

Executive Session - 6:30 p.m. Real Estate & Litigation

**AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
May 22, 2003 - 7:30 p.m.**

✓ CALL TO ORDER - Mayor Steenrod

✓ PLEDGE OF ALLEGIANCE

✓ ROLL CALL

✓ CORRESPONDENCE

enall to present but
Maggie had laryngitis -
Richard Brown Benjamin
residing

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

✓ BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

passed 6-0

Bob Ponds - Kings Arms from Council
Mike Foote - rediquity gates
Rich Edwards - traffic fees
David Litowitz - traffic fees
Alex White - traffic fees

1. Motion is to approve the special and regular minutes of May 1, 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 # 85261 through # & electronic fund transfers in the total amount of \$ 408,741.14

Payroll fund transfers in the total amount of \$ 343,082.41

3. Draft Resolution No. 03-125 - Title: A Resolution of the City Council of the City of Des Moines, Washington, setting the time, date and place of the final assessment roll hearing for Local Improvement District No. 1-97-9.

MOTION is to approve Draft Resolution No. 03-125 setting a Public Hearing for LID 1-97-9 on June 26, 2003.

4. Motion is to approve the Interlocal Agreement with City of Fife for jail services and to authorize the City Manager to sign the 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. 02-2-19399-4 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.

beer garden
lines
Peterson

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

OLD BUSINESS

come to 6/5
1. Interview of Finalists for Vacant, Unexpired Council Position #2 and Potential Selection of Candidate to Fill Position

2. Draft Ordinance No. 02-264 Traffic Impact Fees - 2nd Reading

passed - new version
SUMMARY: The draft ordinance has been discussed at several past Council meetings. The Council Public Safety & Transportation Committee has reviewed the funding level and after careful consideration recommended a phased-in rate. At the April 3rd Council meeting other possible amendments were suggested for consideration. The draft ordinance, when adopted, will establish a transportation impact fee service area, impose impact fees to finance part of the costs of improvements to serve new development, provide disposition of such impact fees and establish an appeal process.

3. Draft Ordinance No. 03-116 Administrative Land Use Hearings - 2nd Reading

passed - no change
SUMMARY: The draft ordinance was presented to council at its May 8, 2003 meeting, at which time the draft ordinance was passed to a 2nd reading. Staff will present the following additional information: 1) Memorandum from Hearing Examiner Ted Hunter concerning administrative hearings and civil violation process in the City of Kent, 2) Chart prepared by the City Attorney showing procedures for various hearings, 3) Brief oral presentation by Des Moines Code Enforcement Officer Nancy Uhrich, and 4) Brief oral presentation by Kent Code Enforcement Officer Brian Swanberg.

NEW BUSINESS

1. Draft Resolution No. 03-145 Authorizing the 2003 Fireworks Over Des Moines, July 4th

passed no change
SUMMARY: The purpose of this item is to seek Council approval of the draft resolution that would authorize the 3rd annual "Fireworks Over Des Moines" on July 4, 2003. This event is sponsored by private individuals and local services organizations and would be held at the Des Moines Marina the afternoon and evening of July 4, 2003.

2. Draft Ordinance No. 03-075 Right-of-way & Park Use Permits - 1st Reading

passed pulled
SUMMARY: This report is to present, for Council consideration, Draft Ordinance No. 03-075, which has been prepared in part at the direction of the City Council late last fall and in part at the recent request of 3 members of the Council. The draft ordinance establishes policy, guidelines and approval procedures for City right-of-way and City park special use permits and amends DMMC chapters 12.04 and 19.08.

NEXT MEETING DATE - Study Session June 5, 2003

ADJOURNMENT

Passed 6-20

OLD BUSINESS
Item #3

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Administrative Land Use Hearings

FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: 1. Memo from Ted Hunter;
2. Chart;
3. Agenda Item from 5/8/03;
4. Draft Ordinance No. 03-116.

DATE SUBMITTED: May 14, 2003

CLEARANCES:

[X] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

Draft Ordinance No. 03-116 was presented to Council at its May 8, 2003 meeting, at which time the Council moved to pass Draft Ordinance No. 03-116 to a second reading.

MOTION: "I move to enact Draft Ordinance No. 03-116 ~~substantially in the~~ form as attached on second reading, amending the City's civil violation hearing process."

DISCUSSION

In addition to the materials previously submitted, the following information is submitted for Council consideration of this item:

1. Memorandum from Hearing Examiner Ted Hunter concerning administrative hearings and civil violation process in the City of Kent.
2. Chart prepared by the City Attorney showing procedures for various hearings.
3. Brief oral presentation by Des Moines Code Enforcement Officer Nancy Uhrich.
4. Brief oral presentation by Kent Code Enforcement Officer Brian Swanberg.

CONCURRENCE

Des Moines Municipal Court, the Department of Community Development, and the City Manager all concur with this recommendation to improve the efficiency and expertise of the City's civil violation hearing process.

DRAFTORD:ag03-116-2ND

May 9,2003

TO: Linda Marousek, City Attorney

FROM: Ted Hunter, Land Use Hearing Examiner

RE: Administrative Appeals for Code Compliance Issues

You requested some background information from me about how the administrative appeals process for code compliance issues works in the City of Kent. I understand that the City of Des Moines is considering implementation of a similar process and is interested in knowing how it's worked in Kent to draw on that experience where applicable. I have been the Hearing Examiner in the City of Kent since 1988 so I do have some experience with the systems there.

The City of Kent adopted an administrative appeals process for code compliance issues about six years ago. Chapter 1.04 of the Kent City Code details the procedures that are used and is very similar to the ordinance your City Council is now considering. Although the Kent ordinance was amended in 2001, the approach we've taken in the hearings has been consistent throughout the six years. The system is designed to encourage voluntary cooperation from those who may be in violation of the land use code, including allowing an alleged violator to appeal the issues of law or fact to the Hearing Examiner.

The hearings I hold are designed to allow both sides to be heard in an open forum before a neutral decision maker. The hearings are a bit different from what happens in a court of law. Usually, there is no attorney for the appellant. The appellant is allowed to tell his side of the story after the city presents the case for the alleged violations. This is often done with narrative testimony and may even include photographs taken by another. We do not strictly adhere to the Rules of Evidence but use a "reasonable person" standard to determine what evidence to allow into the record. The hearings often focus on the extent of the violation, the time frame to correct a violation and the cost of any penalty that might be imposed. The appellant usually leaves the hearing room with an order that specifies exactly what must be done or, if he wins, an order dismissing the case.

There are some clear advantages of the Hearing Examiner system for code compliance hearings over the judicial system. First, the calendar is not crowded with other issues so an appeal can be heard within a very short time. Second, we focus only on land use matters so we understand the nature of the issues involved. Third, it is a less costly process for appellants because no attorney is usually involved and we do not require strict compliance with the Rules of Evidence (for e.g., copies of materials are permissible for the record). Finally, we usually issue a decision the day of the hearing in writing so that the appellant knows what the outcome is right away.

Several cities other than Kent have adopted a Hearing Examiner system for code compliance appeals. The City of Everett has used the system for many years. Most recently, we helped the City of Bremerton put such a system in place. In all cases I am aware of those cities that have adopted an administrative appeal process for code compliance issues have been satisfied with the decision and have continued with the system.

I hope this general information is of assistance to you. I invite you or anyone on your staff to attend a City of Kent hearing to watch how it is done "in the field". I believe you will find that all participants are treated with respect, are given due process in their presentations, and leave the hearing room feeling that they have been treated fairly. Although there is always room for improvement in any decision making system, we believe that administrative appeals for code compliance issues have worked very well where implemented.

Please feel free to contact me directly at any time if you have any questions or if I can assist further in any way.

Civil Violation Hearings Comparison Chart

TYPE OF HEARING:	AFFECT OF PROPOSED ORDINANCE:	HEARINGS TO:
Noise infractions per DMMC Titles 7 & 18	No change, per Sec. 1(4)	Municipal Court.
Traffic infractions per DMMC Title 10	No change, per Sec. 1(4)	Municipal Court.
Business license-related code violations under DMMC 5.04.035(4)(b)	Changed from Municipal Court	Hearing Examiner.
Doing business without a license, violation of DMMC 5.04.020(3)	No change, per DMMC 5.04.100	Municipal Court.
Accumulating garbage in violation of DMMC 7.08.120	Changed from Municipal Court	Hearing Examiner.
Obstructing sight lines at intersections in violation of DMMC 12.08.040(2)	No change	Municipal Court.
Permitting accumulation of foreign material in right-of-way in violation of DMMC 12.32.010	No change for one-time violations: to Municipal Court per DMMC 12.32.030.	Multiple violations: potentially to Hearing Examiner.
Clearing and grading appeals by individuals under DMMC 14.60.200	No change	Hearing Examiner.
City-initiated clearing and grading violations under DMMC 14.60.040	Changed from Municipal Court	Hearing Examiner.
Marina parking violations under DMMC 15.12.050	No change	Municipal Court.
Marina rule violations under DMMC 15.04.580	No change	Hearing Examiner.
Occupancy of building without certificate of occupancy from Building Department in violation of DMMC 18.72.010	Changed from Municipal Court	Hearing Examiner.
Violation of environmental standards in Pacific Ridge Zone under DMMC 18.31.080(1)(g)(ii)	Changed from Municipal Court	Hearing Examiner.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Administrative Land Use Hearings

ATTACHMENTS: Draft Ordinance No. 03-116

FOR AGENDA OF: May 8, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: May 6, 2003

CLEARANCES:
[X] Legal *L. Am*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AT*

PURPOSE AND RECOMMENDATION

The purpose of this ordinance is to improve the expertise and efficiency of City administrative land use hearings.

It is recommended that the Council pass Draft Ordinance No. 03-116 on first reading.

TWO MOTIONS:

FIRST MOTION: "To suspend Rule 26(b) in order to enact Draft Ordinance No. 03-116 on first reading."

SECOND MOTION: "To enact Draft Ordinance No. 03-116, amending the City's administrative land use hearing process."

DISCUSSION

This draft ordinance is the second major step needed to improve the expertise and efficiency of administrative land use hearings in the City of Des Moines. The Council took the first step effective March 27, 2003 by appointing land use attorney Ted Hunter as the Des Moines Hearing Examiner, and his law partner, James Driscoll, and an associate as Deputy Hearing Examiners. These Hearing

Examiners bring a wealth of experience to both major land use hearings, like the Wescot case, and to minor land use hearings, such as code enforcement and other administrative land use matters.

Since 1999, minor land use matters have been heard in Des Moines Municipal Court as civil violations, under Des Moines Municipal Code Chapter 1.28. At this time, Hunter and Driscoll strongly recommend the City take the second step in improving its land use hearing process by using the Hearing Examiner system for civil violations, rather than holding those hearings in Des Moines Municipal Court. This change would cause no increase in the City's Hearing Examiner cost; it would make good use of the Hearing Examiner's specialized expertise; it would clear a time-consuming and contentious caseload from the dockets of Des Moines Municipal Court; and it would bring our minor land use hearing process into compliance with the integrated land use hearing requirements of RCW 36.70B.060 and DMMC 18.56.030 and DMMC 18.56.150.

The third step in the land use hearing improvement process will be to review the DMMC and to repeal the 50 references to a 1982 "civil penalty" process that was used for code enforcement on other minor land use matters before enactment of the civil violation ordinance in 1999. The City Attorney expects to complete this process during the summer of 2003. At the present time, any conflicts between these two processes are resolved by two existing subsections, DMMC 1.28.100, which integrates the two processes by use of appropriate definitions, and by DMMC 1.28.090, which provides that the 1999 civil violation process set forth in DMMC Chapter 1.28 controls in the event of a conflict.

FINANCIAL IMPACT

None (see above).

CONCURRENCES

Des Moines Municipal Court, the Department of Community Development, and the City Manager all concur with this recommendation to improve the efficiency and expertise of the City's land use hearing process.

CITY ATTORNEY'S FIRST DRAFT 05/05/03

DRAFT ORDINANCE NO. 03-116

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to civil violations and the Hearing Examiner code, substituting the Des Moines Hearing Examiner for the Des Moines Municipal Court Judge in the civil violation process for appeals of code enforcement violations and administrative land use matters, and amending DMMC 1.28.030, 1.28.040, 1.28.050, 1.28.060, 1.28.100 and 18.94.160.

WHEREAS, the Hearing Examiner Code was established in 1988 by Ordinance No. 770 to implement a Hearing Examiner system for the City of Des Moines, and

WHEREAS, in 1999, the City Council passed Ordinance No. 1236 establishing a process in Des Moines Municipal Court for enforcing civil violations and establishing penalties for such civil violations, which process is well-suited for consideration of appeals of code enforcement violations and other administrative land use matters, and

WHEREAS, the City Council has recently appointed a new Hearing Examiner and new Deputy Hearing Examiners who possess significant expertise in land use hearings, and

WHEREAS, the City Council wishes to provide a specialized and efficient civil violation process for appeals of code enforcement violations and other administrative land use matters, and

WHEREAS, Ordinance No. 1009, codified as Des Moines Municipal Code Chapter 1.24, continues to be an efficient civil infraction process in Des Moines Municipal Court for enforcement of violations of the Des Moines Municipal Code that are not related to code enforcement violations or administrative land use matters; now therefore,

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

Sec. 1. DMMC 1.28.020 and section 2 of Ordinance No. 1236 are each amended to read as follows:

Definitions.

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

(2) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety, and welfare of the community.

(3) "Act" means doing or performing something.

(4) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions pursuant to Title 10 DMMC and civil noise infractions pursuant to Titles 7 and 18 DMMC are specifically excluded from this chapter.

(5) "Development" means the erection, alteration, enlargement, demolition, maintenance, or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a City permit, approval, or other regulation.

(6) "Emergency" means a situation that in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat of injury or damage to persons or property.

(7) "~~((Judge or h))~~Hearing ~~((e))~~Examiner" means the Des Moines ~~((municipal court~~

~~judge))~~ Hearing Examiner or any lawfully appointed
(~~(judge pro tem))~~ Deputy Hearing Examiner.

(8) "Omission" means a failure to act.

(9) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(10) "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(11) "Regulation" means and includes the following, as now or hereafter amended:

(a) Title 5 DMMC, regarding City business licenses, taxes and regulation;

(b) Title 7 DMMC, regarding health and sanitation, including without limitation regulations pertaining to solid waste disposal, noise, and junk vehicles;

(c) Title 12 DMMC relating to streets, sidewalks and public places, including without limitation the City's right-of-way use code;

(d) Title 14 DMMC, the City's building and construction code;

(e) Chapter 15.04 DMMC, the Des Moines harbor code, which includes without limitation all marina rules;

(f) Title 18 DMMC, the City's zoning code;

(g) Chapter 19.08 DMMC, regarding the City's park use regulations;

(h) All standards, regulations and procedures adopted pursuant to the above; and

(i) The terms and conditions of any lease, moorage agreement, contract, permit or approval issued by the City, or any concomitant agreement with the City.

(12) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(13) "Violation" means an act or omission contrary to a City regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Sec. 2. DMMC 1.28.030 and section 3 of Ordinance No. 1236 are each amended to read as follows:

Voluntary correction.

(1) **Applicability.** This section applies whenever the City Manager or designee determines that a violation of a regulation has occurred or is occurring.

(2) **General.** Where, in the judgment of the City Manager or designee, it might be beneficial in resolving a code violation, he/she will make a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation, explaining the violation and requesting correction.

(3) **Issuance of voluntary correction agreement.** A voluntary correction agreement may be entered into between the person responsible for the violation and the City, acting through the City Manager or designee.

(a) **Content.** The voluntary correction agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

(i) The name and address of the person responsible for the violation; and

(ii) The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(iii) A description of the violation and a reference to the provision(s) of the City ordinance or regulation which has been violated; and

(iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and

(v) An agreement by the person responsible for the violation that the City may abate the violation and recover its costs and expenses and a monetary penalty pursuant to this chapter from the person responsible for the violation if terms of the voluntary correction agreement are not met; and

(vi) An agreement that by entering into the voluntary correction agreement the person responsible for the violation waives the right to

an appeal of the violation and/or the required corrective action, except that an appeal may be pursued regarding compliance with any required corrective action to the ~~((municipal court judge))~~ Hearing Examiner.

(b) **Right to a hearing waived.** The person responsible for the violation waives the right to an appeal of the violation and the required corrective action upon entering into a voluntary correction agreement, except that an appeal may be pursued regarding compliance with any required corrective action to the ~~((municipal court judge))~~ Hearing Examiner.

(c) **Extension--Modification.** An extension of the time limit for correction or a modification of the required corrective action may be granted by the City Manager or designee if the person responsible for the violation has shown due diligence or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

(d) **Abatement by the City.** The City may abate the violation in accordance with this chapter if the terms of the voluntary correction agreement are not met.

(e) **Collection of costs.** If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, plus all costs and expenses of abatement.

Sec. 3. DMMC 1.28.040 and section 4 of Ordinance No. 1236 are amended to read as follows:

Notice of civil violation.

(1) **Issuance.** When the City Manager or designee determines that a violation has occurred or is occurring, the City Manager or designee may issue a notice of civil violation without having attempted to secure voluntary correction as provided in DMMC 1.28.030 under the following circumstances:

- (a) When an emergency exists; or
- (b) When a repeat violation occurs; or
- (c) When the violation creates a situation or condition which cannot be corrected; or
- (d) When the person knows or reasonably should have known that the action is in violation of a City regulation.

(2) **Content.** The notice of civil violation shall include the following:

- (a) The name and address of the person responsible for that violation; and
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- (c) A description of the violation and a reference to the provision(s) of the City regulation which has been violated; and
- (d) The required corrective action and a date and time by which the correction must be completed after which the City may abate the unlawful condition in accordance with this chapter or other applicable law; and

(e) The date, time and location by which an affected party may file an appeal before the ~~((municipal court judge))~~ Hearing Examiner; and

(f) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the City Manager or designee approves the completed, required corrective action at least 48 hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

(g) A statement that the costs and expenses of abatement incurred by the City pursuant to this chapter and a monetary penalty in an amount per day for each violation as specified in this chapter may be assessed against the person to whom the notice of civil violation is directed.

(3) **Service of notice.** The City Manager or designee shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

(4) **Extension.** No extension of the time specified in the notice of civil violation for

correction of the violation may be granted, except by order of the ((~~municipal court judge~~)) Hearing Examiner, or by written agreement of the City Manager or designee and the person responsible for the violation.

(5) **Monetary penalty.** The monetary penalty for each violation per day or portion thereof shall be as follows:

- (a) First day of each violation, \$100.00;
- (b) Second day of each violation, \$200.00;
- (c) Third day of each violation, \$300.00;
- (d) Fourth day of each violation, \$400.00;
- (e) Each additional day of each violation beyond four days, \$500.00 per day.

(6) **Continued duty to correct.** Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(7) **Collection of monetary penalty.**

(a) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the City within 10 calendar days from the date of service of the notice of violation. Service by mail shall be deemed complete upon the third day following the day upon which notice is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

(b) The City Attorney is authorized to take appropriate action to collect the monetary penalty.

Sec. 4. DMMC 1.28.050 and section 5 of Ordinance No. 1236 are each amended to read as follows:

Hearing before the ~~((municipal court judge))~~ Hearing Examiner.

(1) **Notice.** A person to whom a notice of civil violation is issued may appeal such notice to the ~~((municipal court judge))~~ Hearing Examiner within 10 calendar days after the notice of civil violation is issued.

(2) **Prior correction of violation.** Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the City Manager or designee approves the completed required corrective action at least 48 hours prior to the scheduled hearing or agrees to extend the time for correction of the violation as provided in DMMC 1.28.040.

(3) **Procedure.** The ~~((municipal court judge))~~ Hearing Examiner shall conduct a hearing on the civil violation pursuant to ~~((the local rules for the Des Moines municipal court))~~ the Des Moines Hearing Examiner code, chapter 18.94 DMMC. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the ~~((municipal court judge))~~ Hearing Examiner in determining the reasonableness of the required corrective action.

**(4) Decision of the ((~~municipal court judge~~))
Hearing Examiner.**

(a) The ((~~municipal court judge~~)) Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(b) The ((~~municipal court judge~~)) Hearing Examiner shall issue an order to the person responsible for the violation which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the provisions of this chapter;

(v) The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

(c) Assessment of monetary penalty. Monetary penalties assessed by the ((~~municipal court judge~~)) Hearing Examiner shall be in accordance with the monetary penalty schedule in DMMC 1.28.040(5).

(i) The ((~~municipal court judge~~))
Hearing Examiner shall have the following options
in assessing monetary penalties:

(A) Assess monetary penalties
beginning on the date the notice of civil
violation was issued and thereafter; or

(B) Assess monetary penalties
beginning on the correction date set by the
applicable department director or an alternate
correction date set by the ((~~municipal court judge~~))
Hearing Examiner and thereafter; or

(C) Assess no monetary penalties.

(ii) In determining the monetary
penalty assessment, the ((~~municipal court judge~~))
Hearing Examiner shall consider the following
factors:

(A) Whether the person responded
to staff attempts to contact the person and
cooperated with efforts to correct the violation;

(B) Whether the person failed to
appear at the hearing;

(C) Whether the violation was a
repeat violation;

(D) Whether the person showed due
diligence or substantial progress in correcting
the violation;

(E) Whether a genuine code
interpretation issue exists; and

(F) Any other relevant factors.

(iii) The ((~~municipal court judge~~))
Hearing Examiner may double the monetary penalty
schedule if the violation was a repeat violation.

(d) **Notice of decision.** The ((~~municipal court judge~~)) Hearing Examiner shall mail a copy of the decision to the appellant and to the applicable department director within 15 working days of the hearing.

(5) **Failure to appear.** If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the ((~~municipal court judge~~)) Hearing Examiner may enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the ((~~municipal court judge~~)) Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(6) **Monetary penalty.** The monetary penalty for a violation does not accrue pending the appeal, however, the ((~~municipal court judge~~)) Hearing Examiner may impose a daily monetary penalty from the date of service of the notice of civil violation if the ((~~judge~~)) Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance.

(7) **Appeal to Superior Court--Land Use Decision.** Judicial review of a land use decision, as defined in RCW 36.70C.020, made by the ((~~municipal court judge~~)) Hearing Examiner must be made pursuant to the provisions of the Land Use Petition Act, chapter 36.70C RCW.

Sec. 5. DMMC 1.28.060 and section 6 of Ordinance No. 1236 are each amended to read as follows:

Abatement by the City.

(1) The City may abate a condition which was caused by or continues to be a civil violation when:

(a) The terms of any voluntary correction agreement pursuant to this chapter have not been met; or

(b) A notice of civil violation has been issued pursuant to this chapter, the period for filing an appeal with the municipal court has expired, and the required correction has not been completed; or

(c) A notice of civil violation has been issued pursuant to this chapter, a timely appeal was filed, the appellant failed to appear at the scheduled hearing or the municipal court held an appeal hearing as provided in this chapter and the required correction has not been completed by the date specified by an order of the (~~municipal court judge~~) Hearing Examiner; or

(d) The condition is subject to summary abatement as provided for in this chapter or other specific provisions of City or state law(s).

(2) **Summary abatement.** Whenever a violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(3) **Authorized action by the City.** Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

(4) **Recovery of costs and expenses.** The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the City within 10 calendar days. The term "incidental expenses" includes but shall not be limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.

(5) **Interference.** No person shall obstruct, impede, or interfere with the City or its agents, or with any person who owns, or holds any interest or estate in any property, in performing any tasks necessary to correct the violation.

Sec. 6. DMMC 1.28.100 and section 10 of Ordinance No. 1236 are each amended to read as follows:

Meaning of terms. For the purposes of this code, whenever ~~(("civil infraction" and))~~ "civil penalty" ~~((are))~~ is used in any code, ordinance or regulation of the City, ~~((these terms))~~ the term shall be deemed to have the same meaning as ~~((the terms))~~ "civil violation" ~~((and "monetary penalty", respectively))~~, as used herein.

Sec. 7. DMMC 18.94.160 and section 16 of Ordinance No. 770 are each amended to read as follows:

Notice of hearing--Content. Each public notice required by this chapter shall contain at least the following information:

(1) The date, time, and place of the hearing, ~~((which shall be 7:30 p.m. on any Monday, Tuesday, or Wednesday))~~ as designated by the Hearing Examiner, except legal holidays, specified in DMMC 1.01.055;

(2) A legal description and common location description of the property;

(3) A description of the proposed action;

(4) A statement that any person may appear or be heard and that written comments will be accepted and made part of the record;

(5) A statement that the hearing will be held pursuant to the rules of procedure of the Hearing Examiner; and

(6) The name, address, and office telephone number of the person within the community development department or other city department from whom additional information may be obtained.

NEW SECTION. Sec. 8. 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. 9. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

Ordinanace No. ____
Page 17 of ____

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:03-116

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Administrative Land Use Hearings

FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: 1. Memo from Ted Hunter;
2. Chart;
3. Agenda Item from 5/8/03;
4. Draft Ordinance No. 03-116.

DATE SUBMITTED: May 14, 2003

CLEARANCES:
☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

Draft Ordinance No. 03-116 was presented to Council at its May 8, 2003 meeting, at which time the Council moved to pass Draft Ordinance No. 03-116 to a second reading.

MOTION: "I move to enact Draft Ordinance No. 03-116 substantially in the form as attached on second reading, amending the City's administrative land use hearing process."

DISCUSSION

In addition to the materials previously submitted, the following information is submitted for Council consideration of this item:

1. Memorandum from Hearing Examiner Ted Hunter concerning administrative hearings and civil violation process in the City of Kent.
2. Chart prepared by the City Attorney showing procedures for various hearings.
3. Brief oral presentation by Des Moines Code Enforcement Officer Nancy Uhrich.
4. Brief oral presentation by Kent Code Enforcement Officer Brian Swanberg.

CONCURRENCE

Des Moines Municipal Court, the Department of Community Development, and the City Manager all concur with this recommendation to improve the efficiency and expertise of the City's land use hearing process.

DRAFTORD:ag03-116-2ND

AGENDA ITEM

*passed
6-0*

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution NO. 03-145
Authorizing the 2003 "Fireworks Over Des
Moines" on July 4, 2003 at the Des Moines
Marina.

ATTACHMENTS:
Draft Resolution NO. 03-145

FOR AGENDA OF: May 22, 2003
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: May 12, 2003
CLEARANCES:

☒ Marina

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AP*

A. Purpose & Recommendation

The purpose of this item is to seek Council approval of Draft Resolution NO. 03-145 that would authorize the third annual "Fireworks Over Des Moines" on July 4, 2003. This event is sponsored by private individuals and local service organizations and would be held at the Des Moines Marina the afternoon and evening of July 4, 2003.

MOTION: "I move to adopt Draft Resolution No. 03-145, authorizing the 2003 'Fireworks Over Des Moines' event on July 4, 2003, at the Des Moines Marina."

B. Background

For the last two years, Cliff Hanna, a Des Moines resident who resides in the Redondo community, has organized a small fireworks display for the Fourth of July holiday. This year, as in the past, Mr. Hanna will fund the Fourth of July fireworks display by seeking donations from private individuals, businesses and service organizations in the Des Moines area. The last two shows were successful, drawing crowds of two to three thousand people.

C. Discussion

The fireworks display would take place in the Marina. The fireworks would be discharged from the Public Fishing Pier, and people can watch the display from the North Parking Lot or the Beach Park. Setting up for the event starts about noon on the Fourth, and the show usually starts at about 10:00 pm. Set up involves placing several yards of sand on the Pier to act as a base for the fireworks, setting up signage and bringing in some portable toilets. Last year, two or three food vendors also participated. The vendors set up near the public launch in the center of the

operations. As a precaution, the public launch was closed one hour earlier than usual, and the Marina staff put up signs to direct vehicle and pedestrian traffic. The Marina staff anticipates doing the same for this years event. The Police Department will provide some Officers for traffic control and the Parks Department will put out extra litter barrels. The event organizers also need to get a permit from Fire District NO. 26 for the actual fireworks display. The Fire Department inspects and monitors the set up and discharge of the fireworks. Fire District NO. 26 also sends the fire/rescue boat out to patrol the area around the pier and keep boaters from getting too close.

D. Alternatives

Alternative 1. Pass Draft Resolution NO. 03-145 authorizing the 2003 "Fireworks Over Des Moines" display.

Alternative 2. Pass Draft Resolution NO. 03-145 with modifications or additional conditions.

Alternative 3. Do not pass Draft Resolution NO. 03-145.

E. Financial Impact

As with last year, the organizers of the Fourth of July fireworks event will pay for the cost of the fireworks display, the portable toilets and the police officers needed for traffic and crowd control. Last year the direct cost for the police officers was \$1200. The Parks Maintenance staff will set the Pier up for the fireworks and provide four summer workers for litter patrol during the show. The Marina staff will also provide some staff to clean up and monitor the restrooms. The staff estimates the cost of the City's support to be about \$1000. The organizers are also required to purchase event insurance from WCIA.

F. Recommendation

The staff recommends that the Council adopt Draft Resolution 03-145 as presented.

G. Concurrence

The City Attorney, the Police Department and the Parks and Recreation Department concur with this recommendation.

CITY ATTORNEY'S FIRST DRAFT 05/14/03

DRAFT RESOLUTION NO. 03-145

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the 2003 "Fireworks Over Des Moines" fireworks event on July 4, 2003 at the Des Moines Marina and Fishing Pier, and listing conditions under which such permission is granted.

WHEREAS, the City Council finds that "Fireworks Over Des Moines," an annual community fireworks event begun in 2001, enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, the City of Des Moines wishes to permit the "Fireworks Over Des Moines" event while at the same time being held harmless from any liability arising from the existence of such fireworks display activities; now therefore,

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

Sec. 1. Permission to conduct the 2003 "Fireworks Over Des Moines" fireworks display on July 4, 2003 is granted, subject to the following conditions:

(1) "Fireworks Over Des Moines" shall defend and hold harmless the City of Des Moines from any liability which may result from the conduct of the "Fireworks Over Des Moines" event or its activities.

(2) "Fireworks Over Des Moines" shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as an additional named insured. Proof of such insurance must be delivered to the City ten (10) days prior to the event.

(3) "Fireworks Over Des Moines" shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. All such signage must be removed within ten (10) days after July 4, 2003.

(4) Normal fees for conduct of a community event shall be waived where possible, excepting those fees required by another

governmental agency, provided the event subject to such permit or fee is fully sanctioned by "Fireworks Over Des Moines" and complies with all necessary requirements including health regulations.

(5) "Fireworks Over Des Moines" shall acknowledge in writing its responsibilities for the conduct of the 4th of July fireworks display activities accepting such limitations as are contained in this resolution in addition to such limitations as may be imposed by the City Council or City Manager, including but not limited to:

(a) "Fireworks Over Des Moines" will take whatever measures are necessary to prevent damage to City facilities, and will be financially liable for any damage that may occur.

(b) Setup may begin at 12:00 noon on July 4, 2003, with fireworks beginning at 10:00 p.m.

(c) A Des Moines Police Department command officer will have the authority to close the event down should it be necessary following assessment of any security issues.

(d) "Fireworks Over Des Moines" will not have associated retail sales of food or merchandise. If mobile concessionaires or vendors are present during this event, these concessionaires or vendors will be subject to the City's Mobile and Itinerant Vendor Code, chapter 5.57 DMMC.

(e) "Fireworks Over Des Moines" will reimburse the City directly for any reasonable Police services.

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to "Fireworks Over Des Moines" to use and occupy, for the purpose of the 4th of July fireworks display, City facilities and property, including, but not limited to, the Des Moines Marina, City parks, and public rights-of-way.

Sec. 3. The City Manager is directed and authorized to issue to "Fireworks Over Des Moines," without cost, a right-of-way use permit for the fireworks event.

Resolution No. ____
Page 3 of ____

Sec. 4. The City Manager is authorized to provide City assistance to the "Fireworks Over Des Moines" event, which may include, without limitation, services by the Police, Public Works, Parks, and Marina departments. The City Manager shall provide a report to the City Council on services provided and costs thereof. Police Department services shall be subject to reimbursement as required in Section 1(5)(e).

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-145

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Jail Services

ATTACHMENTS:
Interlocal Agreement between City of Fife and
the City of Des Moines for Jail Services

FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Municipal Court

DATE SUBMITTED: May 12, 2003

CLEARANCES:
☒ Legal L. Am
☒ Municipal Court [Signature]

APPROVED BY CITY MANAGER [Signature]

FOR SUBMITTAL: [Signature]

PURPOSE AND RECOMMENDED ACTION

The purpose of this agenda item is to request approval of an interlocal agreement between City of Fife and City of Des Moines for jail services.

The following motion will appear on the Consent Calendar:

"I move to approve the Interlocal agreement with City of Fife for jail services and to authorize the City Manager to sign the agreement substantially in the form as submitted."

BACKGROUND

In the past, the standard procedure for a 1-2 day court commitments has been for the person to turn themselves into the King County Jail. King County has given the cities notice that in ten years they would like to phase out jail services for misdemeanor type cases. The Municipal Court has been looking at other alternatives and jail facilities to accommodate the short-term commitments.

DISCUSSION

The Court Administrator has contacted three jail facilities, City of Puyallup, City of Enumclaw, and City of Fife for short-term court commitments. These commitments are one to two day commitments, i.e. DUI and or Possession of Drug paraphernalia type of charges. City of Puyallup is no longer offering jail services for outside agencies. City of Enumclaw charges \$50 a day for jail services, they have some bed

space available, but could only serve on a first come first serve basis. City of Fife charges \$65 a day for jail services and is willing to accept advance reservation for short-term court commitments. Unfortunately this is only possible for male inmates, since we already have a jail services contract with the City of Enumclaw we will be using their facility for short-term female court commitments.

ALTERNATIVE

Continue using King County Jail facility at a higher rate of pay.

FINANCIAL IMPACT

For a one day court commitment, it costs \$239.27 to serve their commitment at the King County Jail, with this new contract the costs is \$65 for a one day court commitment. This is a \$175 savings for jail services.

RECOMMENDATION (OR CONCLUSION)

Enter the Interlocal agreement between City of Fife and City of Des Moines for jail services.

JAIL SERVICES AGREEMENT
Between
City of Fife and City of Des Moines

1. **Date and Parties.** This Agreement, for reference purposes only, is dated the 23rd day of May, 2003, and is entered into by and between the City of Fife, hereinafter referred to as "FIFE", and the City of Des Moines, hereinafter referred to as "DES MOINES", under and pursuant to the provisions of Chapter 70.48.090 of the Revised Code of Washington. This Agreement supersedes any prior agreements entered into between the parties herein with regard to the terms and provisions set forth below.

2. **Authority.** This agreement is entered into by the parties hereto under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Cities and Counties Jails Act, Chapter 70.48 RCW. Fife is authorized to execute this agreement by the terms of Fife Resolution Number 726. Des Moines is authorized to enter into this agreement by action taken by its governing body on the 22nd day of May, 2003.

3. **General Recitals.** Fife currently owns and operates a jail (the "Jail"). In order to assist other jurisdictions with their jail needs Fife is willing to house Des Moines prisoners upon the terms and conditions set forth herein.

4. **Services to be Provided.** Fife will furnish its facilities and personnel for the confinement of Des Moines prisoners in the same manner and to the same extent as Fife furnishes said services for confinement of its own prisoners. The Jail shall be operated in accordance with the Standards of Operating Procedures (SOP) enacted by Fife. A copy of the SOP will be made available to Des Moines upon request. A prisoner shall become the responsibility of Fife at the point that the prisoner is booked into the Jail.

5. **Prisoner Release.** Fife will not release a prisoner from the Fife jail, except at the end of the commitment term provided in the commitment order received at the time of booking, unless he is released to a Des Moines police officer, or unless a court order is received mandating the release. Fife may utilize the prisoner on work details where the prisoner remains under the direct supervision of a corrections officer. Fife may remove the prisoner for medical, dental, or mental health care services, under the provisions of Paragraph 8, or in the case of an emergency condition presenting an eminent danger to the safety of the prisoner, prison population, or Fife personnel. In the event of such emergency removal Fife shall inform Des Moines of the prisoner's location at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of the prisoner. Provided, however, if the prisoner requires hospitalization, then Fife may request that Des Moines provide security for the prisoner during the time of hospitalization.

6. **Term.** The term shall commence on the date of this Agreement, and continue until December 31, 2010. Provided, however, either party may terminate this agreement at any time without penalty, by giving the other party written notice of termination at least 90 days prior to the proposed termination date. Early termination shall not affect either parties' obligations regarding payment for services, accounting, and defense and indemnity, for services provided, and obligations incurred prior to the termination date.

7. **Amendments.** This agreement may be amended in writing at any time by mutual consent of the parties hereto and such amendments shall take effect immediately. In the event of any conflict between the provisions of this agreement and the provisions of the amendment, the provisions of the amendment shall control.

8. **Bed Space Availability.** Fife provides Jail space on a space-available basis. This agreement does not provide for guaranteed bed space. Fife shall have sole and unfettered discretion in determining whether or not space is available. No prisoner may be housed in the Fife jail for a longer period of time than is authorized by state law. Fife reserves the right to refuse to accept a prisoner, or to continue to house a prisoner if the prisoner, in the opinion of Fife personnel, has an illness or injury which may adversely affect Jail operations, presents a substantial risk of escape, or is a threat to the safety or general welfare of Fife personnel or other prisoners. If Fife requests that a prisoner be removed then Des Moines shall remove the prisoner within one hour after being notified that the prisoner must be removed.

9. **Health Care.**

A. Fife will be responsible for arranging for such medical, mental and dental treatment for prisoners as may be necessary to safeguard the prisoners' health while housed in the Jail. Fife does not have medical health care workers on staff, thus, Fife will arrange for all medical health care services to be provided by contract with an outside agency. Des Moines shall be responsible for all medical, dental or mental health costs incurred by or on behalf of a Des Moines prisoner, including but not limited to prescriptions, appliances, supplies, emergency transport, hospitalization and health care professional service charges.

B. If Fife becomes aware that a Des Moines prisoner is in need of medical health care requiring the assistance of a medical health care services provider, then Fife shall make reasonable effort to notify Des Moines prior to obtaining said service. If Des Moines is contacted and does not authorize Fife to obtain the service, then Des Moines shall within one hour pick up the prisoner from the Jail. Provided, in the case of emergency, Fife may notify Des Moines after the service has been provided.

C. Upon payment to Fife by Des Moines for the prisoner's health care expense, Fife will assign to Des Moines, if requested by Des Moines, any and all right to reimbursement for medical expenses authorized under RCW 70.48.130.

D. Fife shall keep adequate record of all services provided under the terms of this paragraph and will allow Des Moines to review those records upon request.

10. **Cost for Services.** Des Moines shall pay to Fife, within 30 days of being invoiced by Fife, the cost for housing and providing health care to a Des Moines prisoner. The cost for housing a Des Moines prisoner shall be \$65.00 per day, or any portion thereof. A day shall be a calendar day. This rate may be increased from time to time by Fife providing written notice to Des Moines at least 90 days before the effective date of the proposed increase.

11. **Accounting.** Fife shall provide a monthly summary to the appropriate officers of Des Moines, setting forth in detail the number of prisoner days and number of bookings for which Des Moines was responsible in the preceding month, including the prisoners and the costs incurred for each prisoner pursuant to the terms of this agreement. Des Moines, upon reasonable notice and during regular business hours, shall have the right to review all books of accounts, dockets, and records of Fife pertaining to the confinement of Des Moines prisoners.

12. **Defense and Indemnity Agreement.**

A. Fife agrees to indemnify and hold Des Moines harmless, including attorneys fees and other costs of defense, from any and all claims, of whatsoever kind or nature, arising from acts or omissions of Fife, its officers, or employees in operating the Jail, provided said claim does not arise out of or in any way result from any intentional, willful or negligent act or omission on the part of Des Moines or any officer, agent or employee thereof.

B. Des Moines agrees to indemnify and hold Fife harmless, including attorneys fees and other costs of defense, from any and all claims, of whatsoever kind or nature, arising from acts or omissions of Des Moines, its officers, or employees, including, but not limited to claims alleging false imprisonment for any Des Moines prisoner, unless said claim for false imprisonment arises for imprisonment after Fife has been directed by Des Moines to release a Des Moines prisoner and Fife fails to do so.

13. **Insurance.** Each party shall provide the other, upon request, with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement. Each party shall maintain coverage with minimum liability limits of two million dollars (\$2,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for its liability, errors and omissions, motor vehicle liability and police professional liability. The insurance policy, or insurance pool agreement shall provide for coverage on a "per occurrence" basis.

14. **Remedies.** No waiver of any right under this agreement shall be effective unless made in writing by the authorized representative of the parties to be bound thereby. Failure to assist upon full performance on any one or several occasions does not constitute consent to or waiver of any later non-performance, nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto.

Disputes shall be referred to the Fife City Manager and Des Moines's Chief Executive Officer for mediation and/or settlement. If not resolved by them within sixty (60) days, either party may apply to the presiding Judge of the Superior Court of Pierce County,

Washington, for appointment of a conciliator. The Conciliator shall assume the functions of an arbitrator of the dispute after a reasonable effort at conciliation fails, should the amount involved in the dispute and application of the principle at issue in future years entail expenditures or appropriations of One Hundred Thousand Dollars (\$100,000) or less. Each party shall pay one-half (1/2) of a conciliator's fee and expenses.

15. **Written Notices.** All Notices required by this Agreement shall be considered properly delivered (1) when personally delivered, or (2) when transmitted by facsimile showing date and time of transmittal, or (3) on the day following mailing, postage prepaid, certified mail, return receipt requested, or (4) one (1) day after depositing in overnight carrier, e.g. Federal Express to:

FIFE: City Manager Bill Malinen
City of Fife
5411 23rd Street East
Fife, WA 98424

With a copy to: Chief of Police
City of Fife
3737 Pacific Highway East
Fife, WA 98424

Loren D. Combs
McGavick Graves, P.S.
P.O. Box 1317
Tacoma, WA 98401-1317

DES MOINES: Tony Piasecki, City Manager
City of Des Moines
21630 11th Ave South
Des Moines, WA 98198

16. **Entire Agreement.** This agreement constitutes the entire agreement between the parties and represents the entire understanding of the parties hereto. It supersedes any oral representations that are inconsistent with or modify its terms and conditions.

17. **Invalid Provisions.** Should any provisions of this agreement be held invalid, the remainder of the agreement shall remain in effect.

18. **Governing Law.** Except where expressly provided otherwise, the laws and administrative rules of the State of Washington shall govern in any matter relating to a prisoner's confinement pursuant to this Agreement. Jurisdiction and venue shall be in Pierce County Superior Court.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the
____ day of _____, 200__.

FIFE

DES MOINES

City Manager

City Manager

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Linda Marousek, City Attorney

LIDA

AMENDED

Executive Session - 6:30 p.m. Real Estate & Litigation

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
May 22, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

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

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

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

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

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

Payroll fund transfers in the total amount of \$

3. Draft Resolution No. 03-125 - Title: A Resolution of the City Council of the City of Des Moines, Washington, setting the time, date and place of the final assessment roll hearing for Local Improvement District No. 1-97-9.

MOTION is to approve Draft Resolution No. 03-125 setting a Public Hearing for LID 1-97-9 on June 26, 2003.

4. Motion is to approve the Interlocal Agreement with City of Fife for jail services and to authorize the City Manager to sign the 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. 02-2-19399-4 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.

6. Motion is to approve the Contract with Rakoz Electric in the amount up to \$25,980.38 plus tax, and authorize the City Manager to sign the contract substantially in the form as submitted. Ad 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.

OLD BUSINESS

1. Interview of Finalists for Vacant, Unexpired Council Position #2 and Potential Selection of Candidate to Fill Position

2. Draft Ordinance No. 02-264 Traffic Impact Fees - 2nd Reading

SUMMARY: The draft ordinance has been discussed at several past Council meetings. The Council Public Safety & Transportation Committee has reviewed the funding level and after careful consideration recommended a phased-in rate. At the April 3rd Council meeting other possible amendments were suggested for consideration. The draft ordinance, when adopted, will establish a transportation impact fee service area, impose impact fees to finance part of the costs of improvements to serve new development, provide disposition of such impact fees and establish an appeal process.

3. Draft Ordinance No. 03-116 Administrative Land Use Hearings - 2nd Reading

SUMMARY: The draft ordinance was presented to council at its May 8, 2003 meeting, at which time the draft ordinance was passed to a 2nd reading. Staff will present the following additional information: 1) Memorandum from Hearing Examiner Ted Hunter concerning administrative hearings and civil violation process in the City of Kent, 2) Chart prepared by the City Attorney showing procedures for various hearings, 3) Brief oral presentation by Des Moines Code Enforcement Officer Nancy Uhrich, and 4) Brief oral presentation by Kent Code Enforcement Officer Brian Swanberg.

NEW BUSINESS

1. Draft Resolution No. 03-145 Authorizing the 2003 Fireworks Over Des Moines, July 4th

SUMMARY: The purpose of this item is to seek Council approval of the draft resolution that would authorize the 3rd annual "Fireworks Over Des Moines" on July 4, 2003. This event is sponsored by private individuals and local services organizations and would be held at the Des Moines Marina the afternoon and evening of July 4, 2003.

2. Draft Ordinance No. 03-075 Right-of-way & Park Use Permits - 1st Reading

SUMMARY: This report is to present, for Council consideration, Draft Ordinance No. 03-075, which has been prepared in part at the direction of the City Council late last fall and in part at the recent request of 3 members of the Council. The draft ordinance establishes policy, guidelines and approval procedures for City right-of-way and City park special use permits and amends DMMC chapters 12.04 and 19.08.

NEXT MEETING DATE - Study Session June 5, 2003

ADJOURNMENT

AGENDA ITEM

**BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA**

SUBJECT: Steven J. Underwood
Memorial Park Phase One-
Electrical Contract

ATTACHMENTS:

- A. Draft Contract between the City of Des Moines and Rakoz Electric
- B. 2003-2004 Capital Improvement Plan (prior years)
- C. Electrical Installation Bid Tabulation

FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: May 13, 2003

CLEARANCES:

- ☒ Parks & Recreation Director
- ☒ City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:

Administration recommends approval of the contract with Rakoz Electric to provide installation of electrical service at Steven J. Underwood Memorial Park.

Motion: "I move to approve the Contract with Rakoz Electric in the amount of up to \$25,980.38 plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders in amounts not to exceed 10% in total."

Background:

Steven J. Underwood Memorial Park Phase One construction is now near completion. The majority of construction was bid out to a general contractor, this includes site earthwork, erosion control, installation of water, sanitary and storm utilities, paving and concrete work needed for two softball fields, parking lot, and infrastructure to provide for water, sewer and storm detention for full build out of the park including the Activity Center and proposed Community Center site. During the design phase of Steven J. Underwood Memorial Park specific project construction elements were identified to be managed by the city to save up to 30% contractor mark up fees. Electrical service installation was planned to be bid out as a separate project and supervised by the Park Manager.

Discussion:

The construction contractor hired for Steven J. Underwood Memorial Park Phase I Part A and Part B installed all of the underground conduits for the project. That contract did not include electrical service to the site, installation of vaults, hand holes, wire and above ground electrical equipment.

The \$25,980.38 bid amount includes the following installation work: furnishing and installing electrical and telephone service to the site, panels, dry type transformers, disconnects, wiring, receptacles, equipment mounting hardware, concrete vaults, hand hole and all wiring in conduit runs identified in the project scope of work.

The city received three bids by electrical contractors for the work (see Attachment C). Rakoz Electric submitted the lowest and best bid for the project.

Alternatives:

None Provided

Financial Impact:

The electrical contract is part of the Steven J. Underwood Memorial Park Phase One project scope of work budgeted in the 2002 Capital Improvement Plan.

Recommendation/Conclusion:

Staff recommends approval of the electrical construction contract.

Concurrence

This project went through a review process with city permitting personnel from the Building Department.

DRAFT
AGREEMENT BETWEEN THE CITY OF DES MOINES AND RAKOZ ELECTRIC

THIS AGREEMENT, entered into as of this 23rd day of May, 2003 is by and between the CITY OF DES MOINES, a Washington municipal corporation, hereinafter referred to as the "City," and Rakoz Electric, here in after referred to as the "Contractor."

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

1. Purpose. The purpose of this Agreement is to retain Contractor to facilitate the electrical installation at Steven J. Underwood Memorial Park.

2. Scope of Work and Contract Documents. Contractor agrees to furnish all materials, labor, and other incidentals and to perform all services and work as described in this Agreement and the Contract Documents which consist of this Agreement, the Bid Schedule of Work identified as Exhibit "A", bid specifications and plans identified as Exhibit "B", the bid proposal submitted by Rakoz Electric dated May 9, 2003, and all State, County, and Municipal regulations for construction.

3. Project Schedule. Contractor agrees to complete all work as provided in this Agreement according to the attached Project Schedule, provided, however, that the parties may, in a written amendment signed by the parties, agree to modify the schedule as conditions require. Contractor to begin work on Monday, June 2, 2003

4. Compensation. In consideration for the complete and faithful performance of all work and services rendered under this Agreement, the Contractor shall be paid not more than \$25,980.38 plus WSST sales tax. Such payment shall be full compensation for work, services, labor, materials, supplies, equipment, and all other things necessary to complete the attached Bid Schedule. The Contractor shall be entitled to receive full payment upon receipt of written notice from the City's designated project manager that all work has been performed to the satisfaction of the City. The City agrees that notification of satisfactory work shall not be unreasonably withheld.

5. Insurance. The Contractor shall secure and maintain in force throughout the duration of this Agreement, insurance coverage sufficient to satisfy the following minimums:

Comprehensive General Liability:	\$1,000,000 combined single limit per occurrence \$1,000,000 aggregate
Automobile:	\$1,000,000 single limit.

Contractor's general liability policy shall name the City of Des Moines as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage, as set forth in this section shall be delivered to the City within fifteen (15) days of execution of this Agreement.

6. Performance Standards. Contractor's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance, and consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

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

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

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

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

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

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

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

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

15. Time of Essence. The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule as attached hereto. The City understands, however, that the Contractor's performance must be governed by sound professional practices. Project to be completed within 45 calendar days.

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

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

CITY OF DES MOINES

RAKOZ ELECTRIC

By _____
Tony Piasecki
City Manager
Dated _____

By _____
Randy Rakoz
Owner
Dated _____

APPROVED AS TO FORM:

Linda Marousek
City Attorney

Exhibit A
Schedule of Work

1. Provide and install Panel P1 and Panel P2
2. Provide and install 1-30 KVA dry transformer
3. Provide 2-GFCI receptacles below panels
4. Provide and install concrete vaults V1,V2,V5,V6,V7
5. Provide wire and devices for 3 field receptacles as indicated on drawings
6. Provide concession stand pedestal
7. PSE to provide primary service to site
8. Conduits for project used are to be existing - any extras to be on a t&m basis
9. Plastic hand holes to be provided and installed @\$175.00 each

ATTACHMENT B

CAPITAL IMPROVEMENT PLAN REQUEST FORM

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

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					
Contingency	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

ATTACHMENT C

#	ITEM DESCRIPTION	RAKOZ ELECTRIC TOTAL PRICE	CLOVER CREEK ELECTRIC TOTAL PRICE	AULT ELECTRIC CO. TOTAL PRICE
	Base Bid	\$25,980.38	\$26,267.00	\$38,114.00
	Subtotal Base Bid	\$25,980.38	\$26,267.00	\$38,114.00
	Sales Tax (8.8%)	\$2,286.27	\$2,311.50	\$3,354.03
	Total Base Bid	\$28,266.65	\$28,578.50	\$41,468.03

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

The special meeting of the Des Moines City Council was called to order at 6:44 p.m. by Mayor Steenrod in the City Hall Conference Room, 21630 11th Avenue South, Suite A.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Also in attendance were City Manager Tony Piasecki and Assistant City Manager Corbitt Loch.

Mayor Steenrod announced that the Council would hold an Executive Session for approximately 20 minutes to evaluate the qualifications of candidates for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public.

No formal action was taken.

ADJOURNMENT

The Executive Session adjourned at 6:57 p.m.

Respectfully submitted,

Corbitt Loch
Assistant City Manager

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

May 1, 2003

The regular study session of the Des Moines City Council was called to order at 7:00 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 Thomasson.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch and City Clerk Denis Staab.

DISCUSSION ITEMS:

Council Candidate Interview Process

Mayor Steenrod read Council Rule 33 into the record as follows: "If a vacancy occurs in the office of Councilmember, the Council will follow the procedures outlined in RCW 35A.13.020. In order to fill the vacancy with the most qualified person available until an election is held, the Council will widely distribute and publish a notice of the vacancy, the procedure and any application form for applying. The Council will draw up an application form which contains relevant information to answer set questions posed by the Council. The application forms will be used in conjunction with an interview of each candidate to aid the Council's selection of the new Councilmember."

After a brief discussion, it was determined the following interview process will be followed:

- Each candidate will be given 3 minutes to introduce themselves.
- Each Councilmember will be allowed to ask one question, in rotating order, and the applicant shall have a 2 minute time limit to respond to the question.
- In deference to being former Councilmembers and their experience in addressing the Council, Dave Kaplan and Dan Sherman will be interviewed first followed by the other candidates in alphabetical order.

It was also determined that after all interviews have been concluded, Council will hold an Executive Session (date to be determined) to evaluate the candidates and narrow the applicants for further interviews at another open Council meeting.

Draft Resolution No. 03-088 2003 Waterland Festival

Ed Coumou, past President of the Chamber of Commerce, addressed Council advising that Chamber members met with City staff earlier in the week to discuss measures to help reduce the cost to the City in conducting the Waterland Festival. He informed Council that the Chamber has agreed to do their own litter pick-up which should result in a savings to the City around \$6,000. He noted that the main goal is to have a successful Festival to raise funds for year-round Chamber activities. He advised that a reduction in hours of operation is possible, but not by much, as most activity at the Festival occurs after 9 p.m. He reminded Council that the Chamber has negotiated in good faith with the condo owners. He advised that in the last 43 years of the Festival there have been minimal problems. He stated that the Chamber began negotiations and signing of contracts in January so event planning must move forward now or

not at all. In regards to cutting out the beer garden, he informed Council that there has been no outcry from the public and no complaints from the City's Police department. He concluded by stating that he felt it was unfair that only the Chamber was being asked to be more efficient and not the City.

Upon questioning by Mayor Pro Tem Benjamin, Mr. Coumou stated that the City Manager indicated during the earlier meeting that City staff were reviewing the option of the City running Waterland.

City Manager Piasecki stated that he did not indicate that the City was working to take over Waterland. He noted he felt there was a possibility that Council may not approve the Festival and in anticipation of that, he requested staff look at possibilities of what the City could do in the event that Council asked for such information. He reiterated there was no attempt by City Administration to assume responsibility for Waterland.

Mr. Coumou also noted that the City's Finance Director was invited to look over the Chambers' financial records.

Mayor Pro Tem Benjamin reported that it appears that costs could be reduced by using other security than Des Moines Police officers. However he felt that it is the City's responsibility to provide citizens essential services, which includes security at Waterland.

Councilmember White remarked that there is a need to trim all expenses city-wide. She felt that if the Festival is truly a family event, there is no need for a beer garden, and security costs could be reduced accordingly.

Mr. Coumou stated that he has been advised by the Police Department that eliminating the beer garden would not make any impact on Police costs.

City Manager Piasecki remarked that staff time is also spent in helping to set-up, clean-up and install and remove parade day barricades. He stated that he has requested staff to review ways to reduce costs and has asked the Police Department to use more reserve officers when possible. However, he informed Council that the reserve police staff has decreased in recent times.

Councilmember Thomasson noted that Council did not want to see the Chambers' entire financial records, but only requested a detail of the expenses and revenues as related to Waterland. He advised that he has asked staff to prepare an alternative resolution, Draft Resolution No. 03-088-B.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to approve Draft Resolution No. 03-088-B.

Councilmember Thomasson detailed the changes in the new draft as follows:

- Page 2, (6)(c) - Hours of operation reduced from Midnight to 10 p.m. on Wednesday, from 11 p.m. to 9 p.m. on Thursday, Friday & Saturday.
- Page 3 (6)(d) - There shall be no Waterland Pub or other beer garden.
- Page 3 (6)(g) - Requiring \$10,000 payment towards police security and any remaining sum to be paid directly to the City.
- Page 3 (6)(j) - Provision for a walking path outside fenced festival area.

Mayor Pro Tem Benjamin stated that he could see no reason not to have a beer garden. He felt it is well-run and presents no problems. He further felt it hypocritical to not allow the beer garden when the City is holding a sports auction where alcohol will be served. He also noted that some Councilmembers are willing to spend \$150,000 to fight the 3rd runway, but not to fund security for a community event.

Councilmember Petersen stated that he felt it is a little late for Council to start changing the Festival, noting that the Chamber already has signed contracts for various activities. He felt the Chamber should be allowed to conduct the Festival under the original resolution and plan to address the issues in detail with Council early next year.

MOTION was made by Councilmember Petersen, seconded by Mayor Pro Tem Benjamin, to replace Draft Resolution No. 03-088-B, with the original Draft Resolution No. 03-088.

Councilmember Thomasson stated that the last several years Council has asked the Chamber to come sooner with their Festival plans. He noted that it is a historical fact that for the past five years he has raised the question over the need for a beer garden at a family oriented event. He further stated that the upcoming Sports Auction is sponsored by the Legacy Foundation a private group, and they are not asking for the Police Department to provide security. Without the Chamber providing any financial details he is reluctant to approve the original resolution. He stated that shorter hours will save on Police costs.

Councilmember Sheckler remarked that the late hour of negotiation is not the City's fault. If the Chamber proposes to use City property, they must obtain the City's permission. He questioned Mr. Coumou as to why the Chamber has not furnished the Council with a revenue and expense record of the Festival as requested.

Mr. Coumou stated that the Chamber is a private company and it is not appropriate to set precedent by allowing the financial records of the Chamber to be reviewed for political reasons. He reminded Council that the Chamber had only been asked to request permission to conduct the Festival 90 days in advance.

Mayor Steenrod commented that not allowing a beer garden is a major change to the Festival. She advised that she has helped with children's day at the Festival. The activities have been held next to the beer gardens and she has never seen a problem. She felt that elimination of the beer garden would create a significant reduction in the Chamber's revenues from the Festival.

She requested that the draft resolution also include the language to ensure a walking path and an additional sub-section to require that the Chamber furnish the Council with a detailed expense and revenue sheet within 90 days of the conclusion of the Festival. This was accepted as a FRIENDLY AMENDMENT.

VOTE ON MOTION: Motion failed 3 to 3 with Councilmembers Sheckler, Thomasson and White voting NO.

A FRIENDLY AMENDMENT was accepted to amend Draft Resolution No. 03-088-B to change the closing hours on Thursday, Friday and Saturday from 9 p.m. to 10 p.m.

VOTE ON MOTION: Motion failed 3 to 3 with Councilmember Petersen, Mayor Pro Tem Benjamin and Mayor Steenrod voting NO.

MOTION was made by Mayor Steenrod, seconded by Mayor Pro Tem Benjamin, to direct the City Manager to look into the City sponsoring Waterland. Motion failed unanimously.

8:18 p.m. Mayor Steenrod called for a 12 minute break.

Interviews of Candidates for Vacant, Unexpired Council Position #2

Mayor Steenrod thanked the candidates for their time and effort involved regarding their interest to be appointed to the vacant Council seat.

The following individuals, in the order listed, were given 3 minutes for an introductory statement and then were interviewed by Councilmembers:

Dave Kaplan
Dan Sherman
Rob Back
Gary Kennedy
William Kennedy
James Kenney

At 9:30 p.m. Mayor Steenrod called for a 10 minute break.

Edwina Martin-Arnold
Scott McCarty
J. Scott McFarlane
Dave Petrie
Brenda Siegrist
Thomas Sitterley

At 10:25 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Petersen and passed unanimously, to extend the meeting until 11 p.m.

Michael Spear

[ED NOTE: James Sundin who had applied, was not available to be interviewed and later formally withdrew his application.]

NEXT MEETING DATE

Mayor Steenrod advised that the next regular meeting will be May 8, 2003.

ADJOURNMENT

At 10:46 p.m. **MOTION** was made by Councilmember White, seconded by Councilmember Thomasson and passed unanimously, to adjourn.

Respectfully Submitted,

Denis Staab, City Clerk

passed

AGENDA ITEM

SUBJECT: 4th Place Local Improvement
District (LID) 1-97-9 Public
Hearing.

ATTACHMENTS:
Draft Resolution 03-125

AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: April 16, 2003

CLEARANCES:

☒ Finance *ph*

☒ Public Works *Sam R...*

☒ Legal *R. S...*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation:

This draft resolution was presented and adopted on the April 24, 2003 Consent Calendar. That motion did not literally adopt the resolution itself; it only set the public hearing date. Draft Resolution No. 03-125 is being presented again in order to clarify the Council's intent to adopt the resolution and set the public hearing date.

Suggested Motion:

The following motion will appear on the Consent Calendar:

"I move to adopt Draft Resolution No. 03-125, setting the final assessment roll public hearing date for LID 1-97-9 on June 26, 2003."

CITY ATTORNEY'S FIRST DRAFT 04/16/03

DRAFT RESOLUTION NO. 03-125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, setting the time, date and place of the final assessment roll hearing for Local Improvement District No. 1-97-9.

WHEREAS, on June 12, 1997, the City Council adopted Resolution No. 830 declaring its intention to order the improvement by constructing a paved street within the 4th Place South right-of-way in the City of Des Moines, and

WHEREAS, on July 10, 1997, the City Council adopted Ordinance No. 1194 establishing Local Improvement District No. 1-97-9, and

WHEREAS, the public works director has determined the project complete and final costs for the improvement are available, and

WHEREAS, RCW 35.44.070 requires a public hearing on the final assessment role for the purpose of hearing objections, and

WHEREAS, RCW 35.44.090 requires that notice be given by mail to the owners or reputed owners of all lots, tracts, and parcels of land or other property benefiting from the improvement, and shown on the rolls of the County Assessor, and that such notice be given at least fifteen (15) days before the day fixed for the public hearing; now therefore,

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

Sec. 1. Pursuant to RCW 35.44.070 a public hearing is hereby scheduled for June 26, 2003 at 7:30 p.m., or as soon thereafter as the hearing may be held, in the Des Moines City Council Chambers, 21630 11th Avenue South, Des Moines, Washington 98198, to permit all persons who object to the final assessment of Local Improvement District 1-97-9 to appear and present their objections.

Sec 2. The City Clerk is hereby directed to publish this resolution in at least two (2) consecutive issues of the official newspaper of the City of Des Moines, the first

Resolution No. ____
Page 2 of ____

publication to be at least fifteen (15) days before June 26, 2003.

Sec 3. The City Clerk is hereby directed to give further notice by mailing a notice of the public hearing to the owners or reputed owners of all lots, tracts, and parcels of land or other property benefiting from the improvement, and shown on the rolls of the County Assessor, directed to the address thereon shown. Such notice shall include the final cost and be mailed at least fifteen (15) days before June 26, 2003.

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:03-125

5/12/03 10:57 AM

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific
Highway South Project
(C.H.E.F. Property)

ATTACHMENTS: Consent Judgment &
Decree of Appropriation

FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: May 13, 2003

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

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. 02-2-19399-4 KNT, which provides for acquisition by the City, for \$177,000.00, 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. 02-2-19399-4 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. 4,384.00 square feet) and a temporary construction easement (over approximately another 15,799 square feet) for a total of \$177,000.00 including attorney fees and appraisal fees.

ALTERNATIVES

This agreed settlement is based upon the City's most recent appraisal for the land taken, the cost to cure the damages from the loss of parking stalls, additional landscaping, impact to the business during construction, expert appraisal and traffic engineering fees and attorney fees. The only alternative is a court trial which, in staff's opinion, would likely result in more cost to the City.

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.

Case No: 02-2-19399-4 KNT

Consent Judgment and
Decree of Appropriation

COMPREHENSIVE HEALTH EDUCATION
FOUNDATION, a Washington Non-Profit
Corporation,
Respondent

Clerk's Action Required

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Comprehensive Health Education Foundation, a Washington Non-Profit Corporation
Attorney for Judgment Creditor	John Paul Turner (WSBA # 21182)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	\$160,000
Pre-judgment Interest	\$4,500.00
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	\$5,000.00
Expert Fees	\$7,500.00
Total Judgment Amount	\$177,000.00
Real Property Awarded	Portion of property recorded under King County No. 9011301195
Assessor's Tax Parcel Number	2500600005

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;

Consent Judgment &
Decree of Appropriation - 1

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

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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 respondent was represented by its attorney, John Paul Turner of Rodgers Deutsch & Turner, P.L.L.C.

The petitioner has previously deposited the sum of Ninety-Five Thousand Nine Hundred Seven and 00/100 Dollars (\$95,907.00) into the court registry and, on or before the date of this judgment, shall have deposited the remaining Eighty One Thousand Ninety Three and 00/100 Dollars (\$81,093.00) representing 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 One Hundred Seventy Seven Thousand and 00/100 (\$177,000.00) Dollars represents the total just compensation for the taken property and all consequential damages and costs to cure, including without limitation the temporary construction easement, curbing, concrete steps, steel handrail, landscaping, loss of use of conference space, replacement parking, statutory pre-judgment interest, expert fees and attorney fees;
2. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

A portion of that property described in instrument recorded under Recording Number 9011301195 records of King County, Washington, as follows:

Beginning at the northeast corner of the above said parcel, being 50.00 feet west of the center line of Pacific Hwy South SR(99), from which a radius point bears North 74°10'39" East; thence parallel with and 50.00 feet west of said center line along a

5779.58-foot radius curve to the left with a central angle of 2°11'17" an arc distance of 200.72 feet; thence continuing parallel with said centerline South 18°00'38" East a distance of 201.53 feet to the southeast corner of said property; thence along the south line of said property North 88°31'56" West a distance of 7.42 feet; thence North 18°00'38" West a distance of 14.81 feet; thence North 32°02'48" West a distance of 41.23 feet; thence North 18°00'38" West a distance of 72.50 feet; thence North 8°32'54" West a distance of 60.83 feet to a point 57.00 feet west of said center line; thence parallel with and 57.00 feet west of said center line North 18°00'38" West a distance of 11.74 feet; thence continuing parallel with said center line along a 5786.58 foot radius curve to the right with a central angle of 2°00'20" an arc distance of 202.55 feet; thence North 52°17'30" West a distance of 33.26 feet to the north line of said property; thence along the north line of said parcel South 88°33'20" East a distance of 28.00 feet to the Point of Beginning, **containing 4384 square feet**, more or less.

3. At such time as the remaining sum of Eighty One Thousand Ninety Three and 00/100 Dollars (\$81,093.00) has been deposited into the court registry, 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):

A portion of that property described in instrument recorded under Recording Number 9011301195 records of King County, Washington, as follows:

Commencing at the northeast corner of the above said parcel; thence along the north line of said parcel North 88° 33' 20" West a distance of 28.00 feet to the Point of Beginning; thence South 52° 17' 30" East a distance of 33.26 feet to a non tangent curve being 57.00 feet west of the center line of Pacific Hwy South SR(99), from which a radius point bears North 73° 59' 42" East; thence parallel with and 57.00 feet west of said center line along a 5786.58-foot radius curve to the left with a central angle of 2° 00' 20" an arc distance of 202.55 feet; thence continuing parallel with said centerline South 18° 00' 38" East a distance of 11.74 feet; thence South 8° 32' 54" East a distance of 60.83 feet; thence South 18° 00' 38" East a distance of 72.50 feet; thence South 32° 02' 48" East a distance of 41.23 feet; thence South 18° 00' 38" East a distance of 14.81 feet to the south line of said property; thence along the south line of said property North 88° 31' 56" West a

1 distance of 56.22 feet; thence North 18° 00' 38" West a distance of
2 107.20 feet; thence North 56° 51' 35 " East a distance of 39.71 feet;
3 thence North 17°50'42.275" West a distance of 158.99 feet; thence
4 North 74°46'11" West a distance of 42.68 feet; thence North 16° 21'
5 22" West a distance of 42.25 feet; thence North 42° 22' 50" East a
6 distance of 36.19 feet; thence North 16° 03' 56" West a distance of
7 34.65 feet; thence North 88° 33' 20" West a distance of 106.48 feet;
8 thence South 20° 22' 30" West a distance of 21.14 feet; thence
9 North 88° 33' 20" West a distance of 55.14 feet to the east line of
10 said property; thence along the east line of said property North 18°
11 00' 38" West a distance of 37.12 feet to the northwest corner of said
12 property; thence along the north line of said property South 88° 33'
13 20" East a distance of 176.44 feet the Point of Beginning,
14 **containing 15,799 square feet, more or less.**

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

- 16 a. The initial term of this temporary construction easement is sixty (60) consecutive
17 calendar days. The term will commence on a date selected by petitioner and sent
18 to respondent in writing sixty (60) days in advance of petitioner's selected
19 commencement date. Petitioner shall have the option to extend the initial sixty
20 (60) day term for a period of up to three (3) thirty (30) day periods at the rate of
21 Five Thousand Five Hundred and 00/100 Dollars (\$5,500.00) per thirty (30) day
22 renewal. At least thirty (30) days before the last day of the initial term, petitioner
23 shall give respondent notice in writing irrevocably exercising the option.
24 Petitioner's notice shall include the period of time for which petitioner is
25 exercising the option.
- 26 b. The easement shall allow the City, its contractors, employees, agents, successors
27 and assigns, the right of ingress and egress to enter upon the land subject to the
28 temporary easement as required to complete the construction work, to place
29 personnel and equipment, and to reconstruct roadway access;
- 30 c. 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;
- d. Provided the City complies with the terms and conditions outlined in 5a, 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;
- e. 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;

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

4 6. Pursuant to the prior Stipulated Order for Disbursement of Condemnation Proceeds
5 previously entered with this court on October 18, 2002, the King County Superior Court
6 Clerk shall disburse the remaining sum of Eighty One Thousand Ninety Three and 00/100
7 Dollars (\$81,093.00), less any clerk's handling fee, for the benefit of respondent
8 Comprehensive Health Education Foundation to the Rodgers Deutsch & Turner Trust
9 Account, Three Lake Bellevue Dr., Suite 100, Bellevue, WA 98005.

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

12 DONE IN OPEN COURT this ____ day of _____, 2003

13 _____
14 Judge Dean S. Lum

15 Presented by:

16 _____
17 Richard S. Brown (WSBA # 1985)
18 Assistant City Attorney
19 City of Des Moines

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

23 RODGERS DEUTSCH & TURNER, P.L.L.C.

24 _____
25 John Paul Turner, (WSBA # 21182)
26 Attorney for Respondent

Added by mayor pro-tem

NEW BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

**Right of Way, Park & Recreation Area
Use Permit Ordinance**

ATTACHMENTS:

Draft Ordinance No. 03-075

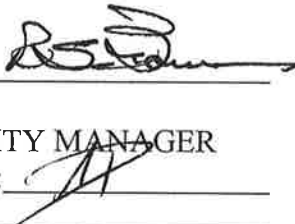
FOR AGENDA OF: May 22, 2003

DEPT. OF ORIGIN: Public Works/Parks

DATE SUBMITTED: May 15, 2003

CLEARANCES:

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

This report is to present, for council consideration, draft ordinance No. 03-075, which has been prepared in part at the direction of the city council late last fall and in part at the recent request of 3 members of the council.

Draft ordinance No. 03-075 establishes policy, guidelines and approval procedures for city right-of-way, park and recreation area special use permits and amends DMMC chapters 12.04 and 19.08.

The City Attorney's 2nd Draft – dated 5/15/03 revises the ordinance by changing all of the relevant references to "Parks and Park Facilities" to "Parks & Recreation Areas."

- DMMC 19.20.010 designates "Parks & Recreation Areas" of Local Significance & specifically includes the Marina as one of the areas of significance. The Code (DMMC 19.20.010) doesn't refer to the Marina as either a "Park" or a "Recreation Area," however DMMC 19.12 designates the City Parks and the Marina is not included, so we can assume that the reference to the Marina in DMMC 19.20.010 is as a "recreation area," so by making this revision we have included the Marina property in the ordinance so that, if the ordinance is adopted, it will require permits for special uses on Marina property without having to designate it as a park.

Without further direction from the council this draft ordinance is not ready for enactment because it is incomplete as follows:

- The proposed new section for DMMC 12.04 (**Sec. 1 of the draft ordinance**) requires definitions for those right of way permits that will need council approval;
- The proposed new section for DMMC 12.04 (**Sec. 2 of the draft ordinance**) requires a final decision and description of city costs to be reimbursed and whether the council may waive reimbursement.
- The proposed new section for DMMC 12.04 (**Sec. 3 of the draft ordinance**) requires a final decision for required time limitations for obtaining city approval for events. This also needs to be reconciled with DMMC 12.04.090, which provides that applications for right of way permits be submitted 30 days in advance
- The proposed amended section of DMMC 19.08.020 (2) (**Sec. 5 (2) of the draft ordinance**) requires definitions for those events and/or uses of city parks and recreation areas that will need council approval;
- The proposed amended section of DMMC 19.08.020 (3) (**Sec. 5 (3) of the draft ordinance**) requires a final decision for required time limitations for obtaining approval for use of park and recreation area buildings and structures. Currently DMMC 19.08.020, provides that park buildings and structures may not be reserved more than 90 days in advance;
- The proposed amended section of DMMC 19.08.020 (9) (**Sec. 5 (9) of the draft ordinance**) requires a final decision and description of city costs to be reimbursed and whether the Council may waive reimbursement.

If the council wants to take further action on this matter it may complete and/or amend the draft ordinance and pass it on to a second reading for enactment at the next available calendar.

BACKGROUND

Currently, DMMC Chapter 12.04.060 (City Right of Way Code) provides that the director of the department of public works, under the supervision of the city manager, has the power, without approval of the city council, to prepare and adopt procedures as needed to implement and carry out the city right of way code, including the issuance of all right of way permits.

Likewise, DMMC Chapter 19.08.020 (City Park Use Regulations) provides that the city manager has the authority, without approval of the city council, to promulgate rules setting forth the times

and conditions upon which city parks and park facilities will be open, closed, or used by the public.

There have been past instances when the city manager has sought guidance from the council regarding policy and approval of right-of-way and park special use permits and past instances when the council has deemed it appropriate to provide policy and guidelines for approval of right-of-way and park special event permits. This draft ordinance is in anticipation that there will be future instances where it will be appropriate for the city council to provide policy, guidelines, and approval of right-of-way use permits and park special event permits.

Because the intent of this action is to provide policy and guidelines in regards to special events and use of city property the action is presented in the form of an ordinance amending both existing ordinances (12.04 and 19.08), establishing policy, guidelines and approval criteria as part of the city code and requiring a council resolution for approval of specified permits.

DISCUSSION

The central issues are:

- How involved should the council be in the policy making, management and permit approval process of city right of way, park and recreation area property?;
- What is the most efficient legislative and/or policy making process for the council to establish policy and direct or supervise the right of way, park and recreation area permit process?; and
- What specific events and/or uses of city right of way, park and recreation area property should require involvement/approval of the council?

ALTERNATIVES

ACTION ALTERNATIVES:

The council has the following action alternatives:

1. **Take no action.** This would leave DMMC sections 12.04 and 19.08 unchanged and would leave authority with the director of public works, under the direction of the city manager, to prepare and adopt all procedures needed to implement and carry out the city right of way code and would leave authority with the city manager to promulgate the rules for the city parks and recreation areas, all without necessary approval of the city council. This would not preclude the director of public works or the city manager from requesting the involvement or approval by the council if they chose to do so.

2. **Establish policy by resolution.** This would require only minor amendments to existing DMMC sections 12.04 and 19.08 by authorizing the council to specify those events and/or uses that would require council approval and would allow for council approval on the consent calendar or by simple motion.
3. **Amend DMMC sections 12.04 and 19.08** to establish and codify those specific events and/or uses that would require council approval and **require a council resolution** establishing the terms and conditions of each permit approval. This is essentially the form of Draft Ordinance No. 03-075 – with the blanks to be filled in at council direction.

EVENTS/USES/PURPOSES ALTERNATIVES:

The following are some of the events, uses and purposes that could require council approval for a city right of way or special park use permit:

1. Events that involve use of City property for more than a specified number of days;
2. Events where people are charged an admission fee;
3. Events allowing concessions for sale of food, drinks, merchandise or services;
4. Events where the expected attendance is over a specified number of people.
5. Events where the purpose is not a public benefit.
6. Events where the purpose is for specific activities, such as fund raising or general for-profit activities.

FINANCIAL IMPACT

The financial impact of any of the above actions or alternatives is minimal.

RECOMMENDATION

Staff has no recommendation.

CONCLUSION

Further action requires direction from the council as specified above.

CITY ATTORNEY'S FIRST DRAFT 3/24/03
CITY ATTORNEY'S SECOND DRAFT 5/15/03

DRAFT ORDINANCE NO. 03-075

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to permits; establishing policy, guidelines, and approval procedures for right-of-way and special use permits; identifying conditions that require approval of the City Council rather than administrative action; adding new sections to chapter 12.04 DMMC; and amending DMMC 19.08.020.

WHEREAS, DMMC 12.04.060 provides that the director of the department of public works, under the supervision of the city manager, shall have the power to prepare and adopt procedures as needed to implement and carry out the responsibilities of the city right-of-way code (DMMC 12.04) without approval of the City Council; and

WHEREAS, DMMC 19.08.020 provides that the City Manager shall have the authority to promulgate rules setting forth the times and conditions upon which City parks and park facilities will be open, closed or used by the public, and

WHEREAS, there have been past instances when the City Manager has sought guidance from the City Council regarding policy and approval of right-of-way use permits for use of City rights-of-way and special use permits for use of City-owned parks and recreation areas ~~park property~~, and

WHEREAS, there have been past instances when the City Council has deemed it appropriate to provide policy and guidelines for approval of right-of-way use and special event permits for use of City-owned rights-of-way, parks, and recreation areas ~~park property~~, and

WHEREAS, it is likely that there will be future instances where it will be appropriate for the City Council to provide policy, guidelines, and approval of right-of-way use permits and special event permits; now therefore,

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 12.04 DMMC to read as follows:

Council approval-When required. City Council approval by resolution is required for the following right of way permits:

(1)

(2)

(3)

(4)

NEW SECTION. **Sec. 2.** A new section is added to chapter 12.04 to read as follows:

Reimbursement of City costs. Persons or organizations wishing to hold events that are subject to this new section shall reimburse the City its costs of supporting the event, including, but not limited to, police, security, parks, marina, and public works costs. ***[The City Council may, in its sole discretion, waive reimbursement if it finds that there is or has been a public benefit for the event?]***

Sec. 3. DMMC 12.04.060 and section 6 of Ordinance No. 872 are amended to read as follows:

Powers of the director. The director, under the supervision of the City Manager, shall have the power to:

(1) Prepare and adopt procedures as needed to implement this chapter and to carry out the responsibilities of the department. Except for those right-of-way permits that require City Council approval by resolution, ((§))such procedures do not require approval of the City Council;

(2) Administer and coordinate the enforcement of this chapter and all procedures

adopted under this chapter relating to the use of rights-of-way;

(3) Advise the City Council, City Manager, and other City departments on matters relating to use of the right-of-way;

(4) Carry out such other responsibilities as required by this chapter or other codes, ordinances, resolutions, or procedures of the City;

(5) Request the assistance of other City departments to administer and enforce this chapter;

(6) Assign the responsibility for interpretation and application of specified procedures to the traffic engineer.

NEW SECTION. **Sec. 4.** A new section is added to chapter 12.04 to read as follows:

Request for approval—Time for submission. Persons or organizations wishing to hold events that are subject to this chapter shall submit a request for each approval at least **90 (?) days** prior to the event.

Sec. 5. DMMC 19.08.020 and section 2 of Ordinance No. 758 are amended to read as follows:

19.08.020 Administration.

(1) The City Manager shall have the authority to promulgate rules setting forth the times and conditions upon which City parks and recreation areas ~~park facilities~~ will be open, closed, or used by the public. With the exception of the conditions set forth in section 2 below, such rules and conditions do not require approval of the City Council.

(2) City Council approval by resolution is required for the following events and/or uses of City parks and recreation areas ~~park facilities~~:

(a) _____

(b) _____

(c) _____

(d) _____

~~((2))~~ (3) Persons or community groups desiring to use park and recreation area buildings or structures shall obtain a permit from the City Manager or his designee for approval at least 90(?) days prior to the event. Park and recreation area buildings or structures may not be reserved more than ~~((90))~~ 180 (?) days in advance unless otherwise authorized by the division.

~~((3))~~ (4) Religious services or group rallies may be permitted in City parks where facilities are adequate, and where such activities will not conflict with normal park usage. A community group permit must be obtained prior to the service or rally.

~~((4))~~ (5) All persons must leave park and recreation area buildings and structures in a condition satisfactory to the City ~~division~~. No person shall conduct activities causing extra custodial work unless previous agreement has been made to pay for such work and this is stated on the use permit. The City ~~division~~ may require a cleaning deposit sufficient to cover possible added custodial costs.

~~((5))~~ (6) Persons using facilities by permit will be required to protect, defend, save, and hold the City, its elected and appointed officials and employees, while acting within the

scope of their duties, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a person or group's members or employees or third parties on account of any action, including but not limited to personal injuries, death, or damage to property arising out of the use of premises, or in any way arising out of the acts or omissions of the person, group, and/or its agents, employees or representatives.

~~((+6+))~~ (7) During all periods of use, persons using facilities by permit shall obtain and maintain public liability insurance in such form and amounts as determined by the division.

~~((+7+))~~ (8) The use of park and recreation area facilities for financial gain shall be allowed only through concession contracts with the City or by written permit from the City Manager or his designee.

(9) Reimbursement of City costs. Persons or organizations wishing to hold events that are subject to DMMC 19.08.020(2) shall reimburse the City its costs of supporting the event, including, but not limited to, police, security, parks, marina, and public works costs. [The City Council may, in its sole discretion, waive reimbursement if it finds that there is or has been a public benefit for the event?]

NEW SECTION. **Sec. 6. Codification.** Sections 1, 2, and 4 of this ordinance shall be codified as new sections in chapter 12.04 DMMC.

NEW SECTION. **Sec. 7. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent

Ordinance No. ____
Page 6 of ____

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. 8.** **Effective date.** This ordinance shall take effect and be in full force thirty (30) 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: _____

Effective Date: _____