

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

FOR AGENDA OF: March 13, 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 Ordinance No. 03-014 at the regular session of January 16, 2002, 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.

DRAFTORD:AG/03-014

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: ___________________

DRAFTORD:03-014

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 suspended—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 *dispense 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 dispense 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.

NEW BUSINESS
Item #1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

passed to 2d reading

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

ATTACHMENTS: Draft Resolution No. 02-237.

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 11/07/02

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

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.

DRAFTRES:02-237

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 <u>as required by the Revised Code of Washington and Robert's Rules of Order, and including a specific action item section,</u> and shall perform such other and further duties in the meeting as may be required

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

CONSENT CALENDAR
Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Transfer of Surplus Ball Field Equipment to Mt. Rainier High School

ATTACHMENTS: Interlocal Agreement Between Highline School District and Des Moines for The Transfer of Surplus Equipment

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 25, 2003

CLEARANCES:
[X] Legal LAM

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AP

RECOMMENDATION

MOTION: "To enter into an interlocal agreement with the Highline School District for the transfer of a surplus ball field drag to Mt. Rainier High School and to authorize the City Manager to sign the interlocal agreement substantially in the form as attached. "

BACKGROUND

The Park & Recreation Department would like to transfer ownership of its surplus Gandy Ball Field Drag to Highline School District for use at Mt. Rainier High School to service its ball fields. The ball field drag will be transferred in "as is" condition.

FINANCIAL IMPACT

None. Highline School District will assume complete responsibility, at no cost to Des Moines, for the operation and maintenance of the transferred surplus Gandy Ball Field Drag.

CONCLUSION

The Highline School District would benefit from the transfer of ownership of the City's surplus Gandy Ball Field Drag for use at Mt. Rainier High School's ball fields.

CONTRACT/MtRainierFieldDragDonation/03-066

TRANSFER OF SURPLUS PROPERTY AND RELEASE OF LIABILITY BETWEEN THE CITY OF DES MOINES AND HIGHLINE SCHOOL DISTRICT

THIS AGREEMENT is made and entered into by and between the CITY OF DES MOINES ("Des Moines") and HIGHLINE SCHOOL DISTRICT.

WHEREAS, Des Moines desires to dispose of its surplus Gandy Ball Field Drag, Serial No. 66594, in "as-is condition," for use by Highline School District, a public corporation, to service its ball fields; and

WHEREAS, Mt. Rainier High School of Highline School District is able and willing to use such equipment for such purposes in accordance with the terms of this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

(1) Subject to the terms of this Agreement, Des Moines agrees to transfer title to, and possession of, a Gandy Ball Field Drag, bearing Serial No. 66594, to Highline School District. Upon transfer of said Ball Field Drag, Highline School District shall assume complete responsibility, at no cost to Des Moines, for operation and maintenance of said Ball Field Drag.

(2) Such Ball Field Drag shall be provided on an "AS IS" and "WITH ALL FAULTS" basis. Des Moines makes no warranties of any kind whatever, expressed or implied, as to said Ball Field Drag and all warranties, including any warranties of merchantability and fitness for any particular purpose, are hereby disclaimed and excluded. Highline School District acknowledges and agrees that it accepts the above disclaimer and waiver and further agrees to defend, indemnify and hold harmless Des Moines, its officials, employees, agents and contractors from and against any and all claims, demands, suits, liabilities or costs of whatsoever kind and nature, which arise out of or are in any way related to said Ball Field Drag or its use. Said claims include, but are not limited to, claims against Des Moines which are brought by employees or former employees of Highline School District and, by mutual negotiation, Highline School District hereby waives, as respects Des Moines only, any immunity that would otherwise be available against such claims under the workers' compensation provisions of Title 51 RCW. Notwithstanding anything to the contrary, the terms of this section shall survive any termination of this Agreement.

HIGHLINE SCHOOL DISTRICT

By______________________________
Its______________________________

DATED:________________________

CITY OF DES MOINES

By______________________________
Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City Council at an Open Public Meeting on March 13, 2003.

DATED:________________________

CONTRACTS/MtRainierFieldDragDonation//03-066

CONSENT CALENDAR
Item #5

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific Highway South Project (State Farm/Houser Property)

ATTACHMENTS: Consent Judgment & Decree of Appropriation

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: March 7, 2003

CLEARANCES:
[X] Legal ____

APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT, which provides for acquisition by the City, for $32,750.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and

2. Authorize the City Attorney to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT and to authorize the City Attorney to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

BACKGROUND

On April 11, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1302 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 699 square feet) and a temporary construction easement for a total of $32,750.00 including attorney fees and appraisal fees.

ALTERNATIVES

There are no viable alternatives. This agreed settlement is for the appraised value of the property as of September 2001 ($29,452.00) plus $3,298.00, including the temporary construction easement, appraisal fees and attorney fees.

FINANCIAL IMPACT

This is the most efficient and least expensive way for the City to acquire this property and easement.

RECOMMENDATION

The City Attorney recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

City of Des Moines, a Municipal Corporation, **Petitioner,** **vs.** **Gary r. Houser, et ux,** **Respondents**	**Case No: 02-2-19389-6 KNT** **Consent Judgment and Decree of Appropriation**

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Gary R. Houser and Christi A. Houser, Husband & Wife
Attorney for Judgment Creditor	Daryl A. Deutsch (WSBA # 11003)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	$32,000.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	None, included in Principal Judgment Amount
Expert Fees	$750.00
Total Judgment Amount	$32,750.00
Real Property Awarded	Ptn. Lots 5-6, Block 2, Federal Highway Add. to King County, Vol. 30, pgs. 1-2
Assessor's Tax Parcel Number	250060-0146-03

STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite C
Des Moines WA 98198
Tel: 206-870-6553
Fax: 206-870-4387

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and

3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by the City Attorney for the City of Des Moines. The respondents were represented by their attorney, Daryl A. Deutsch.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment, including attorney and expert witness fees, into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of Thirty Two Thousand Seven Hundred Fifty and 00/100 ($32,750.00) Dollars, an amount which includes a statutory evaluation fee of $750.00, represents the just compensation for the subject property;

2. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

   The west 7.0 feet, **containing 699 square feet**, more or less, of that property described in recorded instrument recorded Number 8907071259, records of King County, Washington.

3. All of the right, title and interest in and to the above described property shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.

4. The petitioner, City of Des Moines, is also awarded and granted a temporary construction easement over the following described property (the easement property):

   The east 15.0 feet of the west 22.0 feet, **containing 1,499 square feet**, more or less, of that property described in recorded instrument Number 8907071259, records of King County, Washington.

5. The terms of the temporary construction easement are as follows:

   a. The easement shall allow the City, its contractors, employees, agents, successors and assigns, the right of ingress and egress to enter upon the land subject to the temporary easement as required to complete the construction work, to place personnel and equipment, and to reconstruct roadway access;

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite C
Des Moines WA 98198
Tel: 206-870-6553
Fax: 206-870-4387

b. The City shall, to the extent possible, leave the property in as good condition as existed on the day construction commences. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities;

c. The easement shall remain in force during construction and until such time as the street improvements have been accepted for operation and maintenance by the City, but not later than January 1, 2005;

d. The City, its agents and assigns, will notify the respondent of its construction schedule, and will, to the full extent possible, schedule the construction activity so as to minimize any inconvenience to the property;

e. The City shall indemnify and hold respondent harmless from all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the easement rights.

6. The City, as part of its construction project involving the property appropriated, shall create for purposes of ingress and egress a (i) twenty-four (24) foot wide curb cut at the north end of the Respondents' property, and (ii) a fifteen (15) foot wide curb cut at both the south end thereof, and at the north end of the adjacent property to the south, with said thirty foot curb cut to be used as a joint driveway.

7 All other claims, counterclaims and causes of action alleged herein shall be and are hereby dismissed with prejudice.

DONE IN OPEN COURT this _____ day of _______________, 2003

____
Judge Harry McCarthy

Presented by:

____
Richard S. Brown (WSBA # 1985)
Assistant City Attorney
City of Des Moines

Stipulated for Entry,
Agreed as to form and content; and
Notice of Presentation Waived by:

____
Daryl A. Deutsch, (WSBA # 11003)
Attorney for Respondents

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite C
Des Moines WA 98198
Tel: 206-870-6553
Fax: 206-870-4387

CONSENT CALENDAR
Item #7

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Steven J. Underwood Memorial Park Phase I-B Consultant Agreement

ATTACHMENTS:
A. Draft Agreement Steven J. Underwood Memorial Park Phase I-B for Landscape Architecture, Civil Engineering and Project Construction Observation Services
B. 2003 - 2004 Capital Improvement Plan Project Sheet

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: March 7, 2003

CLEARANCES:

[x] Park & Recreation Director
[x] City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:
Administration recommends approval of the Steven J. Underwood Memorial Park Phase I-B Consultant Agreement for Landscape Architecture, Civil Engineering and Project Construction Observation Services with Cosmopolitan Engineering Group, Inc.

Motion: "I move to approve the Consultant Agreement for Landscape Architecture, Civil Engineering and Project Construction Observation Services with Cosmopolitan Engineering Group, Inc., in the amount of $42,000 and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manger to approve change orders in amounts not to exceed 10% in total."

Background:
Cosmopolitan Engineering Group was hired in 2002 to assist the city with review of bid documents, value engineering and construction field observation services to supplement and support city staff during the bidding and construction of Steven J. Underwood Memorial Park Phase I. Cosmopolitan Engineering Group made several recommendations to the city's engineering and parks staff for better optimization of the city's limited resources and better site utilization. Staff wishes to hire Cosmopolitan Engineering Group, Inc to provide landscape architecture, civil engineering and project construction observation services to complete Phase I-B of the project in 2003-2004.

Discussion:
Cosmopolitan Engineering Group, Inc., would provided complete construction drawings, plans and specifications for Phase I-B of Steven J. Underwood Memorial Park to include design of a

third softball field (irrigation system, subdrain system, final grading design, backstops and fencing) and adjacent restroom facility. Cosmopolitan would also assist with project construction observation through the completion of the Phase I-B Park project. Steven J. Underwood Memorial Park infrastructure including site detention ponds was sized to accommodate the Park at full build-out.

Justification for building the third field is the following:

- Softball complexes with fewer than three fields have difficulty drawing softball tournaments which are the main revenue generators for sports complexes. Tournaments pay premium rental fees for the use of the park to help offset facility maintenance and operation expenses.
- Tournaments draw players from around the state to stay in our hotel/motel rooms, eat in our restaurants and enjoy the many amenities of our community. This increased park use (exposure) also enhances staff's ability to sell advertising and sponsorships to help offset facility maintenance and operations expenses.
- The third field construction would begin immediately prior to completion of concrete pavers and landscape installation to reduce interference with in-the-ground facilities.

Alternatives:
The 2003 Parks, Recreation and Senior Services Master Plan recommends the completion of all Steven J. Underwood Memorial Park phases as a high priority. Construction of field lighting is an important element of the project, however, an additional $150,000.00 city matching funds is required for field lighting. If additional funds are available from the Capital Improvement Plan for this project in 2004, staff recommends seeking an Interagency Committee for Outdoor Recreation Local Parks Grant for field lighting as part of this project.

Financial Impact:
The Phase I-B project is funded in the 2003-2004 Capital Improvement Plan (see Attachment B) and is recommended by the Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee.

2003-2004 Capital Improvement Plan funds:

Source	2003	2004	Total
MCI	$173,300	$105,512	$278,812
Park In Lieu Fees	$60,000	$55,000	$115,000
Total Funds	$233,300	$160,512	$393,812

Recommendation/Conclusion:
Staff recommends approval of the Draft Consultant Agreement between the City of Des Moines and Cosmopolitan Engineering Group, Inc. for Landscape Architecture, Civil Engineering and Project Construction Observation Services for Steven J. Underwood Memorial Park Phase I-B.

Concurrence
Parks, Recreation and Senior Services staff have worked with Cosmopolitan Engineering Group, Inc. throughout the construction of Phase I and recommend retaining the Consultant for the completion of Phase I-B.

DRAFT
CONTRACT FOR LANDSCAPE ARCHITECTURE AND CIVIL ENGINEERING AND CONSTRUCTION OBSERVATION
BETWEEN THE CITY OF DES MOINES AND COSMOPOLITAN ENGINEERING GROUP, INC.

THIS CONTRACT is made and entered into this 14th day of March 2003, by and between the CITY OF DES MOINES, Washington, hereinafter called the "City", and COSMOPOLITAN ENGINEERING GROUP hereinafter called the "Consultant".

WHEREAS, the City has requested assistance in providing landscape architecture and civil engineering and construction observation services for Steven J. Underwood Memorial Park Phase I-B hereinafter called the "Project", by Cosmopolitan Engineering Group, the firm that contracted with the City to serve as "Consultant" on the Project; and

WHEREAS, Consultant has agreed to provide landscape architecture and engineering and construction observation 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 landscape architecture and civil engineering and construction observation services for Steven J. Underwood Memorial Park Phase I-B identified in Attachment A - Scope of Work. 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 Tacoma, 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 changes and modifications necessitated or agreed upon as provided in the Contract, the Park and Recreation Director has authorized payment to Consultant of no more than $42,000.00 ($32,000.00 for landscape architecture and civil engineering services and $10,000 for construction observation services), plus a 10% contingency. 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.

5. Term. The term of this Contract shall be one year from the date of execution. Work shall begin within ten days of the date of execution of this Contract. The Consultant shall complete project design and contract documents with six (6) weeks of the date of execution of this Contract. This Contract may be extended upon written agreement of both parties. 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 $1,00,000 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____________________________

1000 South 220th Street

Des Moines, WA 98198

Dated__________________________

COSMOPOLITAN ENGINEERING GROUP, INC.

By____________________________
Its____________________________

117 South 8th Street

Tacoma, WA 98402

Dated__________________________

APPROVED AS TO FORM:

____
City Attorney

ATTACHEMNT A
Steven J. Underwood Memorial Park - Phase 1B
Cosmopolitan Engineering Group, Inc.
Landscape Architecture and Engineering Services and Construction Observation Services
Scope of Work

Cosmopolitan Engineering Group, Inc. will provide landscape and building design and contract documents for the Steven J. Underwood Park – Phase 1B to build baseball field #3, restroom and site amenities as identified in this Scope of Work:

Task 1 Survey of Existing Conditions $ 2,000
Review and verify existing grades – edges of slope, grade breaks
Verify existing fence lines
Verify existing plaza line and establish finish edges

Task 2 Grading & Drainage Plan $ 4,000
Grade modifications & finish grades from plaza and Field #2.
Calculate import needed for left field fill
Field sub drainage design coordinated with irrigation system
Direct sub drain tight line to existing riprap on storm pond slope

Task 3 Site Dimension and Layout $ 4,000
Field Layout / Dimensioning Plan – with home plate corrections per city's comments
Copy Parking Lot Striping & Layout from Phase 1 and write up limited scope of work to finish
Locate Restrooms adjacent to Plaza

Task 4 Restroom Architectural Plans $ 6,000
Meetings needed to facilitate City of Des Moines approval of design
Plans and elevations necessary to obtain Building Permit
Specifications & Cost Estimates

Task 4 Utilities Plans $ 4,000
Sanitary Plan (Restrooms) necessary for Midway Sewer District approval
Water Plan (Restrooms) necessary for Highline Water District approval

Task 5 Irrigation Plan $ 3,000
Layout of Irrigation System coordinated with field sub drainage

Task 6 Details (copy from Phase 1 and organize) **$ 2,000**
Fence & Backstop – copy revised details from Phase 1
Irrigation details (4) – copy heads, drain valves, lines
Drainage details (3) – copy revised details from Phase 1
Concrete Mow Band at Fence – copy and include in set

Task 7 Specifications $ 3,000
Prepare Contract Specifications Boiler Plate complete with Bid Schedule, Technical Sections and Plans for all design elements (Contract Section provided by City) in adherence to WSDOT Standard Specifications for Roads, Bridge and Municipal Construction 2002 (or latest version). Bid schedule shall be prepared in accordance with unit prices except where not practicable, and then it shall be prepared lump sum prices.

Task 8 Bid Document Package (Fee Included)
Compile drawings and specifications including any drawings from the Architect and Electrical Engineer into Bid Documents

Task 9 Cost Estimating $ 2,000

Task 10 **Bidding** **$ 2,000**

Assemble and coordinate printing of 30 sets of contract documents for bidding
Distribute plans to Plan Centers and respond to prospective bidders. (City will advertise bid announcement)
Prepare for and attend pre-bidding meeting and job-site tour with the City and affected utilities
Respond to comments and questions from prospective bidders during the bid period and issue Addenda

TOTAL **Design Fees for Scope Listed Above** **$ 32,000.00**

Cosmopolitan Engineering Group, Inc. will provide construction observation services for the Steven J. Underwood Park – Phase 1B to build baseball field #3, restroom and site amenities as identified in this Scope of Work:

Task 1 Prepare for and attend pre-construction conference with the City, Contractor, and affected utilities. The City shall prepare notice of pre-construction meetings and minutes and distribute to all city departments and utilities and will provide utility contacts and coordination between Contractor, City and utilities during construction.

Task 2 Provide Landscape Architect, Engineer and specialty inspectors, as needed to review and comment on Contractor's work to include:

Construction schedule and updates to the schedule and requests for payment

Quality and acceptability of materials furnished, work performed, rate of progress of work

Review Contractor's Erosion/Pollution Control Plan, and make recommendations on traffic control and review submittals provided by the Contractor

Prepare field records and prepare correspondence for the construction period

Coordinate the efforts of project sub-consultants for field observation and testing. Document and evaluate results of tests and identify deficiencies. Notify Contractor and City of any deficiencies. Track remedial work until completed in accordance with contract

Task 3 Provide coordination between the Contractor and City for the duration of construction including:

Conduct weekly progress meetings with Contractor and City. City will provide daily construction site monitoring and maintain daily record of work conditions for review by Cosmopolitan at weekly meeting or as needed

Review Contractor's submittals, catalog cuts and shop drawings such as retaining wall design for compliance with contract documents

Clarify and interpret the contract drawings and specifications

Prepare and maintain payment, design changes, construction change orders including contractor's proposed design revisions, submittal, RFI, and non-conformance logs at for review at all times

Prepare and distribute change orders to the Contractor, review Contractor's change estimates and make recommendations to the City on acceptance of changes

Provide informal site visits on an "on call" basis with the field observer and Contractor to provide general site observation and to address concerns, make clarifications, and assure compliance with Contract Documents

Review claims submitted by the Contractor and provide with an analysis and recommendation for resolution

Task 4 Review project and provide field observation at substantial completion and final completion including:

Prepare and review a comprehensive punch list based on the above field observations

Review record drawings documenting Contractor's 'As-Built' conditions on AutoCAD and provide to the City at final completion of project

TOTAL Construction Observation Fees for Scope Listed Above **$10,000**

Attachment B

CAPITAL IMPROVEMENT PLAN
REQUEST FORM

		PROJECT NO.	
CATEGORY	General Government	PROJECT STATUS:	
		Preliminary Estimate	
PROJECT	Steven J Underwood Memorial Park (15 acres)	Plans in Preparation	
	Phase IB	P.S.E. Complete	
LOCATION	20th Avenue South at South 218th Street		

DESCRIPTION:
The City Council has identified the need for a sports field complex. The 2003-2008 Capital Improvement Plan outlines the phased development of 3 baseball fields and 2 soccer fields. The Park includes space for a future Community Center.

PROPOSED IMPROVEMENTS:
Phase I-B development includes 1 baseball field and restrooms to complete the baseball complex and provide for tournament play at the park making the facility more profitable.
Phase II, planned for 2005 includes plans for 1 soccer field and field lighting and additional parking.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL	PRIOR YRS	FY 03	FY 04	FY 05	FY 06	FY 07	FY08
ADMINISTRATION	15,800	12,000	2,300	1,500				
DESIGN/ENG	37,000		37,000					
EARTHWORKS/UTILITIES	376,938	376,938						
IMPROVEMENTS	919,397	623,897	155,500	140,000				
INSPECTION	30,000	20,000	10,000					
Contigency	109,836	88,284	14,860	6,692				
SALES TAX	114,900	88,940	13,640	12,320				
Latecomers Fees Grakon, SWM	65,000	65,000						
TOTAL	1,668,871	1,275,059	233,300	160,512				

FUNDING SOURCE	TOTAL	PRIOR YRS	FY 03	FY 04	FY 05	FY 06	FY 07	FY08
IAC YAF Grant Confirmed	267,451	267,451						
King County Grant Confirmed	50,000	50,000						
King County Confirmed	135,000	135,000						
Youth Sports (in-kind) Confirmed	75,000	75,000						
Park In Lieu Fees	194,949	79,949	60,000	55,000				
Donations	50,000	50,000						
MCI	896,471	617,659	173,300	105,512				
TOTAL	1,668,871	1,275,059	233,300	160,512				

OPERATING COSTS								
PERSONNEL								
SUPPLIES								
UTILITIES								
TOTAL		50,000	50,000	50,000	50,000	50,000	50,000	50,000

CAPITAL IMPROVEMENT PLAN
REQUEST FORM

		PROJECT NO.
CATEGORY	General Government	PROJECT STATUS:
		Preliminary Estimate______
PROJECT	Steven J Underwood Memorial Park	Plans in Preparation______
	Phase I B	P.S.E. Complete______
LOCATION	20th Avenue South at South 218th Street	

JUSTIFICATION:

The Sports Park was identified as a number one park and recreation priority by the City Council because of the lack of active recreation facilities in Des Moines. The community has a strong interest in league sports for youth, young adults, general and senior adult members of the population. The greatest demand and interest level is for soccer, softball, and baseball fields.

SCOPE OF WORK:
Drawing/Site Plan Attached

Phase I B 2003-2004

Design, engineering, permits (Includes permits for Phase I)	$37,000
Sports field development-1 softball fields, site irrigation, landscaping, and restrooms	$295,500
Inspection/Contract Maintenance	$10,000
Administration %1	$3,800
Contingency	$21,552
Sales Tax @ 8.8%	$25,960
Total Phase I B	$393,812

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES January 23, 2003

At 7:30 p.m., City Manager Piasecki announced that Council would remain in Executive Session for approximately another fifteen minutes.

The regular meeting of the Des Moines City Council was called to order at 7:54 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, Senior Planner Robert Ruth, Harbormaster Joe Dusenbury, and Deputy City Clerk Angela Chaufty.

COMMENTS FROM THE PUBLIC

Mayor Wasson announced that Council would accept public comments for thirty minutes and then they would deal with the matters on the agenda. Upon the conclusion of the business, public comments would resume. He said that he would remain at the meeting until the last person had opportunity to speak.

Harvey Rowe, 8850 9th Avenue SW, Seattle

Mr. Rowe informed Council that he has been a professional aviator for most of his working life. He said that he was not in support of the construction of a third runway. Mr. Rowe gave copies of his previous letters to Council to the Clerk for distribution. Mr. Rowe asked Council to call him if they had any questions regarding the material. Mr. Rowe voiced concern with the water quality and noise pollution currently generated by the airport. In closing, Mr. Rowe said that as candidates, the Councilmembers had campaigned against the third runway. He asked Council to fund the fight against the third runway.

Upon Mayor Wasson's request, City Attorney Marousek read the rules of conduct for comments from the public.

Jeanne Moeller, 22211 Cliff Avenue South, #104

Ms. Moeller spoke against New Business, Item No. 5 (Draft Ordinance No. 03-014 Allowing Suspension of Council Rules of Procedure). She felt that the passage of the proposed ordinance would remove a protection and safety mechanism for the citizens. Ms. Moeller said that she was saddened by the events that had transpired. She hoped that the issues could be resolved quickly and Council could return to running an ethical and moral town.

Dan Caldwell, 19547 2nd Avenue South

Mr. Caldwell informed Council that he was concerned with the happenings in the City. He said that the City had been sold to the Port of Seattle for $49,000. Mr. Caldwell urged Council to do what they could to restore order.

Lala Klenman, 24804 9th Place South

Ms. Klenman asked Council to state their reason for considering Draft Ordinance No. 03-014. She felt that rules were necessary. Ms. Klenman asked Council to consider the potential consequences if the rules could easily be changed or suspended. She urged Council to work within the established Council Rules of Procedure.

Alli Larkin, 21937 7th Avenue South

In regard to New Business, Item No. 4 (Draft Resolution No. 03-013 Amendment of Council Rule 36, Videotaping of Council Meetings), Ms. Larkin asked Council to continue to allow recording from the front of the room until the quality of the sound system has been upgraded.

Stan Scarvie, 204 South 206th

Mr. Scarvie addressed Council regarding Draft Ordinance No. 03-014. He identified due process as one of the most important facets of democracy. Mr. Scarvie said that processes and procedures protected citizens from the whims of four Councilmembers. He noted that the previous Councils had worked within the rules and suggested that Council take the time to learn the existing rules and then work within them.

Al Furney, 24718 Marine View Drive South

Mr. Furney voiced his opposition to Draft Ordinance 03-014. He said that the rules served an important purpose. Mr. Furney said that transcripts of the Councilmembers' PDC statements taken under oath had been posted at www.citizensfordesmoines.com. He encouraged citizens to read them.

Gene Achziger, 28708 Soundview Drive South

Mr. Achziger questioned whether Council intended to fund the ACC this year. He felt that their decision to eliminate the funding had been based upon an unscientific poll conducted by Scott MacFarlane. He questioned who had paid for Mr. MacFarlane's poll.

Wayne Bader, 21938 Marine View Drive South

Mr. Bader said that the majority of the citizens supported the Council and did not want their money spent on fighting airport expansion. He said that the previous Council had ignored the citizens. Mr. Bader felt that all newspapers would soon be considered tabloids. He posed the following questions:

- Why won't the airport groups account for their money?
- Why doesn't the press investigate the "Citizens for Des Moines"?
- Whose money is the "Citizens for Des Moines" group spending?
- Why are the Councilmembers being discredited?
- Why are certain groups receiving free press?

Mike Foote, Des Moines Marina

Mr. Foote addressed his comments to the voting taxpayers. He said that Des Moines would never become an airport ghetto. Mr. Foote stated that the City needed strong leadership from people who were willing to assist the business community. He said that the people needed to know of the deceit and corruption of a small group of people both from within and outside of City Hall. He said that the group would stop at nothing to advance their personal agendas. During his involvement in the political scene, Mr. Foote said that he had his residence broken into, his political papers stolen, his dog poisoned, his car tires slashed, and his family and friend's lives threatened. He said that the corrupt groups, with the assistance of Highline School District, local politicians and the media, have been able to manipulate the truth. Mr. Foote said that the groups have spent more than $13,000,000 of tax money without any accountability. He said that he has tried to warn the citizens of the corruption since 1999. Mr. Foote said that if you dare to disagree with the Des Moines News, they will attempt to destroy you.

Catherine Carbone Rogers, 22516 10th Avenue South

Ms. Carbone Rogers asked for Council's endorsement of the Highline School District Levy that would be presented to the voters on February 4, 2003. She cited the following reasons to support it:

- The quality of the schools impact the quality of community life.
- The levy was not a new tax but a continuation of the existing levy.
- Levy money would pay for the direct education of children. It would provide for up to one-fifth of the School District's total budget.
- The levy would be endorsed by all of the other cities in Highline.

Ms. Carbone Rogers noted that a mailpiece listing endorsers would be sent to the voters. She said that she would welcome an endorsement from Council at their next meeting.

BOARD & COMMITTEE REPORTS

Highline School District Levy

Councilmember Sheckler voiced agreement with Ms. Carbone Rogers' comments. He said that his name could be added to the list of endorsers in the mailer.

Statement

Mayor Pro Tem Benjamin read the following statement into the record:

> We all know that the third runway is not the solution. Ultimately another regional airport is. However, the Corps of Engineers, the governor, legislature and the Port of Seattle are committed to the project anyway. We have battled in the courts for decades spending millions of your tax dollars to do so. In the past year, both permits have been issued. Still, the ACC, RCAA and another political action group wants to spend more of your tax dollars on a fight that is now over. The special interest group, ACC and RCAA will tell you that funding is needed now more than ever to act as a watchdog on pollution control issues. We already pay for pollution control so what are the real motives. Follow the money. The trail leads to special interest money recipients, the consultants, lobbyists, money managers and you continuously hear from these folks in our chambers. The corruption that goes along with this special interest money runs much deeper than I had originally suspected. No matter what happens with the runway, no benefit can possibly outweigh the corruption this money brings to the Des Moines Highline area. For over a year now, this Council has been the target of obstructionist tactics designed to stymie this council. This group, ACC, RCAA and the political action committee that goes by the name Citizens of Des Moines, has pursued their political agenda at any cost regardless of who stands before them. These people frantically tried to intimidate fellow Councilman Gary Peterson in the eleventh hour before he was to take the oath of office. They tried to stop an elected official from acting in his capacity on the flimsy basis of an alleged conflict of interest. They were nearly successful except Gary is a smart man and he

reacted. Since then, Gary has remained steadfast in his commitment to represent all the people of Des Moines, not just the vocal minority that you hear from in these chambers. Gary has personally endured through several lawsuits intended to drive him from his duly elected position, not to mention the personal attacks to his impeccable reputation and character. All of this in the name of the ACC, RCAA, political action committee also known as Citizens of Des Moines. These folks don't seem to care about the years of service Councilman Petersen has provided to our town. They don't care about all the contributions Councilmember Petersen has made to fund programs for the kids. They don't care about anyone or anything that might conflict with their own lust for public funds. To these folks, it's a game with no regard for lives in the balance. On the one hand is Peterson. Now let's contrast his services with that of the special interest group. Another fellow, Al Furney, who is the VP of the RCAA, came to this Council alleging bribery. We hear from him on a regular basis. He is reckless with his accusations and irresponsible with his slanderous remarks. For you, the public, ask yourself the question "Who is Al Furney?" One thing we know is he is an officer with the RCAA. Moreover, Furney is an officer of the political action group, Citizens for Des Moines. The RCAA has contracts with the City and they receive your tax dollars. I have questions for Al Furney. Where does Furney get the money to pay for the extravagant lawsuits filed against officials elected by the people. Furthermore, why does he want to obstruct the people's business. How do we know the money isn't used for illegal purposes? What are they doing behind that cloak of secrecy? Why don't they open their books to the public and let the citizens see what Al is spending the money on? Every entity receiving public money must open their books to the public. When will the RCAA open theirs? Attention, RCAA, you must assure us that public money is not being used to pay high priced lawyers to bring frivolous lawsuits against duly elected officials. That done, let's take a look at the strategies employed by ACC and the RCAA. Rather than work with the legislature, these groups sue them, probably with your public money. What is so frustrating to me as an elected councilmember is these are the people our City has funded to fight the third runway. It is no surprise that the strategy used is the same self-defeating litigious strategy that has lost the fight against the third runway. Why just two days ago in our Mount Rainier Ad Hoc Pool Committee, I learned of Normandy Park's intent to hold the Mount Rainier Pool hostage by holding up funding that had already been approved by their Council and committed in their budget. Their city manager, Merlin MacReynold, withheld the funds because he felt with Des Moines no longer funding the ACC, they would need to reevaluate the funding of the Mount Rainer Pool. In essence, this was an attempt by the ACC, which, by the way, had moved from Des Moines to Normandy Park which is now based in Normandy Park, to extort funds. Shame on them. I've since learned, fortunately learned by way of a concerned Normandy Park resident when she inquired with her City Councilmen that they would fulfill their commitment as originally agreed upon. I'm happy to hear that. I'd like to thank you, Normandy Park, for no longer holding the Mount Rainier Pool as a hostage for airport defense funds.

SR 509 Committee

Councilmember Petersen reported that the SR 509 Project was on hold until the status of the project's funding was determined.

Activity Center Remodel

Councilmember White reported that the remodel of the Activity Center was progressing nicely.

South County Area Transportation Board

Councilmember White informed Council that the Board had recommended that the funding for the SR 405, Highway 167, and SR 509 projects be consolidated and placed on the November ballot.

Council Meetings

Councilmember White stated that she had viewed the videos of the last few Council meetings. She said that she was disheartened by what had occurred. Councilmember White stated her hope that Council could carry on with their business.

Public Disclosure Commission (PDC) Hearing

Councilmember Steenrod reported that the PDC hearing for the charges would be conducted at the end of March. She said that the information provided by the press was not always accurate. Councilmember Steenrod stated that she did not intend to resign from her position as a Councilmember as she had done nothing wrong.

Activity Center Remodel

Councilmember Steenrod said that the Scholarship Award Night on May 3, 2003 would be the first City event conducted in the remodeled activity center. She said that the facility would be available for tours prior to the event.

Highline School District Levy

Councilmember White asked that Council endorse the Highline School District levy at their next meeting. She voiced her support for the issue.

PRESIDING OFFICER'S REPORT

Resignation from Mayor Position

Mayor Wasson read the following statement into the record:

> I have decided to resign the position of Des Moines Mayor, effective at the end of this meeting. I do not make this decision lightly as I have accomplished many good things for this community. I intend to continue to serve as a Des Moines Councilmember for the remainder of my term. I am making this decision now because I want the City Council to be able to go on with its business without the distraction caused by the recent PDC charges. I expect the Council will elect a new mayor next Thursday in accordance with our Council Rules of Procedure. I wish him or her the best in undertaking the responsibilities of this office. This statement will be the only comment about this event that I will make at this time.

ADMINISTRATION REPORTS

Mount Rainier Pool Contributions

City Manager Piasecki announced that $24,640 had been donated to the Mount Rainier Pool Fund. He has requested a list of donors willing to have their names published in a future edition of the *City Currents*.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

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 # 83894 through #84040 & electronic fund transfers in the total amount of $450,349.22

Payroll fund transfers in the total amount of $328,490.47

~~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.~~

~~4. 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.

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.~~

Councilmember Steenrod removed Item No. 7.

Councilmember Benjamin removed Item No. 4.

Councilmember Thomasson removed Item No. 3.

MOTION was made by Councilmember White, seconded by Mayor Pro Tem Benjamin, and passed unanimously to approve the consent calendar as amended.

Transfer of CIP Funds for Phone and Data System at Des Moines Activity Center

Councilmember Steenrod voiced her concern with the purchase of the system as she felt it was a "want" rather than a "need". She said that the money should be reallocated to other needs such as the overlay program.

Park and Recreation Director Thorell explained that a T-1 system would greatly improve the efficiency of staff due to the data and voice connection to other City departments it would provide.

Councilmember Thomasson voiced support for the T-1 system. He noted that Council had asked staff to do more with less and that the T-1 would provide them with a way to do so. He noted that the savings resulting from the reduced monthly cost would eventually cover the installation expense.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to approve the purchase of a T-1 Phone and Data System for the renovated Des Moines Activity Center.

Councilmember Thomasson said that he expected the appropriate CIP adjustment to be made if the motion passed.

Mayor Pro Tem Benjamin asked staff to investigate whether any used or refurbished equipment was available at a reduced price.

VOTE ON MOTION: Motion passed, 6 – 1, with Councilmember Steenrod opposed.

Activity Center Remodel Flooring Installation Contract

In response to Mayor Pro Tem Benjamin's questioning, Park and Recreation Director Thorell explained that while the installation of the donated floor would result in the same price as materials and installation of another type of floor, the quality of the floor would be better as it was a better product. Park and Recreation Director Thorell explained the selection process for the installers. She said that two official bids and one verbal bid had been received.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White and passed unanimously to approve the contract for flooring installation at the Des Moines Activity Center with Greater Seattle Floors, in the amount of $27,725 plus tax, and to authorize the City Manager to sign the contract, substantially in the form as submitted.

Joint Human Services Application and Funding Program

As Exhibit A would be updated each year, Councilmember Thomasson asked that language be added to the proposed contract which would required annual approval of Exhibit A by Council.

In response to Councilmember Steenrod's questioning, City Manager Piasecki confirmed that the insurance requirements of the proposed agreement were already in effect.

MOTION was made by Councilmember White and seconded by Councilmember Sheckler 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.

Councilmember Thomasson asked that a clause stating that Exhibit A would be updated each year by approval of amendment to this agreement be added to Section 3 of the Memorandum.

The maker and seconder of the motion **accepted** Councilmember Thomasson's request **as a friendly amendment**.

VOTE ON MOTION: Motion passed unanimously.

PUBLIC HEARING

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

Mayor Wasson opened the public hearing.

City Attorney Marousek read the rules for conducting a public hearing. She announced that the subject was a quasi-judicial matter and polled Council to determine whether the Appearance of Fairness doctrine applied to any of them. It did not. *(Editor's Note: Councilmember Sheckler had briefly left the chambers. The question was posed to him later in the meeting.)*

Senior Planner Ruth informed Council that the shoreline permit was a city-sponsored application as the facility was owned an operated by the City of Des Moines. He explained that Assistant City Manager Loch and Harbormaster Dusenbury would be representing the City as applicants while he would be reviewing the project for permit purposes. Senior Planner Ruth displayed a map and aerial photograph of the area. He highlighted the legal notification area on the map and briefly summarized the following proposed improvements:

- Within the same footprint of the existing ramp launch, make improvements that would allow the existing single lane launch to be used as a two lane launch.
- Remove the existing boarding float on the north side of the ramp and its associated creosote treated wood pilings and approach ramp.
- Install new removable boarding floats at the north and south side of the ramp.
- Remove and replace the precast concrete panels at the end of the ramp and recondition the base material beneath them.
- Install a new floating breakwater perpendicular to the launch ramp to reduce wave activity near the launch.
- Restripe and change alignment for aisleways and parking stalls within the upland parking facility to improve efficiency.
- Develop an access from Soundview Drive to improve traffic circulation and user queuing.
- Install a water runoff treatment system for the parking area including the vehicle wash-down area.
- Make miscellaneous improvements in and around the parking area such as resurface select areas along side streets, enhance existing landscaping, provide irrigation, improve safety/security lighting, create better definition of pedestrian walkways and installation of security gates.

Senior Planner Ruth informed Council that the review criteria for a conditional shoreline permit review was listed on Page 3 of their packet while the environmentally sensitive areas' review criteria was listed on Page 5. He stated staff's belief that the applicant had met the review criteria and that the project attempted to further enhance the policy direction of the City's Shoreline code. Senior Planner Ruth said that the project application had already received aquatic biologic studies, State Environment Policy Act review, and SEPA review. The SEPA official had determined that there were no significant adverse environmental impacts. No comments were received during the comment period and no appeals were filed. The project met all of the approval criteria and was consistent with the ESA development exceptions. Approval was recommended.

City Attorney Marousek placed all persons wishing to participate in the public hearing under oath to testify truthfully and accurately to best of their knowledge.

Proponents

Corbitt Loch, 21630 11th Avenue South
As the applicant of the project, Assistant City Manager Loch said that he and Harbormaster Dusenbury were available for questions. He explained that a permit from the Department of Fish and Wildlife was also needed for the project. Funding for the project was provided by a \$750,000 State Interagency Committee for Outdoor Recreation grant and the sale of Marina bonds. Mr. Loch said that the City sought to modernize the facility without increasing its capacity and to insure that it served its current level of usage well. If all the permits were secured he hoped to put the project to bid in March or April, 2003 with construction occurring during the summer. He noted that the State Fisheries' regulations require that any work done in the water be performed during the summer. The exact schedule or the extent of the closures would not be known until a contractor had been secured. He said that the City hoped to minimize the amount of time the facility would be down. Mr. Loch noted that the project did not solve the neighborhood's parking problem. He believed that the project maximized the mix of parking between vehicle and trailer spaces to best serve the boating community and the neighborhood. In closing, Mr. Loch informed Council that the Municipal Facilities Committee had reviewed the project.

Due to the quasi-judicial nature of the hearing, City Attorney Marousek confirmed that Councilmember Sheckler was eligible to participate in the hearing.

Dan Ayers, 308 SW 295th Place
Mr. Ayers said that he had used the Redondo boat ramp for thirty years. He thanked Council for considering the project and the applicants for their hard work. On behalf of the State's Sport Fishery Advisory Group, Mr. Ayers voiced support for the project. He suggested that the breakwater be moved south as its current location would channel boats directly in front of the on-shore anglers. Mr. Ayers predicted that the ramp would be a money producing facility for the City.

Norm McDonell, 908 South 279th Place
As a member of the Redondo Community Club, Mr. McDonell informed Council that he had participated in the planning for the existing ramp facility. He voiced support for project. Mr. McDonell asked that the proposed project proceed expeditiously so that the parking lot work could be completed by June. He asked that the beach phase commence as soon as the Department of Fisheries permit was obtained. He recommended that the construction timetable hold the contractor responsible for getting the ramp operable by a date certain. As the Redondo ramp was the only ramp between Seattle and Tacoma, Mr. McDonell said that it was imperative, within cost and quality limitations, to re-open the ramp this summer. Mr. McDonell asked that Council also address the parking problems in the area as he believed that the improvements would bring increased parking pressure. He asked that the city aggressively pursue the acquisition of the large tract of land immediately east of Wooton Park and develop the area adjacent to the park for single car parking.

John Payseno, 524 2nd Avenue, Suite 500, Seattle
On behalf of the owners of Salty's Restaurant, Mr. Payseno said that they were excited about the improvements but concerned about the parking situation. He said that Salty's Restaurant would like to collaborate with the City to improve the situation. For example, he said that their staff

could help secure the security gate if the parking lot remained open later. Mr. Payseno asked the city to examine other possibilities to increase parking in the area. In regard to the timing of the project, Mr. Payseno strongly urged the City to do the work before or after the summer months.

Mayor Wasson called for additional speakers three times.

None responded.

In response to Councilmember Thomasson's questioning, City Attorney Marousek explained that Section 1(7) of the proposed resolution was intended to reference the development exception allowed by DMMC 18.86.094(6) which requires lawful alteration as a condition of going to the previously altered sensitive area.

Harbormaster Dusenbury said that the City may be required to obtain a Department of Natural Resource's lease for the project. He explained that the current lease was being surveyed. The engineers and consultants for the project were seeking to minimize conflicts with the fishing pier anglers. If the Redondo pier was operated under the same rules as the Des Moines Marina, fishing and crabbing from the pier would not be allowed. The breakwater and fingerpiers would be taken out during certain seasons of the year.

Councilmember Thomasson suggested that language that gave the city flexibility in operations in the upland activities be added to the conditions of approval.

Senior Planner Ruth voiced support for the suggestion.

In response to Mayor Pro Tem Benjamin's questioning regarding parking options, Assistant City Manager Loch explained that the City was exploring the possibility of purchasing the lot east of Wooton Park. The flat portion of the property could be used to increase parking.

Mayor Pro Tem Benjamin suggested that the horseshoe area in Wooton Park be converted to parking area.

Assistant City Manager Loch said that he had not yet explored that possibility as he had not heard the community's comments as a whole regarding the option but that he would explore the option if Council directed him to do so. Assistant City Manager Loch briefly described the proposed landscape improvements and ramp arrangement.

In response to Mayor Pro Tem Benjamin's questioning, Harbormaster Dusenbury said that there would be room for two boats in the proposed wash down area. He explained that the wave analysis data would determine the placement of the breakwater. He anticipated using a crane to remove the breakwater annually.

Senior Planner Ruth said that he would add a condition of approval incorporating flexibility to insure that removal and placement equipment for the breakwater would be adequate.

In response to Councilmember Petersen's question, Harbormaster Dusenbury noted that a safety barrier between launch lanes could create an obstacle for the drivers. He believed that the Recreational Immunities Act would cover the city in terms of liability issues for the ramp.

Councilmember Steenrod said that the Municipal Facilities Committee agreed with the parking concerns raised. She reported that the committee recommended approval of the project. She proposed that Council study different parking options.

Mayor Wasson closed the public hearing.

MOTION was made by Councilmember Thomasson and seconded by Councilmember White to continue Draft Resolution No. 03-002 to the January 30, 2003 meeting.

Senior Planner Ruth confirmed that he would add language to the conditions of approval allowing flexibility for operational changes and for repositioning of the breakwater.

Council concurred that the draft resolution could be placed on the next consent calendar.

VOTE ON MOTION: Motion passed unanimously.

NEW BUSINESS

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

MOTION was made by Councilmember White and seconded by Councilmember Sheckler to table Draft Ordinance No. 03-014 indefinitely.

VOTE ON MOTION: Motion failed, 3 – 4, with Mayor Wasson, Mayor Pro Tem Benjamin, and Councilmembers Petersen and Steenrod opposed.

AGENDA REVISION

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to table all remaining agenda items to the next meeting.

NEXT MEETING DATE - Regular Meeting January 30, 2003

ADJOURNMENT

At 10:30 p.m., the meeting expired.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

February 6, 2003

The regular study session of the Des Moines City Council was called to order at 7:34 p.m. by Mayor Steenrod in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen (left the meeting at 10:05 p.m.), Bob Sheckler, Scott Thomasson, Don Wasson and Susan White. Also present were Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Harbormaster Joe Dusenbury, Finance Director Paula Henderson, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Master Sergeant Robert Collins, Community Development Director Judith Kilgore, and Deputy City Clerk Angela Chaufty.

CITIZEN PETITION

On behalf of Association of Community Organizations for Reform Now (ACORN), Kay Lynn Sanches presented the Deputy City Clerk with a petition for Council requesting the installation of lights on 29th and 30th Avenue South between South 216th Street and South 218th Street.

CONSENT CALENDAR

Shoreline Permit for the Redondo Boat Launch Renovation Project City, File No. LUA 2002-008

MOTION was made by Councilmember White, seconded by Councilmember Sheckler and passed unanimously to adopt Draft Resolution No. 03-002 approving environmental and shoreline applications enabling the renovation of the Redondo boat launch.

DISCUSSION ITEMS

Marina Dry Stack Storage Alternatives

Harbormaster Dusenbury informed Council that this subject was a continuation of the January 30, 2003 Council meeting discussion. He presented the following information:

- A market study revealed a significant number of small boats in the marina market area.
- 23% of moorage revenue resulted from small boats.
- Future in-water moorage would be expensive to build.
- Expansion of the dry storage capacity would ensure services for small boaters.
- Dry stack storage was the most efficient dry storage method.
- The existing dry shed site was studied and found to have significant problems.
- The Municipal Facilities Committee had reviewed the project and had recommended that the dry stack storage be located on the Quartermaster site.

In regard to the financial issues associated with the dry stack storage facility, Finance Director Henderson said that if Council decided to not construct the dry stack storage area, the City would not have sufficient money available to cover the bond issue. She noted that the bond issue included the construction of a dry stack storage area. Finance Director Henderson explained that a 3.5% marina revenue growth rate had been projected but was not likely to be realized due current economic conditions. Revenue from dry stack storage was expected to cover the shortfall. The dry stack storage was also needed to cover the bond debt service coverage ratio for the second bond issue. Finance Director Henderson explained that in order to avoid rebate, 85% of the bond proceeds needed to be spent within two years.

Harbormaster Dusenbury addressed the following concerns previously mentioned by the community:

- View Impairment – The two building alternatives for the Quartermaster site were set back as far as possible against the bluff and would comply with City height restrictions. Results of a view analysis for the two facility positions were displayed.
- Aesthetics – Creative wall surfaces, window placement, multiple colors, and landscaping would be utilized to soften the building's appearance.
- Fire Safety – The building would be equipped with a fire suppression system that complied with the Uniform Fire Code. Each layer of the rack would be protected.
- Noise and Exhaust Fumes – The lift tucks would comply with the City's noise ordinance requirements and the State's emission standards. Noise reduction kits would be added to the lift trucks.

In regard to the aesthetics of the dry stack storage facility, Harbormaster Dusenbury explained that the features selected for the facility would determine the construction cost. The pictures displayed were for view analysis and financial forecasting purposes only.

Councilmember Sheckler said that aesthetics were important to the community and Marina users. He suggested that the Municipal Facilities Committee spend time reviewing the aesthetics of the proposed facility.

Councilmember Thomasson stated his expectation that the facility would be attractive and fit the character of the neighborhood.

In response to Councilmember Thomasson's questioning, Harbormaster Dusenbury informed Council that staff had discussed vacating the right-of-way behind the Quartermaster site in order to move the dry stack facility closer to the cliff.

Councilmember Thomasson noted that the facility would need to comply with all City setback requirements.

Mayor Steenrod asked that staff consider earthquake protection features for the facility.

In regard to the noise generated by the back-up alarm, Harbormaster Dusenbury explained that a back-up alarm or a spotter would be required whenever a boat was moved. Staffing levels would determine which method was used.

In order to minimize any disturbance, Mayor Steenrod suggested that spotters be utilized in the early morning and after 8:00 p.m.

Assistant City Manager Loch informed Council that dry stack storage was an integral part of the Master Plan. If Council chose to remove it from the plan, the Master Plan would need to be re-worked. If Council accepted it in the plan, specific details of the facility would be brought back to Council for direction. He stated staff's recommendation to accept the Municipal Facilities Committee's recommendation to proceed with the dry stack storage project at the Quartermaster site.

Mayor Steenrod said that the Municipal Facilities Committee concurred that Alternative A had minimal impact.

Mayor Pro Tem Benjamin said that he was opposed to the dry stack storage project as it placed an industrial application on prime residential real estate. He felt that it was not the highest or best use of the property.

MOTION was made by Councilmember White and seconded by Councilmember Sheckler to approve the recommendation of the Municipal Facilities Committee to proceed with Alternative A of the Dry Stack Boat Storage Project at the Quartermaster Site.

Assistant City Manager Loch said that if the motion passed, staff would continue to work with the Municipal Facilities Committee and come back to Council at critical decision times.

Councilmember Thomasson said that he was willing to consider the development of a dry stack storage facility but it must meet his criteria before he would support it. He suggested that an architect be hired to develop conceptual plans for Council's consideration and approval.

Assistant City Attorney Brown suggested the following **substitute motion**:

> I move that the City Council accept the recommendation of the Municipal Facilities Committee to proceed with the Dry Stack Storage Project at the Quartermaster site using generally Alternative A as a guide and addressing the following concerns: architectural style, building materials, landscaping, appearance, public access amenities, and noise.

Councilmembers White and Sheckler **accepted the wording as a substitute motion**.

VOTE ON SUBSTITUTE MOTION: Motion passed, 6 – 1, with Mayor Pro Tem Benjamin opposed.

Marine View Drive Pedestrian Safety

Assistant City Engineer Andrews introduced the subject. She informed Council that an average of 20,000 vehicles per day traveled on Marine View Drive. As the roadway was part of SR 509, Washington State Department of Transportation would have authority over any but the smallest traffic signal revisions. The pedestrian crossing study was performed on relatively short notice and in poor weather conditions. It consisted of an accident history investigation and pedestrian counts through observation. Assistant City Engineer Andrews reported that the accident history statistics were extremely good considering the volume of traffic. On average, pedestrians were able to cross the street within five to six vehicles during peak hours and within two to four vehicles during non-peak hours. Assistant City Engineer Andrews informed Council that staff had implemented efforts to improve pedestrian safety on the roadway through improved signage, police enforcement, identification of channelization maintenance as a priority, signal timing studies, education of pedestrians through City Currents articles, and staff training. She noted that there were currently fifteen marked crosswalks in the area. Assistant City Engineer Andrews reported that no significant issues were identified through the study. In summary, she identified the following recommendations:

- Conduct a study during good weather in the summer.
- Hire a consultant to conduct additional traffic counts and a more comprehensive traffic analysis.
- Continue police enforcement.
- Investigate and implement additional pedestrian signage where appropriate.
- Investigate and implement low cost visibility measures such as removing trees and sidewalk clutter at intersections.
- Do not construct capital projects until additional analysis indicates a project is warranted.

Mayor Pro Tem Benjamin said he has seen several near collisions on Marine View Drive. He felt that pedestrian safety was a real concern. Mayor Pro Tem Benjamin said that he wished to encourage more pedestrians in the downtown area. He said that he wanted to learn how ten other cities have handled similar concerns.

Mayor Steenrod recommended that the issue be sent to committee.

Councilmember Sheckler agreed.

Mayor Pro Tem Benjamin said that he wanted the recommendation to go directly to Council and not be delayed by committee.

Councilmember White stated that there were pedestrian issues in the Redondo area by Salty's also.

Councilmember Thomasson referred Council to staff's finding that, overall, Marine View Drive was working well considering its traffic volume. He felt that the pedestrians needed to take some responsibility in their safety. Councilmember Thomasson said that he did not believe there was a problem to be solved, as the statistics did not support the perceived concern.

Assistant City Engineer Andrews informed Council that Federal Highway Administration studies indicated that more people were injured in marked crosswalks than unmarked crosswalks. She cautioned Council regarding creating a false sense of security through pedestrian treatments. She explained that many cities contacted were disappointed or divided in their opinions concerning various solutions to pedestrian issues.

Master Sergeant Collins explained the law concerning pedestrian right-of-way.

Public Works Director Heydon recommended that signage which reminded the pedestrian of basic safe crossing rules be installed. For example, staff had considered painting "Stand Here" boxes on the sidewalk for the pedestrians to clearly indicate their intent to cross the street.

In response to Mayor Pro Tem Benjamin's questioning, Assistant City Engineer Andrews said that Shoreline had installed roving eyes and were not pleased with the results. Kirkland used pedestrian signs, flags, and strobe lights. They were generally pleased with the increase in safety gained from these methods. On the other hand, Lynnwood had indicated that they were not pleased with their use of the strobe lights. Assistant City Engineer Andrews informed Council that the strobe light system was not very visible during daylight hours.

Assistant City Manager Loch suggested that if Council remanded the issue to the Public Safety and Transportation Committee, the Economic Development Committee also review the plan as a successful pedestrian safety program could be an economic issue.

Councilmember Thomasson noted that the area's zoning was intentionally pedestrian-friendly rather than pedestrian-oriented. During the neighborhood planning process, Council had acknowledged that the automobile was the primary means of transportation to the area.

Mayor Steenrod recommended that staff immediately begin to investigate and implement additional pedestrian signage where appropriate and low cost visibility measures. She further recommended that the issue be remanded to the Public Safety and Transportation (PS&T) Committee.

Councilmember Thomasson said that he did not believe the issue needed to go to the PS&T Committee but that staff should implement the recommended actions.

Councilmembers White and Sheckler agreed.

Council concurred that staff should immediately begin to investigate and implement additional pedestrian signage where appropriate and low cost visibility measures and perform a pedestrian study of the area again during the summer.

At 9:20 p.m., Mayor Steenrod declared a ten-minute break.

Councilmember Compensation

Mayor Steenrod stated her belief that, as leaders, Council needed to lead by example. She recommended that Council reduce their compensation to send the message that Council was willing to make cuts during the severe economic times.

Councilmember Sheckler noted that State law prevented Council from increasing or reducing their own salary. He suggested that Council postpone any action until after the November election. Then, the action would affect all Councilmembers rather than just the newly elected Councilmembers.

Mayor Steenrod informed Council that DMMC 4.08.020(3) currently allowed a councilmember to voluntarily reduce their compensation to a specific amount for a fixed period of time upon written request to the finance director.

Councilmember Thomasson said that he understood Mayor Steenrod's sentiment but that he was not in favor of changing Council's compensation. He said that Des Moines' Councilmembers were not overpaid compared to other cities' councilmembers and he felt that it was important to maintain a salary that would attract a good cross-section of competent individuals to the position.

Councilmember White reiterated Mayor Steenrod's comment that Council was currently able to donate their salary back to the City or to another charity. She felt that a reduction in Council's compensation could eliminate some qualified candidates from running for office.

Mayor Steenrod stated that she did not necessarily believe that Council should be paid for being Councilmembers as it was a privilege to serve. She said that reducing Council's compensation would send this message to the public.

Mayor Pro Tem Benjamin voiced support for eliminating or reducing Council compensation. He said that it was the right action to take in light of current economic conditions.

Councilmember Sheckler reiterated that due to State law any action to change Council compensation would not affect Mayor Steenrod, Mayor Pro Tem Benjamin, and Councilmembers Petersen and White's level of compensation. He said this would create an unfair situation.

Councilmember Thomasson noted that the last change in Council compensation was arranged to affect all Councilmembers at the same time and, thus treat all Councilmembers equally. He felt that it was not equitable to have some Councilmembers receive one rate of pay while others received a different rate of pay for the same job. He felt there were better ways for Council to show leadership in the community at this time.

Councilmember White suggested that Council demonstrate leadership by moving forward with the economic development plan.

Mayor Steenrod recommended that Council compensation be reduced from $250 to $150 per meeting.

Upon questioning from Mayor Steenrod, Councilmember Thomasson explained that DMMC 4.08.020 was written to take effect incrementally so that the compensation revision affected all councilmembers at the same time.

Mayor Steenrod said that she was disappointed that Council was not willing to take this action.

Planning Agency Duties

Mayor Steenrod introduced the subject.

Community Development Director Kilgore reviewed the history of the issue. She noted that in 2001, Council had given full authority for preliminary subdivisions and other land use actions to the Planning Agency.

At 10:05 p.m., Councilmember Petersen left the meeting.

Community Development Director Kilgore informed Council that there were few large parcels available for subdivision and townhouse development still in existence in the City. She noted that the seven member Planning Agency currently had four vacancies. Three of the prior agency members were willing to serve a second term while one prior member was not eligible for reappointment. As the current Agency did not have a quorum, they were unable to conduct business. Community Development Director Kilgore voiced the City Attorney's recommendation to appoint at least one additional member to the Planning Agency to form a quorum in order to complete the vested projects. She noted that three projects plus the Comprehensive Plan Updates were currently vested.

Mayor Pro Tem Benjamin suggested that Council appoint a full Planning Agency and then determine their duties.

Councilmember Thomasson noted that he and Councilmember Wasson had previously voted against the Ordinance which expanded the authority of the Planning Agency.

Councilmember Wasson proposed that Council remove the Planning Agency's authority after the vested projects were completed.

Councilmember Thomasson explained that Council would need to change the duties in order to prevent the vesting of any new projects.

MOTION was made by Councilmember Wasson and seconded by Mayor Steenrod to direct staff to prepare an ordinance and schedule a public hearing to address the issue with the intention of removing the authority given to the Planning Agency in 2001 and reassigning it to the Council.

Councilmember Thomasson noted that if the three individuals whose Planning Agency terms expired December 31, 2002 were re-appointed, they would not require any additional training.

Mayor Steenrod and Councilmember Thomasson recommended that Council hear staff's prior presentation regarding the Planning Agency duties.

VOTE ON MOTION: Motion passed, 4 – 2 with Councilmembers Sheckler and White opposed.

REMAINING AGENDA ITEMS

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to continue the remaining agenda items to a date set by the Mayor and City Manager.

VOTE ON MOTION: Motion passed, 5 – 1, with Councilmember Wasson opposed.

NEXT MEETING DATE - Regular Meeting, February 13, 2003

ADJOURNMENT

At 10:27 p.m., **motion** was made by Councilmember Thomasson, seconded by Councilmember White, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES February 27, 2003

The regular meeting of the Des Moines City Council was called to order at 7:32 p.m. by Mayor Steenrod 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 Maggie Steenrod, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson, Don Wasson and Susan White. Absent: Mayor Pro Tem Richard Benjamin. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Park and Recreation Director Patrice Thorell, Finance Director Paula Henderson, Community Development Director Judith Kilgore and Deputy City Clerk Angela Chaufty.

> **MOTION** was made by Councilmember Wasson, seconded by Councilmember Thomasson, and passed unanimously to excuse Mayor Pro Tem Benjamin from the meeting.

COMMENTS FROM THE PUBLIC

Alli Larkin, 21937 7th Avenue South, #210

Ms. Larkin applauded City Attorney Marousek for her victory in the Wescot versus Des Moines lawsuit. She distributed two pictures of people digging at the Des Moines Beach Park. She informed Council that the City of Seattle had proposed an ordinance to make seven saltwater parks safer and better for marine life and visitors. Ms. Larkin asked Council to consider adopting a similar ordinance for Des Moines. She gave the City Attorney a copy of Seattle's proposed ordinance.

Mysty Beal, 22628 16th Avenue South

Ms. Beal commended City Attorney Marousek for her successful defense of the Wescot versus Des Moines lawsuit regarding the conveyor belt.

BOARD & COMMITTEE REPORTS

Association of Washington Cities (AWC) Conference

Councilmember Sheckler announced that he had attended the AWC Conference in Olympia last week. He said it was a valuable opportunity to meet and discuss common issues and concerns with state legislators and other city officials. He informed Council that a bill that would allow the Port of Seattle to disregard the Pollution Control Hearing Board and Court of Appeals' decisions regarding the clean fill that is required to build a third runway had been proposed in the House of Representatives. Councilmember Sheckler thanked the 33rd District Legislators for their opposition to the bill. He said that he remains optimistic that the bill will fail. Councilmember Sheckler also thanked the many citizens who provided testimony against it.

Economic Development Plan

In light of the Chamber of Commerce President's recent negative comments regarding the media, 33rd District legislators, City councilmembers, City staff, citizens, the Airport Communities Coalition, and groups affiliated with fighting the third runway, Councilmember Sheckler said that he hoped Council could consider the overall picture of economic development. He said that Des Moines needed a good economic development program that would benefit everyone.

Association of Washington Cities Conference

Councilmember White reported that she had also attended the AWC Conference. She noted that several cities were experiencing tight economic conditions. Councilmember White informed Council that she had testified before the House of Representatives and Senate regarding the bill mentioned by Councilmember Sheckler. She commended the 33rd District Legislators for their opposition to the bill.

PRESIDING OFFICER'S REPORT

Municipal Facilities Committee

Mayor Steenrod announced that the committee had met to discuss Marina rates. The proposed rates should be presented to Council for review and adoption with a few weeks.

ADMINISTRATION REPORTS

Fishing Pier Repairs

City Manager Piasecki announced that repairs to the fishing pier were expected to be completed on February 28, 2003.

Mount Rainier Pool

City Manager Piasecki reported that Des Moines, SeaTac and the Highline School District had paid their full portion of the promised funding for the Mount Rainier Pool. The City of Normandy Park would be submitting payments on a quarterly basis.

Association of Washington Cities Conference

City Manager Piasecki informed Council that he had attended the AWC conference. Information regarding various bills that could impact Des Moines had been distributed to Council.

Response to February 13, 2003 Comments from the Public – Michael Dannels

City Manager Piasecki reported that he and the Public Works Director had met with Mr. Dannels to discuss the issues involving his driveway.

Pacific Highway South Community Visioning Workshop

City Manager Piasecki announced that a community visioning workshop for the Pacific Highway South Project would be conducted Saturday, March 1, 2003 at Highline Community College, Building 2 from 9:00 a.m. to Noon. He invited all interested citizens to attend.

City of Kent Boundary Talks

City Manager Piasecki informed Council that the City of Kent had indicated that it was no longer a high priority for them to straighten the boundary between the two cities. He explained that Kent was seeking a revenue neutral solution. City Manager Piasecki had encouraged them to also consider the expenses incurred by some of the properties when determining the financial estimates. City Manager Piasecki reported that he had proposed straightening the border along Pacific Highway South between Kent-Des Moines Road and South 240th Street or between Kent-Des Moines Road and approximately South 253rd Street. A copy of the City of Kent's letter had been distributed to Council.

Mayor Steenrod confirmed that City Manager Piasecki would respond to the City of Kent's letter.

Wescot Versus City of Des Moines

City Attorney Marousek informed council that Wescot Company had sued Des Moines twice last summer. The first suit was prior to the Hearing Examiner's decision regarding whether the Council had the right to not sign the permit application for the conveyor belt. That case was removed to federal court pending the outcome of the second case. The second suit, a Land Use Petition Act (LUPA) case, was heard by Judge Lum in state court this afternoon. Specifically, the case challenged the Hearing Examiner's decision that said that the City Council had the right to use the park as it wished and the City could not be forced into doing something that it did not want to do. Judge Lum ruled that he had no authority under the Land Use Petition Act to review the petition. The case was dismissed. City Attorney Marousek said that Co-Counsel Mike Walters was now working to dispose of the federal case.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the special and regular meeting minutes of February 13, 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 #84249 through #84402 & electronic fund transfers in the total amount of $480,061.51
   Payroll fund transfers in the total amount of $333,046.70
3. Motion is to approve the surplusing of old Motorola 9100-T MDT's and two VRM600 radio modems from the Police Department and authorize disposing of by auction, sale or transfer to other department or agencies.
4. Motion is to approve the supplemental appendix (Exhibit "A") to the agreement with Valley Communication Center, agreeing to the rate of $21.09 for each dispatchable call, and to authorize the City Manager to sign the agreement substantially in the form as submitted.

Upon questioning from Mayor Steenrod, Deputy City Clerk Chaufty confirmed that the minutes from January 23, 2003 would be presented for Council's approval at the next regular meeting.

MOTION was made by Councilmember White, seconded by Councilmember Wasson, and passed unanimously to approve the consent calendar as read.

NEW BUSINESS

Draft Ordinance No. 03-036 Marina Rates 1st Reading

City Manager Piasecki reminded Council that, under the authority of Rule 9 of the City Council Rules of Procedure, Mayor Steenrod had removed Draft Ordinance No. 03-036 regarding Marina rates from the Agenda. He asked Council to determine whether the subject should be placed on a future meeting agenda for action. If so, he recommended that it be placed on the March 13, 2003 agenda. City Manager Piasecki informed Council that the Municipal Facilities Committee concurred with this recommendation.

MOTION was made by Councilmember White, seconded by Councilmember Wasson, and passed unanimously to place Draft Ordinance No. 03-036 on the agenda of the March 13, 2003 meeting.

Ad Hoc Parks, Recreation & Senior Services Master Plan Citizens Committee Report

Park and Recreation Director Thorell informed Council that over 500 volunteer hours had been dedicated to the Parks, Recreation and Senior Services Master Plan process. She had the members of the Ad Hoc Committee in the audience stand. Park and Recreation Director Thorell said that committee members Shelly Parker, Gary Hisel, Vic Anderson, Lauren Lord, and Joan Allan would present their findings and recommendations to Council.

Mr. Hisel informed Council that the committee had surveyed citizens and had received much information. As several citizens wanted the Senior Center to stay at the Beach Park, Mr. Hisel suggested that Council research refurbishing the facility at that location.

Mr. Anderson reported that the committee recommended that the city build around the waterland theme. He mentioned attracting sailing schools or sailboard meets as examples of this. Mr. Anderson said that he would have liked to collect input from more young people. He reported that the committee had prioritized the development, repair, and renovations of facilities. They recommended that the City acquire land identified as a priority and provide a sports parks for the south end of the City. The Finance subcommittee had reviewed funding options including grants, levy lid lifts, bond issues, and interlocal agreements. Stating his own opinion, Mr. Anderson said that he believed the City needed an industrial base and a mixed income stream. Mr. Anderson informed Council that the committee had studied the current level of service standards, the Transportation Plan and bicycle pedestrian routes.

Ms. Lord reviewed a chart of communitywide park needs. Based upon the Park and Recreation Master Plan standard of 8.5 acres of park land per 1,000 population, Ms. Lord reported that park land in Central Des Moines, Woodmont East, North Hill, and Zenith were significantly insufficient. She identified the following major issues facing Parks, Recreation, and Senior Services:

- Aging and flood/water damaged recreation buildings.
- Lack of adequate recreation facilities such as play equipment, lighting, restrooms, and parking.
- Population and program growth faster than facility development.
- Demographic shifts to an increase of latch key youth and aging society.
- Legal and ethical requirements to care for the city's natural resources and existing parks.
- Scare funding resources available.

Ms. Parker reviewed the following Master Plan capital policy recommendations:

- Dedicate a sustainable portion of Real Estate Excise Tax as an ongoing capital funding source for the major capital maintenance of existing recreation buildings and park facilities.

- Utilize levy lid lift funding in the amount of $0.20 for multiple park projects throughout Des Moines and a citizen voted bond issue to fund the community center project.
- Actively seek joint use and shared cost opportunities such as: interlocal agreements with other governmental agencies, collaborative opportunities with interdepartmental projects, public/private partnerships and volunteerism to develop and maintain parks and facilities.
- Support economic development (especially in the downtown, Port of Seattle buyout area and Pacific Highway South) through creation of a more aesthetically pleasing environment such as: city gateways and signage to include directional road signs to recreational facilities, well kept streetscapes, banners, and flower baskets.
- Provide adequate parking at all recreational facilities.
- Support Marina and Redondo Waterfront Improvement Plans capitalizing on Des Moines' best recreational feature, its waterfront amenities.

Ms. Parker briefly highlighted the priority project list contained in Council's packet. She identified Priority One projects as those projects currently underway, one-time opportunities, or meeting multiple needs. Priority Two projects were those that should be planned for implementation between 2003 and 2008 or as opportunities become available. Priority Three projects were defined as those projects that met needs currently identified and were planned for implementation as opportunities become available.

In response to Councilmember Sheckler's questioning, Finance Director Henderson informed Council that the city's current taxing level was $1.32/$1,000.

Since the city was partnering with local schools for sports fields, Councilmember Thomasson asked that the portion of school property utilized for sport park development be included in the park acreage chart. He also asked that new projects in the Master Plan be indicated differently from existing projects.

In response to Councilmember Thomasson's questioning, Ms. Parker explained that the committee did not include the purchase of the property next to Midway Park in the proposed Master Plan as they could not identify a funding source.

Park and Recreation Director Thorell explained that, ideally, park property should be at least one half acre in size so that it can serve a purpose for the City.

In regard to the proposed dog park, Councilmember Thomasson said that he felt it was more important to provide people with park land and that he was not in favor of taking away existing park land for this purpose. He stated that Council was dealing with a budget shortfall and noted that the Parks, Recreation and Senior Services Master Plan fits into a larger financial picture.

Park and Recreation Director Thorell said that any volunteers willing to assist with park programs, facilities or maintenance should contact the Park and Recreation department.

Ms. Allan asked Council to provide direction to the committee. She said that the committee recommended that a Park and Recreation Advisory Board be appointed once the Master Plan process was implemented.

City Manager Piasecki said that continued review of the Master Plan would be scheduled for the April study session.

At 8:54 p.m., Mayor Steenrod announced a ten-minute break.

Draft Resolution No. 02-269 Adoption of an Economic Development Plan

Mayor Steenrod introduced the subject. She felt it was important for the City to develop an Economic Development Plan.

Community Development Director Kilgore urged Council to consider the Economic Development Plan a strategy or action plan rather than a traditional land use plan. She stated that the plan was designed to provide direction, flexibility, and a system of checks and balances. Community Development Director Kilgore said that successful economic development plans addressed business development and retention, infrastructure development, and workforce development.

Mayor Steenrod explained that the Finance and Economic Development Committee sought to develop a plan that set direction, focused on key areas, and allowed staff flexibility to use their expertise.

Councilmember Sheckler said that he was in favor of economic development but had serious concerns since the proposed resolution stated that the success of the economic development plan was dependent upon a partnership between the City and the Chamber of Commerce. He said that he was concerned that the Chamber president had identified city staff, legislators and others as enemies. Councilmember Sheckler felt that those groups were essential to the success of an economic development plan. He asked the Chamber of Commerce to address his concerns.

Mayor Steenrod clarified that the purpose of a Chamber of Commerce was to serve as an advocate for businesses, attract businesses to the City, and assist with business growth. She said that the economic development plan referred to the Chamber of Commerce as an entity rather than as an individual. The plan was designed to coordinate with other groups' efforts.

Councilmember Sheckler recognized the importance of a collaborative effort but questioned how the plan could succeed if hostilities existed. He said that he would like to see the Chamber of Commerce show that they wanted to collaborate with the City to promote economic development.

Mayor Steenrod asked Community Development Director Kilgore to contact the Chamber of Commerce about the concerns voiced and obtain feedback.

Councilmember White said that if the City was going to partner with the Chamber of Commerce, they should present their items directly to Council rather than through the Community Development Director.

Mayor Steenrod stated that Ed Coumou, on behalf of the Chamber of Commerce, had originally approached the City regarding economic development.

Councilmember Sheckler said that his concern was that the new leadership of the Chamber of Commerce had indicated that he was not willing to work with other factions. Councilmember

Sheckler said that he wanted the Chamber to say that they were willing work with the other groups.

Mayor Steenrod said that she understood and accepted the concerns Councilmember Sheckler had about the current Chamber of Commerce leadership. She asked Council to consider whether the identified goals of the plan were appropriate.

Councilmember Thomasson suggested that partnerships with the Des Moines Boosters and the Pacific Highway South group also be mentioned on Page 5 of the plan.

In response to Councilmember Sheckler's concerns, City Manager Piasecki said that he would invite the Chamber of Commerce to the meeting when this issue came back to Council.

In regard to the proposed plan document, Councilmember Thomasson objected to the use of the word "luckily" on Page 3 as it implied that everything was broken and needed fixed.

Community Development Director Kilgore questioned whether she should add an accomplishment section to the plan.

Regarding the goals of the plan, Councilmember Thomasson made the following comments:

- Attract desirable new employers consistent with the areas's quality of life - Council was not yet in agreement on what was desirable for the community. The plan should identify which types of businesses were desirable.
- Eliminate excessive regulatory restrictions while preserving a high level of health and safety in the community – Define the term "excessive".
- Focus initial revitalization efforts to the downtown and Pacific Ridge communities – "Revitalized" was not the proper term. He questioned when Des Moines was more vitalized than the present.
- Improve the image of the city through a targeted marketing and promotion program – Council had not yet identified the image to be projected.
- Develop a broad base of community support for economic development efforts including innovative public/private partnerships – Language needed to be more specific.
- Maintain and upgrade where necessary roads, utilities and other infrastructure improvements – The statement implied that these actions only needed to be done in a few areas. The tone of the goal should reflect what the City had already accomplished and what items were left to accomplish.

Community Development Director Kilgore noted that Webster Dictionary defined "revitalization" as "new life or vigor to".

In regard to the goal concerning the city's image, Mayor Steenrod said that she has heard that developers have a negative image of Des Moines. Specifically, they felt that Des Moines has a difficult permitting process, an out-of-date code, and excessive regulations.

Community Development Director Kilgore informed Council that the applicable Des Moines Municipal Code section had not been substantially changed since its adoption in 1964.

Councilmember Thomasson noted that updating the Code had been on the department's work plan for some time. He asked that the Economic Development Plan identify the specific image to be improved.

Community Development Director Kilgore stated that the southwest King County area had a negative image for developers. She said that the goal statement addressed both the city's and the area's image needs.

Councilmember Sheckler said that an ambiguous plan would be difficult to accomplish.

City Manager Piasecki suggested that the plan be remanded back to the Finance and Economic Development Committee to eliminate excess words and to develop exact wording.

In response to Councilmember White's questioning, Community Development Director Kilgore said that staff had spent approximately 100 hours developing the plan.

Mayor Steenrod said that the term "luckily" was meant to mean "fortunate to have". She voiced agreement with City Manager Piasecki's suggestion that the goal's plans be made more specific. She asked if Council agreed that infrastructure, retention, and workforce development should be the areas of focus.

Councilmember Thomasson stated that the goals were a matter of philosophical opinion regarding the role of government versus the role of the private sector. He said that, personally, he felt business development and retention should be led by the private sector, infrastructure was a responsibility of government, and workforce development was a duty of the schools. He questioned how involved the City should be given its limited budget when other agencies were available to assist.

Councilmember Sheckler suggested that Council follow the model used during the Pacific Ridge process and bring the key members to the table to determine an economic development plan.

Mayor Steenrod said that Council was necessary to the process as they could remove some roadblocks to business development, empower staff, and make the process for developers easier.

Councilmember Thomasson said that he had not heard of any specific city regulations that have forced existing businesses to close. He felt competition, lack of market demand, or failed companies were the reasons businesses failed. Councilmember Thomasson said that if development costs, such as for a State required retention pond, were not paid by the developer, then the compliance costs would be shifted to the citizens.

Councilmember Sheckler voiced his opinion that it was necessary to meet with the key players to identify concerns and code problems.

Councilmember White suggested that the City also work with the Southwest King County Development Group on economic development. She asked business owners leaving the City to write a letter stating their reasons for doing so in order for the issues to be addressed.

Community Development Director Kilgore said that she could rewrite the plan as a work program with four or five projects identified and present it to Council for approval.

Councilmembers Sheckler and White voiced agreement with Community Development Director Kilgore's suggestion.

City Manager Piasecki questioned whether Council wished staff to be more aggressive in promoting economic development. He cited marketing properties or obtaining a CDBG float loans as examples of potential aggressive actions.

Councilmember Sheckler said that he would like to see a list of code problems related to economic development.

Community Development Director Kilgore asked if Council wished her to prepare a memo, with the assistance of the Finance and Economic Development Committee, listing four or five items with the highest priority, identifying the reasons, and providing a recommended timeline for implementation.

Councilmembers Sheckler and White agreed.

Mayor Steenrod said that the list should provide more specific information concerning the activities that could be tackled, the potential staff time required, and the financial ramifications involved.

Councilmember Thomasson commented that small incremental improvements would at least move the City toward improved economic development.

Council concurred that a memorandum detailing a more specific plan should be developed.

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

Community Development Director Kilgore identified the following recommended revisions to DMMC 14.48:

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

In response to the proposed revisions to the draft ordinance submitted by Gordon M. Gray of Gray Businesses, Community Development Director Kilgore recommended the following:

- Paragraph 1 – "The site plan shall be submitted in conjunction with the application or renewal of a business license as required by DMMC 14.44.050." – Delete the proposed ending to the sentence as it is repetitious.
- DMMC 14.48.280 – Okay to add "and configuration" if the following language is also included: " and subject to the setbacks which were in place at the time the mobile home was placed."
- DMMC 14.48.280(1) – Set a specific date that is at least six months after Council's approval of the proposed ordinance.
- DMMC 14.48.280(2) - Strike "provided they are not more restrictive than those in place at the time the mobile home park was constructed". The city must adhere to current fire, parking, and building codes
- DMMC 14.48.290 – Repetitious but okay.

Councilmember Thomasson asked that an "originally approved development plan" be defined. He also asked whether the replacement of a single-wide mobile home with a double or triple-wide mobile home would be permitted under the proposed ordinance. Since the City had bought a row of mobile homes as part of the Pacific Highway South project, Councilmember Thomasson questioned what the site plan would be for that mobile home park.

City Attorney Marousek suggested that Councilmember Thomasson's last question be discussed in executive session as it was currently in litigation.

Mayor Steenrod asked that an executive session be conducted prior to Council's second reading of the proposed ordinance.

Councilmember Thomasson suggested that the last sentence of DMMC 14.48.040(1) regarding recreational vehicles be placed in the rights-of-way code section rather than in the mobile home park section. He recommended that the definition of mobile homes and recreational vehicles be clarified.

At 10:27 p.m., **motion** was made by Councilmember Thomasson, seconded by Councilmember Petersen, and passed unanimously to extend the meeting by five minutes.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to incorporate the Community Development Director's recommendations into the proposed ordinance.

Mayor Steenrod voiced agreement with Councilmember Thomasson's statement regarding the placement of the language pertaining to recreational vehicles.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to pass Draft Ordinance 02-177 on to a second reading with the changes discussed incorporated into the ordinance.

Reconsideration of RCAA Final Billing

Mayor Steenrod said that the subject would be discussed at Council's next meeting.

NEXT MEETING DATE - Study Session March 6, 2003

ADJOURNMENT

At 10:29 p.m., **MOTION** was made by Councilmember Wasson and seconded by Councilmember White to adjourn the meeting. **VOTE ON MOTION**: Motion passed, 5 – 1, with Councilmember Sheckler opposed.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

CONSENT CALENDAR
Item #3

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Senior Services Advisory Committee Residency Requirements

ATTACHMENTS: Draft Ordinance No. 03-059

FOR AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 19, 2003

CLEARANCES:
[X] Legal

APPROVED BY CITY MANAGER FOR SUBMITTAL:

PURPOSE

The purpose of this agenda item is to amend the residency requirements for members of the Senior Services Advisory Committee to permit Committee membership by persons who live outside of the City of Des Moines, but who work or volunteer within the city limits.

The following motions are suggested:

FIRST MOTION: "To suspend Rule 26(b) in order to enact Draft Ordinance No. 03-059 on first reading."

SECOND MOTION: "To enact Draft Ordinance No. 03-059, revising the provisions governing the Senior Services Advisory Committee requirements by permitting Committee membership by persons who live outside of the City of Des Moines, but who work or volunteer within the city limits; and amending DMMC 4.44.020."

BACKGROUND

Ordinance No. 1161, passed by the City Council on December 7, 1995, created a Senior Services Advisory Committee. Members of the current Committee have suggested that the City Council consider revising the residency requirements so that qualified people who do not live in the City, but who volunteer or work in the City, are eligible to be members of the Committee.

CONCLUSION

Draft Ordinance No. 03-059 amends DMMC 4.44.020 to make the requested revision possible.

DRAFTORD:AG03-059

CITY ATTORNEY'S FIRST DRAFT 02/18/03

DRAFT ORDINANCE NO. 03-059

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to boards and committees, revising provisions governing the Senior Services Advisory Committee residency requirements, and amending DMMC 4.44.020.

WHEREAS, the City of Des Moines has developed a program that provides a variety of services to seniors, and

WHEREAS, the City Council previously enacted Chapter 4.44 DMMC which created a Senior Services Advisory Board, and

WHEREAS, on December 7, 1995, the City Council passed Ordinance No. 1161, repealing and decodifying chapter 4.44 DMMC and codifying Ordinance No. 1161 as a new chapter 4.44 DMMC, revising the provisions relating to the Senior Services Advisory Board, and creating a Senior Services Advisory Committee, and

WHEREAS, the City Council now finds it to be in the public interest to amend the provisions in DMMC 4.44.020 relating to Committee residency requirements; now therefore,

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

Sec. 1. DMMC 4.44.020 and section 3 of Ordinance No. 1161, are each amended to read as follows:

> **Committee—composition.** The committee consists of seven members, one of whom shall be a member of the City Council ((~~and~~))<u>,</u> one of whom may reside outside the city limits of the City of Des Moines<u>, and up to two of whom may reside outside the city limits but work or volunteer within the city limits</u>.

<u>**NEW SECTION.**</u> **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 thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of __________, 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: ___________________

Effective Date: ______________

DRAFTORD:03/059

CONSENT CALENDAR
Item #6

AGENDA ITEM

SUBJECT: Purchase of Property for Pacific Highway Project

ATTACHMENTS:

A. Purchase & Sale Agreement - (Rainier Mart)
B. Acquisition Map-Parcel 11
C. Project Map

AGENDA OF: March 13, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 7, 2003

CLEARANCES:
[X] Finance pl
[X] Public Works
[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: CTL for TP

Purpose and Recommendation:

The purpose of this report is to seek City Council approval for purchase of right-of-way along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase 1,589 square feet of land and improvements from Callow Limited Partnership in the amount of $139,883 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. With the purchase of this property, we will have successfully made arrangements for 36 parcels.

Discussion:

The Pacific Highway South Redevelopment Project is scheduled to be advertised for construction this spring. The biggest challenge to this schedule will be obtaining the necessary right-of-way certification from the State and undergrounding utility agreements. In order to meet this challenge, it is imperative that properties be purchased as quickly as possible.

William Callow, owner of Callow Limited Partnership, Parcel 11, which is the Rainier Mart at 22247 Pacific Highway South, has agreed to sell 1,589 square feet of his property including improvements at a price of $139,883. Upon approval, staff will proceed with closing.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design or in delay and increased costs to the project. We have already successfully purchased 72% of the properties needed.

Financial Impact:

It is important that this step is taken to minimize continuously escalating costs associated with delay to the project. The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area.

Recommendation/Conclusion:

Staff recommends this motion is approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork as required. When specific issues come up that require input by Community Development, we solicit their input. This is a joint effort to improve the conditions along Pacific Ridge.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between **CALLOW LIMITED PARTNERSHIP, A WASHINGTON LIMITED PARTNERSHIP,** as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. **The Property**. Seller agrees to sell and Buyer agrees to purchase from Seller the property located at 22247 PACIFIC HIGHWAY SOUTH, Des Moines, WA 98198 (the "Property" or the "Site"), and legally described as follows, on the terms, covenants, and conditions set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO

Situate in the City of Des Moines, County of King, State of Washington.

Tax Parcel #215640-0201-07

2. **Purchase Price and Payment**. The total purchase price is **ONE HUNDRED THIRTY NINE THOUSAND EIGHT HUNDRED EIGHT THREE and NO/100ths Dollars ($139,883.00)** (the "Purchase Price"), payable as follows: **ONE HUNDRED THIRTY NINE THOUSAND EIGHT HUNDRED EIGHT THREE and NO/100ths DOLLARS ($139,883.00)** cash, including earnest money, shall be paid at Closing. Buyer shall also pay any permit fees associated with the reconfiguration of the parking lot on seller's remaining property.

3. **Contingencies**. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

ATTACHMENT A

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

4. <u>Title</u>.

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company") as hereinafter provided. Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. <u>Closing</u>.

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Statutory Warranty Deed (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) ONE HUNDRED THIRTY NINE THOUSAND EIGHT HUNDRED EIGHT THREE AND NO/100ths Dollars ($139,883.00), constituting the Purchase Price.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all prorated real property taxes due and payable and brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Deed. All property taxes, and utilities, shall be prorated between Seller and Buyer as of Closing. The real property taxes shall be prorated using the most recent tax information available. The utilities shall be prorated by the parties outside of Escrow.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. Possession. Buyer is entitled to possession of the Property on the date of closing.

7. Seller's Warranties. Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no pending zoning changes of the Property or any change to any easements or utilities relating to the Property;

(f) There are no material defects in the Property;

(g) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

(h) There are no current assessments for public improvements against the Property or any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

(i) The property has legal access to all streets adjoining the Property; and

(j) There are no claims, defects, or boundary disputes affecting the Property; and no person claims any right to possession to the Property or any portion thereof adverse to Seller.

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continue to be true, complete, and correct as of the Closing.

8. <u>**Hazardous Material Provisions**</u>.

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS

($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9. **Remedies.**

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. **Eminent Domain.** Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property by eminent domain.

11. **Risk of Loss; Insurance.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. **Notices.** Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal

Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Callow Limited Partnership
22222 Dock St, #C-2
Des Moines, WA 98198

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time**. Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance**. Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council**. The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement**. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees**. In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties**. The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement**. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **<u>Seller's Covenants Pending Closing</u>.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: ____________________

SELLER:

Callow Limited Partnership

By: ________________________________
Its ________________________________
Title

Dated: ____________________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

By:________________________________
Anthony A. Piasecki
Its City Manager

APPROVED AS TO FORM:

____
Linda A. Marousek
City Attorney

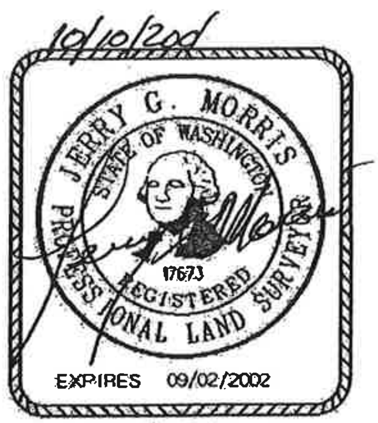
At the direction of the Des Moines City Council taken at an open public meeting on ________________________________.

CONTRACT:

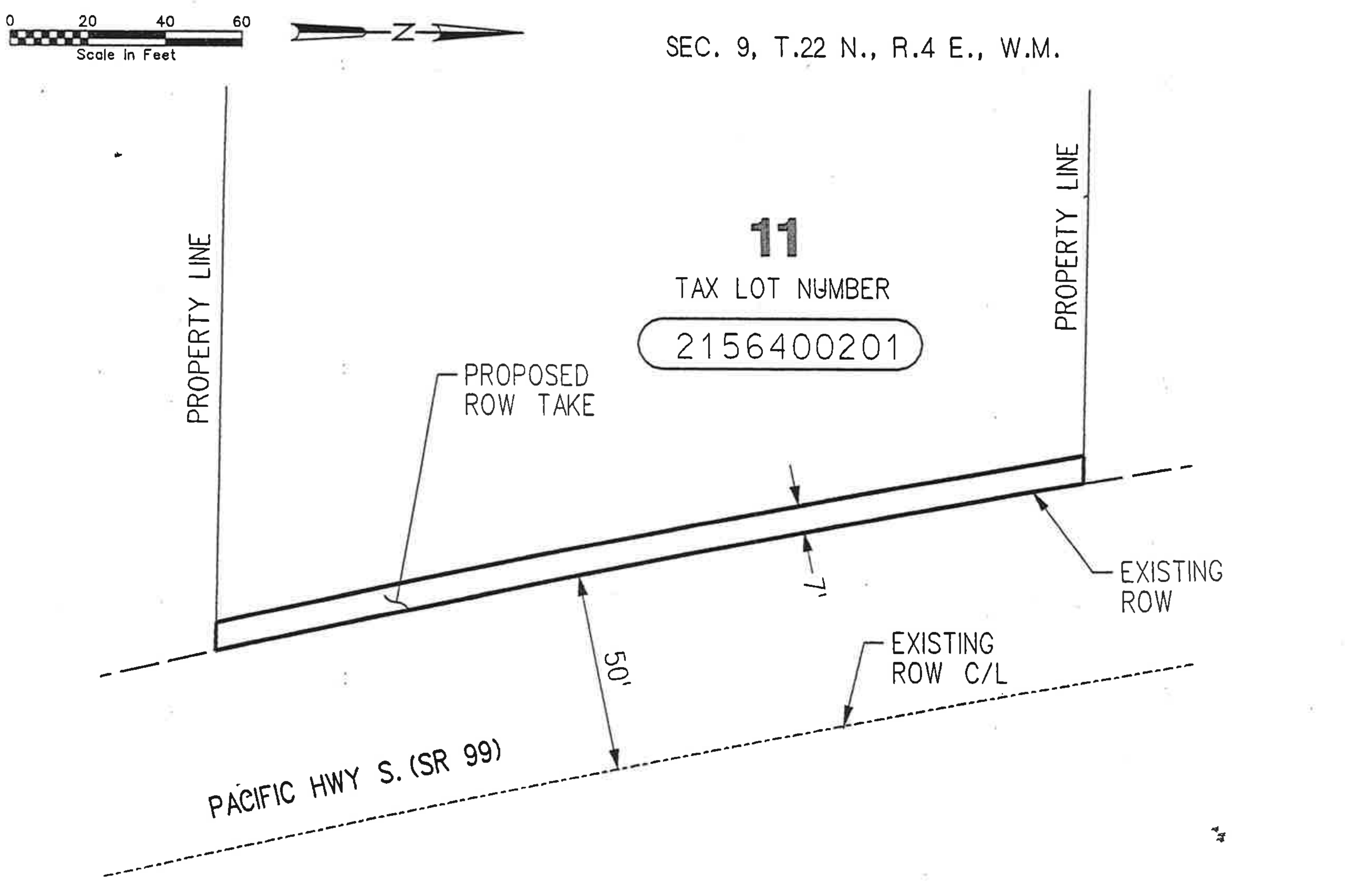
"EXHIBIT A"

FEE SIMPLE ACQUISITION FROM PARCEL NO 2156400201

The east 7.0 feet, containing 1,589 square feet, more or less, of that property as described in instrument recorded under Recording Number 9712300398, records of King County, Washington.



Original signature made with blue ink.



PREPARED BY: EWH DATE 4-13-01
CHECKED BY: JGM DATE 4-13-01
REVISED BY: GCB DATE 7-17-01

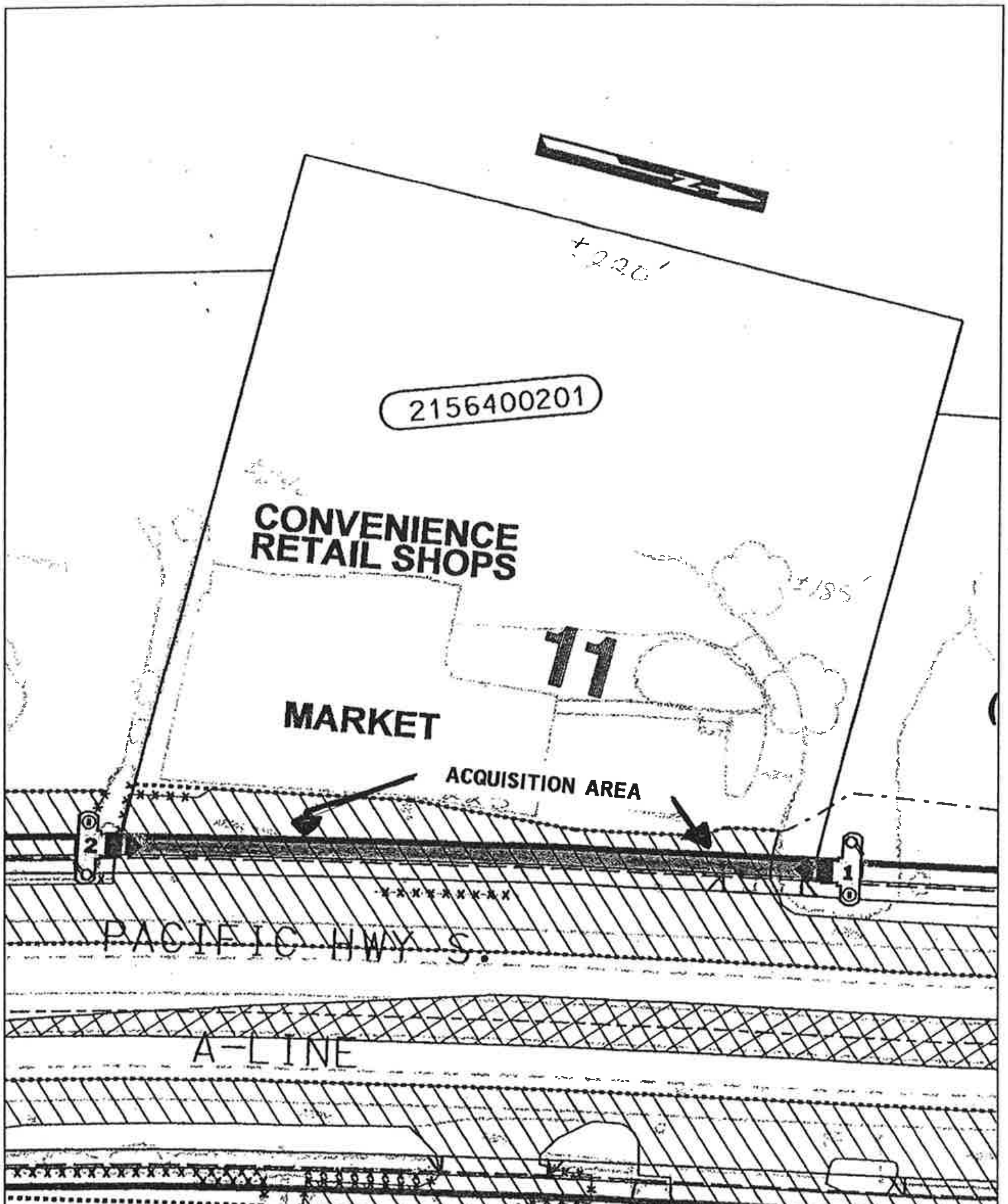
FOR INFORMATION PURPOSES ONLY
THIS DRAWING IS NOT A RECORD OF
SURVEY NOR MEETS MINIMUM STANDARDS

EXHIBIT MAP

CH2M HILL

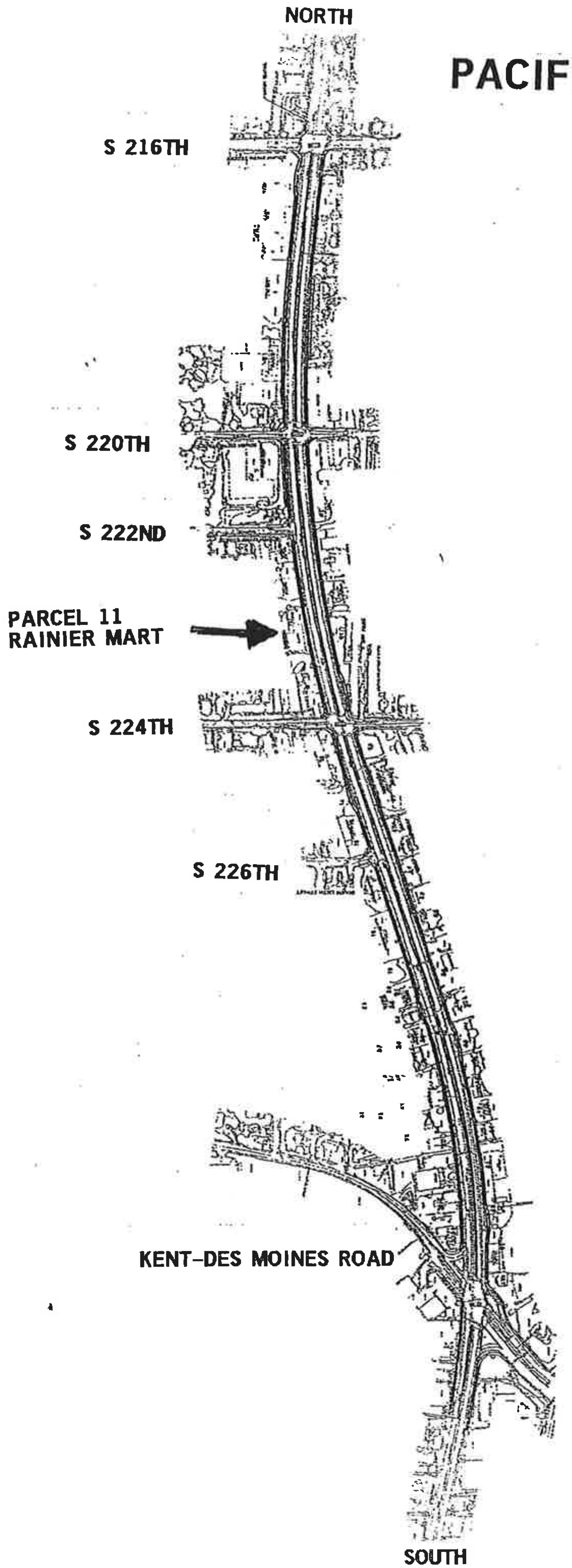
FILE NAME: parc11.dlv 30-AUG-2001 13:02:34

ACQUISITION MAP



Before Area: 47,598 SF	**After Area: 46,009 SF**	**Fee Take: 1,589 SF**
Slope and Sidewalk Easement: N/A	**Construction Easement: 3,895 SF**	

PACIFIC HIGHWAY SOUTH
PROJECT MAP



ATTACHMENT C