

AGENDA
REGULAR MEETING
DES MOINES CITY COUNCIL
March 24, 2011 - 7:30 p.m.

CALL TO ORDER - Mayor Sheckler

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC:

*At this time the audience is invited to comment on any topic to bring it to Council's attention.
Please sign in prior to the meeting and limit comments to three minutes or less.*

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

Part 150 Noise Study Briefing - Port of Seattle

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the meeting of March 10, 2011

Item 2: APPROVAL OF FINDINGS:

Motion is to approve 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, which have been recorded on a listing and made available to the City Council:

Claim checks \$

Payroll fund transfers in the total amount of \$

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$

Item 3. Solid Waste License Period – Removal of Maximum License Period Cap

Motion 1 is to suspend Rule 26 (a) in order to enact Draft Ordinance No. 11-032 on first reading.

Motion 2 is adopt Draft Ordinance No. 11-032 amending DMMC 7.08.050 removing the maximum license period established for solid waste collection licenses.

Item 4. Request for Additional Contingency Funds to Complete Marina Water Main Replacement

Motion is to authorize an additional \$1500 in contingency funding for the Water Main Replacement Project and authorize the staff to pay for the remaining tasks for the completion of the project, subject to the City Manager's approval.

PUBLIC HEARING

Draft Ordinance No.10-117, Sign Code

Staff Presentation: Land Use Planner Jason Sullivan

OLD BUSINESS

1. Draft Ordinance No. 11-014, Update DMMC to Reflect Actual Financial Accounting
Staff Presentation: Finance Director Paula Henderson

NEW BUSINESS

1. Draft Ordinance No. 10-137 relating to Junk Vehicles
Staff Presentation: City Attorney Pat Bosmans/Assistant City Attorney Tim George
2. SHB 1997 – An act relating to providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development
Staff Presentation: City Manager Tony Piasecki

EXECUTIVE SESSION

NEXT MEETING DATE – March 26, 2011 (City Council Retreat in City Council Chambers, 9 a.m. to 3 p.m.)

ADJOURNMENT

**MINUTES
REGULAR MEETING
DES MOINES CITY COUNCIL
March 10, 2011 - 7:30 p.m.**

CALL TO ORDER - Mayor Sheckler called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE - The flag salute was led by Councilmember Thomasson.

ROLL CALL

Present were Mayor Sheckler; Mayor Pro-Tem Kaplan; Councilmembers Scott Thomasson, Dan Sherman, Matt Pina, Melissa Musser and Carmen Scott.

Staff present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager Lorri Ericson; Parks Recreation and Senior Services Director Patrice Thorell; Assistant Director of Transportation and Engineering Dan Brewer; CIP Project Manager Scott Romano; Senior Services Manager Sue Padden; City Clerk Sandy Paul

CORRESPONDENCE

There was no correspondence to report..

COMMENTS FROM THE PUBLIC:

There was no one who wished to comment.

EXECUTIVE SESSION

The City Council recessed to Executive Session and was called to order by Mayor Sheckler at 7:35 p.m. for the purposed of discussing pending litigation for approximately 30 minutes per RCW 42.30.110 (A). Present were Mayor Sheckler; Mayor Pro-Tem Kaplan; Councilmembers Scott Thomasson, Dan Sherman, Matt Pina, Melissa Musser and Carmen Scott. Also present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager Lorri Ericson; and outside Counsel, Mike Walter.

At 7:50 p.m. Mr. Walter left the meeting. The Executive Session was adjourned at 7:55 p.m.

The City Council meeting was reconvened at 8:05 p.m.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Councilmember Scott

- Reported on Arts Commission work and their discussion of upcoming 2011 events

Mayor Pro-Tem Kaplan

- Reported PS & T meeting last Thursday regarding REET funds coming in well below expectations
- Mentioned that Vacation of Streets for SCORE project funds may be coming soon
- Attended the Environment Committee
- Stated late notices were sent out for delinquent business licenses
- Attended the Poverty Bay wine festival and called it 'a great event'
- Said the 2010 Census of 29,600 population showed modest growth and a more diverse community than 10 years ago
- Reported State Revenue forecasts were \$2 billion less than previously predicted
- Shared some thoughts about the *Rosie* incident and said that an Ad Hoc Committee of the City Council would review city policies
- Commended Des Moines police officers for all they do
- Remembered the 10th anniversary of the death Des Moines Officer Steven Underwood who was shot in the line of duty

Councilmember Musser reported

- Attended the Highline Healthy Communities/ HEAL Program Meeting
- Reported the Senior Services Advisory Committee met at 2:00 today. Due to work obligations. Mayor Sheckler will take over her assignment to that committee.

Councilmember Pina

- Also attended the Poverty Bay Wine Festival, attended by about 1500 people
- Reported businesses had a 'banner' weekend with people in town for the Wine Festival
- Reported that citizens are delighted that the Twin Bridges are open, but dismayed about its potholes
- Attended SCA PIC meeting
 - Briefing about HEAL Grant in relation to the trail system
 - Briefing about King County Visitor Tax
 - Presentation on Strategic Transit Plan
 - Briefing on Wastewater Treatment Reclamation
 - Asked for council input about issues on the PIC agenda

Councilmember Sherman

- Confirmed the starting time with Councilmember Scott for *Brothers with Different Mothers* concert at 7:00 p.m. on Tuesday April 26, 2011
- Public Health Department notified all restaurants that re-permitting can be done on-line
- City Manager can forward PIC agendas to all Council Members so that opinions and thoughts can be shared with him who will, in turn, share with PIC representatives

Councilmember Thomasson

- The Environment Committee met to discuss groundwater remediation from a gasoline spill years ago in the Public Works yard and repair of a storm drain pipe at Redondo.

PRESIDING OFFICER'S REPORT

- The City Council will meet in a Retreat on March 26, 2011 in City Council Chambers from 9 a.m. to 3 p.m.. The meeting is open to the public and will be recorded. Councilmembers will begin discussion by sharing their views on how they want the Marina/Downtown district to look

ADMINISTRATION REPORTS

- Tenth anniversary of Officer Steven Underwood's death was commemorated this week. CM Piasecki appreciated that Mayor Pro-Tem Kaplan honored Officer Underwood.
- The electronic version of the ordinance being considered at the retreat was emailed to Council today

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve minutes from the City Council meeting of February 24, 2011.

Item 2: APPROVAL OF FINDINGS:

Motion is to approve 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, which have been recorded on a listing and made available to the City Council.

Claim checks \$628,134.65

Payroll fund transfers in the total amount of \$431,801.71

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$1,059,936.36

Item 3: eCityGov Alliance Amendment

Motion is to approve the eCityGov Alliance Subscription Agreement Amendment #1 for one year of HSConnect services for the City of Des Moines, and to authorize the City Manager to sign the amendment, substantially in the form as submitted

Item 4: Two year ILA with City of Normandy Park for Senior Services funding

Motion is to approve the Interlocal Agreement between the City of Normandy Park and the City of Des Moines for the provision of Senior Services in Fiscal years 2011 and 2012 ~~whereby Normandy Park will pay Des Moines for Senior Services in an amount equal to Normandy Park's pro-rata share of costs per year for services based on participation levels~~ (line deleted by Council) and to authorize the City Manager to sign the Agreement substantially in the form as submitted.

Item 5. 2011 Joint Human Services Funding Program (MOU)

Motion is to approve Exhibit A for Des Moines 2011 funding as provided in the 2003 MOU for the Joint Human Services Funding Program between the Cities of Auburn, Burien, Covington, Des Moines, Renton, SeaTac, and Tukwila (Attachment 2), substantially in the form as submitted.

Item 6. Des Moines Creek Trail Drainage Improvements and Consultant Supplemental Agreement
Motion 1 is to approve Supplement #2 to the Consultant Agreement with INCA, Inc., for additional Construction Management and Inspection Services on the Des Moines Creek Trail Project in the amount of \$17,051.02, bringing the total amount for these services to \$188,826.23, authorize the City Manager or his designee to sign the Supplemental Agreement substantially in the form as submitted, and further authorize the City Manager to approve additional Supplements to the Agreement as may be necessary up to a maximum amount of \$2,500.00.

Motion 2 is to approve an additional \$30,000.00 contingency for the Des Moines Creek Trail Construction contract, bringing the total contingency to a total of \$203,442.78, and a maximum authorized contract amount to \$937,870.

Item 7. Draft Resolution 11-027 Appointing Acceptance Agents for Claims for Damages

Motion is to adopt Draft Resolution No. 11-027 appointing a new Acceptance Agent for Claims for Damages filed against the City pursuant to RCW chapter 4.96.

Item 8. Supplements for Construction Management/Inspection/Construction Engineering Services for the North Twin Bridge Improvement Project

Motion 1 is to approve Supplement 2 to the Consultant Agreement with kpff, Inc. for additional Construction Engineering Services on the North Twin Bridge Improvement Project in the amount of \$61,366.00; bringing the total amount for these services to \$298,063.00, authorize the City Manager or his designee to sign the Supplemental Agreement substantially in the form as submitted, and authorize the City Manager to approve additional Supplements to the Agreement as necessary up to an amount of \$15,000.

Motion 2 is to approve Supplement 2 to the Consultant Agreement with Exeltech, Inc. for additional Construction Management and Inspection Services on the North Twin Bridge Improvement Project in the amount of \$52,740.88, bringing the total amount for these services to \$548,229.40, authorize the City Manager or his designee to sign the Supplemental Agreement substantially in the form as submitted, and authorize the City Manager to approve additional Supplements to the Agreement as necessary up to an amount of \$15,000.00.

Item 9. City Council Ad-Hoc Committee to Review Animal Control Policies

Motion is to create a City Council Ad hoc Committee to review animal control policies, procedures, equipment and training in the Des Moines Police Department and will report back to the City Council in July after completion of work by June 30, 2011.

ACTION/DIRECTION

Councilmember Sherman pulled Item 8.

Councilmember Thomasson had comments on Items 4, 7 and 9. He questioned the wording of the motion for Consent Item 4, which seemed to paraphrase the agreement. The 'whereby' phrase was removed. Councilmember Thomasson commented further that the City should develop some sort of 'tickler' system whereby assignment of specific duties should not be forgotten as employees come and go. Thomasson also requested a start and an end date for the Ad-Hoc Committee to review Animal Control Policies, Consent Item 9. (June 30, 2011 was the intended end date and was added to the motion.)

Councilmember Thomasson moved approval of the Consent Agenda, except Item 8, with amendments to Items 4 and 9; Councilmember Pina, second. The vote to approve the motion was unanimous.

Mayor Sheckler, Mayor Pro-Tem Kaplan and Councilmember Musser were selected to serve on the Ad Hoc Committee to Review Animal Control Policies and to report back to City Council soon after their work is completed by June 30, 2011.

Councilmember Sherman requested a discussion of cost overruns on the North Twin Bridge Improvement Project, most of which are being created by a subcontractor which has proven to be less efficient that would be desirable. Councilmember Sherman wanted to be sure this problem did not occur for other jurisdictions in the future.

Councilmember Sherman moved approval of Consent Item 8. Mayor Pro-Tem Kaplan, second. The motion was approved by unanimous vote.

CITY COUNCIL BREAK

The City Council meeting was recessed for a 10-minute break at 9:00 p.m. The meeting was reconvened at 9:10

OLD BUSINESS

1. City-Wide Energy Savings & Utility Improvements – Grant Funding
Assistant Director of Transportation and Engineering Dan Brewer provided staff presentation on a combination of several projects that have several different sources of grant funding.

ACTION/DIRECTION

Mayor Pro-Tem Kaplan moved to approve the Department of Commerce ARRA/EECBG Funding Agreement in the amount of \$135,000, and further authorize the City Manager to sign the Agreement substantially in the form as submitted. Councilmember Sherman, second.

A typographical error was found on Page 185 referring to *Goldendale* Energy Savings, which should say *Des Moines* Energy Savings.

Following discussion, the vote to approve the motion was unanimous.

Mayor Pro-Tem Kaplan moved to formally decline the award of King County CDBG Funds for Activity Center lighting in the amount of \$70,000, and further authorized the City Manager or his designee to formally convey this decision to the granting agency. Councilmember Sherman, second. The vote to approve the motion was unanimous.

Councilmembers commented on the number of requirements that are attached to CDBG funds now and how those requirements have increased over the years. A request was made of staff to prepare a letter for the Mayor's signature to the City's elected Congressional representatives discussing how cities like Des Moines might find it onerous to submit to rules that directly conflict with the current uses of public facilities when considering to accept federal funding to augment local funding to make public projects possible.

NEW BUSINESS

1. Field House Park Projects
Staff presentation was provided by Director of Parks Recreation and Senior Services Patrice Thorell to request redirection of funds in the amount of \$35,000 from Fund 506 (Facility Replacement Funds) to provide sufficient Des Moines Field House Renovation Project funds to proceed with the project.

ACTION/DIRECTION

Councilmember Sherman moved to authorize staff to redirect funds in the amount of \$35,000 from Fund 506 to augment \$74,383 of approved funds for the 2011 Field House Restroom Renovation Project thereby increasing the project fund total to \$109,383. Councilmember Musser, second. The motion was approved unanimously.

Councilmember Sherman moved to authorize award of the contract for construction services for the Des Moines field House Restroom Renovation Project to Design Air, Ltd. in the amount of \$77,700 which includes \$73,900 total base bid amount, and \$2,800 for Alternate #2, and to authorize the City Manager to sign said contract substantially in the form as submitted and further to authorize the City Manager to sign change orders for unforeseen conditions in an amount up to \$7,700 for a total construction budget of up to \$85,400. Councilmember Pina, second. The vote on the motion was unanimously in favor of approval.

NEXT MEETING DATE – The next meeting will be held on March 24, 2011 at 7:30 p.m.

ADJOURNMENT

Mayor Pro-Tem Kaplan moved to adjourn; Councilmember Pina, second; the motion was approved unanimously. The meeting was adjourned at 9:40 p.m.

Respectfully submitted,
Sandy Paul CMC

City Clerk

Voucher amounts were not available at the time this agenda packet was published due to the unavailability of Finance staff and the way pay day landed on Monday, March 21.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Solid Waste License Period –
Removal of Maximum License Period Cap

FOR AGENDA OF: March 24, 2011

DEPT. OF ORIGIN: Planning, Building, & Public
Works

DATE SUBMITTED: March 10, 2011

ATTACHMENTS:

1. Draft Ordinance 11-032

CLEARANCES:

☒ Planning, Building & Public Works DSB

☒ Legal AG

APPROVED BY CITY MANAGER FOR
SUBMITTAL: AK

Purpose and Recommendation:

The purpose of this agenda item is to consider Draft Ordinance 11-032 which would remove the existing language limiting solid waste license periods to five years. The City Council may either adopt Draft Ordinance 11-032 on first reading by passing Suggested Motions 1A and 1B or pass Draft Ordinance 11-032 to a second reading by passing an alternative motion.

Suggested Motions:

Motion 1A: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 11-032 on first reading.”

Motion 1B: “I move to adopt Draft Ordinance No. 11-032 amending DMMC 7.08.050 by removing the maximum license period established for solid waste collection licenses.”

Background:

DMMC 7.08.050 currently limits the granting of solid waste licenses to a period not to exceed five years. This cap was originally established in 1960 by Ordinance No. 74. The current solid waste collection contract was signed for a period of five years with an option for a five year extension. The current contract expires in July 2011.

This proposed code amendment does not require SEPA review. WAC 197-11-800(19) categorically exempts the proposal or adoption of ordinances, or of any plan or program relating solely to government procedures containing no substantive standards respecting use or modification of the environment from SEPA procedures.

Discussion:

On January 14, 2011, the City published a Request for Proposals (RFP) for solid waste collection. The draft contract term included in the RFP is for seven years (from November 1, 2011 through October 31, 2018) with a City option for two additional two-year extensions. This time frame was chosen to more closely coincide with a typical 8-10 year depreciation time for trucks and containers which is generally accepted by haulers as a minimum timeframe to recover initial equipment costs. Staff research and discussion with the consultant assisting in the preparation of the RFP documents revealed that specified license period caps are atypical for King County cities. Removing specific mention of a license period cap will not affect the authority granted by chapter 7.08 DMMC for the City to establish terms and conditions on a contract-specific basis. The added flexibility will allow the City consider a wider range of proposals and rate structures. This issue was brought up in a discussion on the RFP process with the City Council Franchise Committee who concurred with proceeding with a code amendment.

Alternatives:

The City Council has four alternatives:

- (1) The City Council may approve Draft Ordinance 11-032 on first reading after suspending Rule 26(a).
- (2) The City Council may move Draft Ordinances 11-032 to a second reading.
- (3) The City Council may make additional changes to the Ordinance.
- (4) The City Council may decline to act on the Ordinance.

Financial Impact:

The Ordinance is a procedural revision designed to provide flexibility for future solid waste collection licenses to allow the City consider a wider range of proposals and rate structures. This may have significant impacts on the costs that are reflected in bids by various potential service providers.

Recommendation/Conclusion:

Staff recommends passing the proposed Ordinance on first reading to coincide with a projected signing date for the new contract in May 2011.

Concurrence:

Planning, Building and Public Works Department and Legal Department concur.

DEVELOPMENT SERVICES FIRST DRAFT 03/04/2011

DRAFT ORDINANCE NO. 11-032

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, amending DMMC 7.08.050 and removing the maximum license period for solid waste collection.

WHEREAS, the City Manager, upon approval of the City Council, may promulgate reasonable regulations for the collection, handling, transportation, and disposal of solid waste within the City, and

WHEREAS, Title 7 of the Des Moines Municipal Code provides guidance regarding solid waste collection licenses, and

WHEREAS, DMMC 7.08.050 currently limits license periods to no greater than five years, and

WHEREAS, removing the maximum limitation will provide additional flexibility for future licenses while retaining City authority to institute conditions and license periods on a case by case basis, and

WHEREAS, WAC 197-11-800(19) categorically exempts the proposal or adoption of ordinances, or of any plan or program relating solely to government procedures containing no substantive standards respecting use or modification of the environment from SEPA procedures, and

WHEREAS, the City Council held a public meeting on March 24, 2011 and determined that it was in the public interest to modify DMMC 7.08.050; now therefore,

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

Sec. 1. DMMC 7.08.050 and section 5 of Ordinance No. 74 as amended by section 6 of Ordinance No. 923 are each amended to read as follows:

Issuance of license. The City Manager shall be authorized from time to time by the order of the City Council to execute in the name of the City an exclusive or nonexclusive license to a particular

person to collect, handle, transport, and/or dispose of garbage, yard waste, and recyclable materials not otherwise regulated by RCW 70.95.903 within one or more geographical areas within the City. Such license shall be granted ~~for a period not to exceed five years and~~ upon such terms and conditions set forth by the order of the City council.

Sec. 2. Severability - Construction.

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

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

Sec. 3. Effective Date. This ordinance shall be in full force and effect thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2011 and signed in authentication thereof this ____ day of ____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Effective Date: _____

Published: _____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Request for additional contingency funds to complete the Water Main Replacement project.

ATTACHMENTS: None

FOR AGENDA OF: March 24, 2011
DEPT. OF ORIGIN: Marina

DATE SUBMITTED: March 9, 2011

CLEARANCES:

☒ Marina 3/9/11

☐ Legal Department

☒ Finance Department pl

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

A. Purpose & Recommendation

The purpose of this agenda item is to request that the Council authorize an additional \$1,500 in contingency funding for the Water Main Relocation Project in the Marina

Recommended Motion: "I move that the City authorize an additional \$1,500 in contingency funding for the Water Main Replacement Project and authorize the staff to pay for the remaining tasks for the completion of the project, subject to the City Manager's approval."

B. Background

When the water main in the Marina was replaced in 2009-2010 three fire hydrants were not installed because their exact placement was dependant on the completion of the North Marina Combined Projects, (NMCP). Near the end of that project, the staff solicited an estimate from the General contractor on the NMCP for the installation of the remaining three hydrants and for relocating oneneed to be moved to make way for an electrical duct bank. The estimate for the work was \$26,219.00.

In July of 2010, the Council authorized another \$40,000 in contingency funding for the Water Main Relocation Project to pay for the additional hydrants and additional construction support from the project engineers.

C. Discussion

The hydrants were installed during the course of the NMCP with the final installation near the very end of the project in January of 2011. When the contractor installed the hydrant south of the Marina office they discovered that they had to run the water line under an existing electrical duct bank which they had not anticipated when they prepared their estimate. As a result, they had to dig a deeper trench and use shoring, which add about \$2,000 to the cost of the installation. Also the boat yard hydrant had to be installed further from its intended location to accommodate a change in the vehicle traffic pattern, which also resulted in about \$1,500 in additional costs. The net result of the two cost overruns is that the contingency fund for the project is short \$1,450.53 of having enough to pay the remaining two invoices.

D. Alternatives

1. The Council may approve the additional contingency funds and the staff will pay the final invoices.
2. The Council may decline to approve the additional funds and direct the staff to pay the remaining invoices out of the remaining contingency funds for the North Marina Combined Projects.

E. Financial Impact

The financial impacts are minor for either alternative. The advantage of paying the invoices out of the Water Main Project funds is that all of that project will be accounted for under one budget line item and the change order for the hydrant work already exists for that project. The staff could pay the last invoice out of the contingency for the North Marina Combined Projects but staff would have to create another change order and get it approved by all parties. Keeping the last invoice in the Water Main Project would take less staff time.

The additional \$1,500 would come from fund 406, Marina Depreciation and Improvement.

F. Recommendation

The staff recommends that the Council authorize the addition of another \$1,500 to the contingency fund for the Water Main Replacement Project.

G. Concurrence

The Finance Department concurs with the staff's recommendation.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Sign Code – Chapter
18.42 DMMC

FOR AGENDA OF: March 24, 2011

DEPT. OF ORIGIN: Planning, Building, & Public
Works

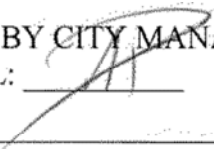
DATE SUBMITTED: March 17, 2011

ATTACHMENTS:

1. Draft Ordinance 10-117
2. Resolution 1142

CLEARANCES:

[X] Planning, Building & Public Works 
[X] Legal 

APPROVED BY CITY MANAGER FOR
SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to consider Draft Ordinance 10-117 which amends the City's current sign code regulations. There are two primary purposes for the proposed amendments; first is to make required changes recommended by the Legal Department to address areas of the sign code that are not consistent with either State or Federal Law and the second is to make modifications to the sign code recommended by the Finance and Economic Development Committee and the Economic Development Manager to facilitate economic development within the City.

The City Council may pass Draft Ordinance 10-117 to a second reading on a date after the conclusion of the required 60 day Department of Commerce review which concludes on March 29, 2011 by passing the following motion:

Suggested Motion:

Motion: "I move to pass Draft Ordinance 10-117 amending the City's Sign Code to a second reading on _____."

Background:

A city has the right to regulate signs as a legitimate exercise of its “police power” in the same manner that it is allowed to zone or otherwise regulate the use of land. However, that power is not absolute. The city’s sign regulations must still comply with the rights given by the constitutions of Washington and the United States. In order not to violate these rights, a sign ordinance must be content neutral, be narrowly tailored to serve a significant governmental interest, and must leave open ample alternative channels for communication.

In a recent Ninth Circuit decision, the Court held that the City of Redmond’s sign ordinance violated Free Speech rights under the Constitution. *Ballen v. Redmond*, 466 F.3d 736 (9th Cir. 2006). In *Ballen*, the City of Redmond’s sign ordinance prohibited most types of portable signs, sandwich signs, and reader-boards; however, a number of exceptions were made. The ordinance exempted, among others, political signs and real estate signs. The court struck down the ordinance stating that it was “more extensive thannecessary to serve [the City’s] interest. Although the City was attempting to promote traffic safety and its overall appearance, “the City failed to show how the exempted signs reduce vehicular and pedestrian safety or besmirch the community any less than the prohibited signs.” Ultimately, the court held that because Redmond’s ordinance placed restrictions based on the content of the signs, it was unfair and invalid under the Constitution.

Ultimately, government can prohibit or regulate the posting of signs so long as there are no exemptions which classify signs based on content. Additionally, local governments may impose reasonable “time, place and manner” restrictions on speech in order to set forth the circumstances under which signs may be displayed. Restrictions that deal with the size, illumination, location and manner of posting signs without regard to the content of the speech are examples of local government enactments likely to be sustained as reasonable time, place and manner sign regulations, provided they advance a legitimate governmental interest.

SEPA

Textual code amendments which contain substantive standards respecting the use or modification of the environment in Draft Ordinance 10-117 require SEPA evaluations. Therefore, a SEPA checklist was completed and reviewed by City staff to determine if significant adverse environmental impacts were likely. It was determined that mitigation was not warranted for this non-project action. The SEPA Official subsequently issued a final threshold decision of a Determination of Non-Significance (DNS) on January 28, 2011. The comment and appeal periods for the DNS concluded on February 14, 2011 and February 24, 2011 respectively.

APPROVAL PROCESS REQUIREMENTS

Textual code amendments are Type IV land use actions as defined by DMMC 18.56.060. Textual code amendments require a public hearing with the City Council pursuant to DMMC 18.56.180. As required by DMMC 18.60.120, the public hearing was set by Resolution 1142 (Attachment 2)

Further, the Sign Code is classified as a development regulation under the Growth Management Act as defined in RCW 36.70A.030(7); therefore amendments to the Sign Code are required to be forwarded to the Department of Commerce (formerly the known as the Department of Commerce, Trade and

Economic Development or CTED) for review and comment by the Department and other State Agencies. Pursuant to RCW 36.70A.106, this review period is a minimum of 60 days; during which a local jurisdiction cannot adopt proposed amendments to its development regulations. The Department acknowledged the receipt of the proposed amendments on January 29, 2011; therefore, the City cannot adopt the amendments until after March 29, 2011.

Discussion:

The City's Sign Code, Chapter 18.42 DMMC, was originally written in 1983 and has not been substantially updated since that time. There have been a few amendments primarily focused on a specific zone: i.e. the creation of the Pacific Ridge. However there has not been a comprehensive review of the sign code completed in the last 28 years. During that 28 year period of time there have been a number of changes in both Federal and State case law which affects the City's regulation of signs within its jurisdiction. There have also been a number of technology changes which have not been reflected in the City's sign regulations. The current Sign Code regulations are based on the type of signs, technology, and law that existed in 1983.

On January 10, 2011, the Finance and Economic Development Committee reviewed a number of proposed changes to the Sign Code to bring the sign code into compliance with Federal and State Law. In addition to those proposed changes, the committee reviewed a number of modifications to the Sign Code mean to streamline the permitting process, improve the regulations of signs in order to facilitate economic development within the City, and reflect current technologies. Given the number of scale of the recommended changes, staff has prepared a section by section discussion of each of the sections within the attached draft ordinance:

SECTION 1:

Legal Department amendment to move the regulations currently codified in Chapter 12.16 DMMC from the traffic code to the sign code so that all sign regulations are located within the same chapter.

SECTION 2:

This is a new section that will be added to the sign code which establishes the requirement for electronic message centers and reader boards. The requirements in the section focus on the timing of the message and are based on Chapter 468-66 WAC (Highway Advertising Control Act). These standards were developed by WSDOT so that reader boarders and other electronic signs can be utilized adjacent to roadways in a manner to limit the distraction of drivers.

SECTION 3:

This is a new section that will replace the current sign regulations for the commercial properties abutting Pacific Highway S. south of Kent Des Moines Road, all commercial properties in the Pacific Ridge Neighborhood and properties zoned Business Park. This creates one set of requirements for all of the City's primary commercial areas. The new section adopts the standards originally created for Pacific Ridge with the following changes:

- a. Monument signs are no longer required and the height of the freestanding sign is raised to 15 feet for single business and multiple business properties and raised to 20 feet for multiple building complexes and shopping centers. (See the definitions in Section 5 of the Ordinance for an explanation on property type).
- b. The methodology for calculating wall signage has been modified for multiple business properties so that the maximum sign area is 20 square feet plus 40 square feet per business and requires that each business is guaranteed a minimum 25 square feet of sign area. For shopping centers and multiple building complexes, the maximum sign area is 150 square feet plus 40 square feet per business and requires that each business is guaranteed a minimum 35 square feet of sign area.

The remainder of the requirements are the same as currently enforced within the Pacific Ridge Neighborhood which allows more signage than in the Business Park Zone, but is little more restrictive than the current requirements for commercial properties south of Kent – Des Moines Road. Therefore, staff believe that with the above modifications which should address the current concerns with the Pacific Ridge requirements, it is a good compromise between the two zones and could be easily be applied on a larger basis.

SECTION 4:

DMMC 18.42.010 (Purpose) identifies the purpose of the City's Sign Code. The only amendment to the section is one from the Legal Department to include the statement that the sign code is established to ensure equal protection and fair treatment under the law.

SECTION 5:

DMMC 18.42.040 (Required) establishes the requirement that signs in the City must comply with the Sign Code. The only proposed amendment is to change code administrator to City Manager or Designee.

SECTION 6:

DMMC 18.42.030(Definitions) is proposed to be amended in the following manner:

- a. Modifies the definition of "Changing Message Center" so that it includes both private and public signs and to allow advertising not just time and temperature.
- b. Deletes the definition of "Front Foot" as it is not utilized in the updated Sign Code
- c. Modifies the definition of "Multiple Building Complex" to describe a development site consisting of multiple buildings and removes the reference to a single building containing multiple businesses with an outdoor access for each business.
- d. Modifies the definition of "Multiple Tenant Complex" by replacing the term with "Multiple Business Property" so that it covers all properties with multiple

businesses whether the business is access via an internal corridor (i.e. office building) or from an exterior door (i.e. strip mall).

- e. Adds the definition of "Shopping Center" in order to show that there is a distinction between a small strip mall and large multiple business shopping centers like the Lowe's or Fred Meyer complex in Kent or the Redondo Square Shopping Center. This definition allows the establishment of different regulations of the larger shopping centers.
- f. Adds the definition of "Single Business Property"

SECTION 7:

DMMC 18.42.050 (Exemptions) identifies all of the signs currently exempt under the sign code to include certain parameters for those exemptions. The section is proposed to be modified in order to create standards under which portable signs "sandwich board signs" would be allowed. The standards allow the signs from 8 AM to 9 PM, limits the number to two, limits the size to 6 square feet per side, and requires that the boards be placed in a manner that does not interfere with vehicles, bicycle, wheelchair, or pedestrians. The regulations require that the sign not be hand written and may not be affixed to the ground, trees or utility poles. These standards were written by the Legal Department to ensure that the regulations are consistent with Federal and State Law.

Additionally political signs, real estate signs, and temporary construction signs are identified as exempt signs in DMMC 18.42.050, but the parameters for these signs are provided in DMMC 18.42.220 – 18.42.250. This information was moved from these sections to this section so that all the requirements are in the same place.

Some modifications are also proposed in order to clarify standards under which "real estate signs" "would be allowed. The standards allow the signs from 8 AM to 9 PM, limits the number to three, limits the size to 4 square feet per side, and requires that the boards be placed in a manner that does not interfere with vehicles, bicycle, wheelchair, or pedestrians. These standards were written by the Legal Department to ensure that the regulations are consistent with Federal and State Law.

Modifications to clarify standards under which "political signs" would be allowed are proposed in the ordinance. The standards requires that the signs to be removed within 10 days after the election, limits the size to 4 square feet per side, and requires that the boards be placed in a manner that does not interfere with vehicles, bicycle, wheelchair, or pedestrians. These standards were written by the Legal Department to ensure that the regulations are consistent with Federal and State Law.

Finally, the current Sign Code has a section for "exemptions" in DMMC 18.42.050 and a separate section for "exceptions" in DMMC 18.42.020. Therefore, to provide greater public readability, the information in DMMC 18.42.020 was moved to this section and DMMC 18.42.020 repealed.

SECTION 8:

DMMC 18.42.060 (Applications) currently identifies the material required to be submitted to the City as part of a Sign Permit review process. The only proposed amendment is to change code administrator to City Manager or Designee.

SECTION 9:

DMMC 18.42.070 (Inspections) establishes the inspection process for signs within the City. The only proposed amendment is to change code administrator to inspector.

SECTION 10:

DMMC 18.42.090 (Special Use Permits) regulations the placement of banners, flags, etc associated with special events within the City. The only proposed amendment is to change code administrator to City Manager or Designee.

SECTION 11:

DMMC 18.42.100 (Application – Generally) currently identifies the purpose of the City's Comprehensive Sign Permit review process. Staff is proposing to change the name of the section to "Purpose" and amend code administrator to City Manager or Designee. Additionally, staff is proposing to remove the statement that the purpose of the Comprehensive Sign Permit review is promote harmony with the surroundings and the enhancement of the surrounding "natural beauty." As there is not an adopted definition and the requirement does not create a measureable standard, the City cannot enforce the requirement. According to the MRSC website design regulations must provide meaningful guidance to the applicant

SECTION 12:

DMMC 18.42.110 (Application – Supplementary Material) currently identifies the material required to be submitted to the City as part of a Comprehensive Sign Permit review. The section is proposed to be amended by changing code administrator to City Manager or Designee. Additionally, the section is proposed to be amended by requiring that as part of the narrative required for a Comprehensive Design Review the applicant must explain how the signs are consistent with the adopted Pacific Ridge and Marina District Design Guidelines.

SECTION 13:

DMMC 18.42.120 (Comprehensive Sign Design Review) was amended by removing the requirement that signs in the Downtown Commercial zone promote the "city's contemporary northwest nautical theme." As there is not an adopted definition and the requirement does not create a measureable standard, the City cannot enforce the requirement. According to the MRSC website design regulations must provide meaningful guidance to the applicant.

SECTION 14:

DMMC 18.42.130 (Applicability) identifies the sections that contain the general provisions that apply to all signs in the City regardless of the zoning classification. This section is proposed to be amended so that the language refers to Article IV instead of DMMC 18.42.140 – 18.42.270 given the number of changes proposed to the sections within Article IV of the Sign Code.

SECTION 15:

DMMC 18.42.150 (Prohibited Signs) was modified by the Legal Department to remove portable signs from the list of prohibited signs. Staff is also recommending adding abandon or obsolete signs and signs not specifically permitted by the chapter to the list of prohibited signs.

SECTION 16:

DMMC 18.42.270 (Placement) This section prohibits the placement of off-premise signage, but excludes real estate and some directional signage from this prohibition. The section is proposed to be amended to expand the exception to include portable signs and political signs. The Legal Department is also proposing to remove the prohibition against all portable sign, real estate, and political signs being placed in the right-of-way.

SECTION 17:

DMMC 18.42.130 (Applicability) this section identifies contains the specific sign regulations provisions for each of the zoning classifications. This section is being proposed to be modified so that the language refers to Article V instead of DMMC 18.42.290 – 18.42.325 given the number of changes proposed to the sections within Article IV of the Sign Code.

SECTION 18:

DMMC 18.42.290 (Residential) this section regulates signage in all of the City's residential zones. The section has been proposed to be modified by the Legal Department to allow political and portable signs in the right-of-way within areas zoned residential. Real estate signs were already allowed within the right-of-way. There are also some minor text amendments which do not affect the enforcement of or modify the substance of the existing regulations.

SECTION 19:

DMMC 18.42.320 (Neighborhood Commercial) this section regulates signage in all of the City's Neighborhood Commercial zoning classification. The section is proposed to be expanded to included properties zoned Community Commercial in the Redondo Neighborhood. Currently there are no sign requirements or limitations for Salty's or MAST, the amendment includes these properties within the neighborhood commercial zone. Staff felt that this was appropriate given that the intent of the NC zone is currently applied to commercial properties located within residential neighborhoods (i.e. Zenith Viewpoint and Redondo Grocery Store) and not the properties zoned Community Commercial along Pacific Highway South. There are also a number of grammatical changes proposed to clarify the reading of the section.

SECTION 20:

DMMC 18.42.320 (Downtown Business) section is being proposed to be renamed to the "Marina District". The section also includes amendments that remove the prohibition against rotating signs, would allow reader board signs, and would establish the height of freestanding signs at 15 feet regardless of the height of the building. Modifications are also proposed so that multiple building complexes and multiple business properties have the same method for determining sign area without a maximum since is based on street frontage and ensures that each business has a minimum of 24 square feet of sign area. Finally the amendments remove the requirement that signs in the Downtown Commercial zone promote the "city's contemporary northwest nautical theme." As there is not an adopted definition and the requirement does not create measureable standards, the City cannot enforce the requirement. According to the MRSC website design regulations must provide meaningful guidance to the applicant.

SECTION 21:

DMMC 18.42.340 (Removal of Unlawful Signs – Notice) is being proposed to be modified by the Legal Department to reflect the changes to allow portable signs in the right-of-way and to modify the enforcement mechanism associated with regulations of portable signs that do not meet the requirements established by the code. A three step approach was developed by the Legal Department which includes a written warning and removal, fine, and prohibiting repeat offenders from having portable signs for one year. The section was also amended to change code administrator to City Manager or Designee

SECTION 22:

DMMC 18.42.350 (Nonconforming Signs) was modified to allow a non-conforming sign to remain on a property when a new sign is approved for the property. Under the current code, if an owner changes one sign on their property, then all other non-conform signs must be removed or modified in such a manner that the sign is consistent with the requirements of this code. For example if one tenant in a strip mall wants a new sign then all signs in the strip mall must be brought up to code to include the signs owned by other tenants in the strip mall. The proposed amendments would remove this requirement.

SECTION 18

Repeals Chapter 12.16 DMMC (Placement of Signs) as the section will be replaced by Section 1 of this Ordinance and repeals DMMC 18.42.310 (Pacific Highway South business districts not within the Pacific Ridge area), 18.42.325 (Business Park), and 18.42.327 (Pacific Ridge) as these three zones have been combined into one zone which is governed by Section 3 of this Ordinance and repeals DMMC 18.42.370 (Other Enforcement) as the same information is found in the DMMC 18.42.340(1).

Alternatives:

The City Council has three alternatives:

- (1) The City Council may move Draft Ordinance 10-117 to a second reading.
- (2) The City Council may make additional changes to the ordinance
- (3) The City Council may decline to act on the ordinance.

Financial Impact:

The ordinance is design to facilitate and promote economic development within the City.

Recommendation/Conclusion:

The proposed ordinance received a do pass recommendation from the City Council's Finance and Economic Development Committee.

Concurrence:

Planning, Building, and Public Works Department and Legal Department concur with the proposed ordinances.

**FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE'S SECOND DRAFT
03/17/2011**

DRAFT ORDINANCE NO. 10-117

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the sign code; amending chapter 18.42 DMMC relating regulation of signs within the City of Des Moines.

WHEREAS, the City of Des Moines has adopted a sign code in Chapter 18.42 DMMC, the purposes of which are stated in DMMC 18.42.010, and

WHEREAS, such sign code has been in effect since 1983, and

WHEREAS, recent court rulings have called into question the legality and enforceability of certain sign code provisions relating to portable signs, real estate signs, and political signs, and

WHEREAS, Strategy 1-04-03(2) of the Des Moines Comprehensive Plan states that the City should "review and amend as appropriate the Zoning Code, Subdivision Code and other development regulations to establish development standards that are clear and predictable, that simplify the review process, and adapt to varied site or neighborhood conditions, and

WHEREAS, clear and predictable development regulations to encourage efficient permitting is a planning goal established by the Growth Management Act, and

WHEREAS, the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental document, and

WHEREAS, the textual code amendment proposed by this ordinance has been processed in accordance with the requirements of the State Environmental Policy Act (hereinafter "SEPA), a determination of non-significance was issued on January 26, 2011 by the responsible official, and the applicable SEPA comment period has concluded; and

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

WHEREAS, the Finance and Economic Development Committee met on January 11, 2011 to review the proposed amendments to the City's Sign Code

WHEREAS, the Finance and Economic Development Committee has determined that modifications to the City's sign regulations are required to facilitate economic growth within the City, and

WHEREAS, on January 27, 2011, the City Council adopted Resolution No. 1142 setting a public hearing for March 24, 2011 to consider the amendments to the Des Moines Zoning Code described herein, and

WHEREAS, notice of the public hearing was given to the public pursuant to law, and

WHEREAS, such public hearing was held on March 24, 2011 to hear proponents and opponents, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments to the sign code contained in this ordinance are appropriate to provide a clear, concise, and legal method of enforcing the sign code to promote the health, safety, and welfare of the citizens, as well as to promote the enhancement of business and to maintain the visual environment of the City; 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 18.42 DMMC to read as follows:

Signs prohibited over right-of-way.

(1) Except as provided in subsections (2) and (3) of this section, no person shall place a sign of any size or description:

- (a) Over the right-of-way of a City street;
- (b) Over the right-of-way of a state highway;
- (c) On a bridge or overpass; or
- (d) On a public or utility improvement.

(2) For a period of thirty (30) days or less, signs advertising community events sponsored by public service organizations may be placed on, above, or over the right-of-way of a City street or a state highway with the written permission of the City Manager.

(3) This section shall not apply to regulatory, directional, or informational signs installed by the City or the state.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.42 DMMC to read as follows:

Electronic Reader Board and Message Center Signs.

All electronic Reader board signs and changeable message center signs shall comply with the following:

(1) Advertising messages on electronic reader boards and message centers may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the reader board or message center, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the reader board or message center with no duration limit.

(2) Displays may travel horizontally or scroll vertically onto electronic reader boards or message center, but must hold in a static position for two seconds after completing the travel or scroll.

(3) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, ~~or otherwise~~ ~~portray graphics~~ or animation as it moves onto, is

displayed on, or leaves the reader board or message center.

(4) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

NEW SECTION. Sec. 3. A new section is added to chapter 18.42 DMMC to read as follows:

Commercial Zone. The following signs are permitted in the Pacific Ridge Commercial Zone 1, Pacific Ridge Commercial Zone 2, Business Park Zone and all commercial zones abutting Pacific Highway South that are not within the Pacific Ridge Neighborhood:

(1) Freestanding Signs. For single business properties, multiple-tenant buildings, multiple-building complexes, and shopping centers, freestanding signs are allowed as follows:

(a) Number of Free Standing Signs.

(i) For building sites with up to 300 feet of street frontage, one sign is allowed.

(ii) For building sites with more than 300 feet of street frontage and having more than one vehicular access, two signs are allowed; provided that the total allowable sign area is not exceed and the signs are more than 100 feet apart.

(b) Freestanding Sign Size.

(i) Each sign allowed shall not exceed 80 square feet in area.

(ii) For properties with less than 80 feet of street frontage, sign area shall not exceed one square foot of sign area for each lineal foot of street frontage.

(c) Freestanding Sign Height.

(i) For Single Business Properties and Multiple Business Properties, freestanding signs shall not exceed fifteen (15) feet in height as measure from median sidewalk grade.

(ii) For Shopping Centers and Multi-Building Complexes freestanding signs shall not exceed twenty (20) feet in height as measure from median sidewalk grade.

(d) Allowed signs, sign area, or sign height may not be transferred from one street frontage to another.

(e) Off-premises signs, including but not limited to billboards, are prohibited. The City Manager or designee may approve monument signs located on a separate parcel of property within a multiple-building complex or shopping center when the following conditions exist.

(i) The multiple-building complex or shopping centers appears and functions as one building site; and

(ii) The monument sign appears and functions as an on-premises sign; and

(iii) The approval would not result in additional signs or sign area for the multiple-building complex or shopping center than would otherwise be allowed; and

(iv) All monument and wall signs within the multiple-building complex or shopping center conform to the provisions of this chapter.

(2) Wall Signs.

(a) Each single business property is permitted a total sign area not exceed one (1) square feet per lineal foot of street frontage, up to a maximum of 100 square feet.

(b) Each multiple business property, is permitted a wall signage not to exceed 20 square feet plus forty (40) square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 25 square feet signage.

(c) Each multi-building complex and shopping center is permitted a wall signage not to exceed 150 square feet plus (40) forty square feet per licensed business; provided, however, that each business must be guaranteed a minimum of at least 35 square feet signage.

(d) Except for buildings containing multiple business, wall signage shall not extend horizontally a distance greater than 50 percent of the width of the building wall on which it is displayed.

(e) Allowed wall signage is not transferable from one property to another; except within a shopping center or multi-building complex.

(f) Wall signs shall not placed higher than 35 feet above median sidewalk grade.

(g) Projecting signs may not project further than six feet from the surface of the building.

(3) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

(4) Reader Board signs and Changeable Message Center signs are permitted as per the requirements established in Section 3 of this Ordinance.

(5) Gasoline price signs shall not be located in, nor project over the public right-of-way, and shall not be portable. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(6) Temporary signs shall be permitted as provided in DMMC 18.42.090 and 18.42.240.

Sec. 4. DMMC 18.42.010 and section 1 (part) of Ordinance No. 584 are amended to read as follows:

Purpose. It is the purpose of this chapter to safeguard the life, health, property, and welfare of the citizens of the city by regulating and controlling the design, construction, location, use, illumination, and maintenance of signs and sign structures visible from any portion of public property or rights-of-way. The intent of the standards set forth in this chapter is:

(1) To protect the right of business to identify its premises and advertise its products through the use of signs without undue hindrance or obstruction;

(2) To encourage the design of signs that attract and invite rather than demand the public's attention and to curb the proliferation of signs;

(3) To encourage the use of signs that enhance the visual environment of the City;

(4) To assure equal protection and fair treatment under the law through consistent application of the regulations and consistent enforcement

(45) To promote the enhancement of business and residential properties and neighborhoods by fostering the erection of signs complementary to the buildings and uses to which they relate and which are harmonious with their surroundings.

Sec. 5. DMMC 18.42.040 and section 3(part) of Ordinance No. 584 is amended to read as follows:

Required. No sign shall be erected, re-erected, constructed, painted, posted, applied, altered, structurally revised, or repaired except as provided in this chapter and pursuant to a permit issued by the ~~code administrator~~ City Manager or designee. A separate permit shall be required for a

sign or signs for each business entity and/or a separate permit for each group of signs or a single supporting structure installed simultaneously. Thereafter, each additional sign erected on the structure must have a separate permit.

Sec. 6. DMMC 18.42.030 and section 2 of Ordinance No. 584 as amended by section 1 of Ordinance No. 634 as amended by section 11 of Ordinance No. 1267 are amended to read as follows:

Definitions. For the purpose of this chapter, the definitions in this section apply

(1) "Abandoned sign" means a sign that no longer correctly identifies, exhorts, or advertises any person, business, lessor, owner, product, or activity conducted or available on the premises where the sign is located.

(2) "Advertising copy" means any letters, figures, symbols, logos, or trademarks which identify or promote the sign user or any product or service; or which provides information about the sign user, the building or the products or services available.

(3) "Awning" means a cloth structure attached to, supported by, and projecting from a building and providing protection of the weather elements. Also called a "canopy."

(4) "Awning sign" means any sign which forms part of or is integrated into an awning and which does not extend beyond the limits of the awning.

(5) "Building" means a roofed and walled structure built for permanent use.

(6) "Changing message center" means an electronically controlled ~~public service time and temperature sign~~ message center ~~where with different copy changes of a public service or commercial nature are shown on the same lampbank.~~

(7) "Comprehensive design plan" means building, design, landscaping, and signs integrated into one

architectural plan, the comprehensive plan being complete in all other building, structural, and electrical requirements.

(8) "Double-faced sign" means a sign that has a sign on opposite sides of a single display surface or sign structure.

(9) "Electrical sign" means a sign or sign structure in which electrical wiring, connections and/or fixtures are used as part of the sign proper.

(10) "Facade" means the entire building front or street wall face of a building extending from the grade of the building to the top of the parapet or eaves and the entire width of the building elevation or elevations.

(11) "Flashing sign" means a sign with any portion thereof which changes light intensity or switches on and off in a constant pattern or contains moving parts or the optical illusion of motion caused by use of electrical energy or illumination.

(12) "Freestanding sign" means a sign attached to the ground and supported by uprights placed on or in the ground.

~~(13) "Front foot" means the maximum lineal dimension of an exterior wall, excluding canopies and projections, measured on a straight line parallel to a fronting street. For purposes of this definition, buildings and occupancies within a multiple building complex on a corner lot are defined as having exterior walls fronting on both streets.~~

(1413) "Frontage" means the measurement of the length of the property line along a street.

(1514) "Grade" means the elevation as measured at the relative ground level in the immediate vicinity of the sign.

(1615) "Ground sign" means a freestanding sign that is less than five feet in height.

(1716) "Incidental sign" means a small nonelectric information sign two square feet or less in area which pertains to goods, products, services, or facilities which are available on the premises where the sign occurs and is intended primarily for the convenience of the public while on those premises.

(1817) "Information sign" means a sign which gives directional information or identifies specific use areas and which is necessary to maintain the orderly internal use of the premises, such as those signs which identify employee parking, shipping, clearance, or which restrict ingress and egress. Excluded from this definition are signs which are not directly related to an identified need for orderly internal use of the property and off-premises or portable signs.

(1918) "Inspector" includes any city employee working under the authority and direction of the ~~code administrator~~ City Manager or designee.

(1920) "Landscaping" means any material used as a decorative feature, such as textured concrete bases, planter boxes, rockeries, driftwood, pole covers, decorative framing, and shrubbery or planting materials, used in conjunction with a sign, which expresses the theme of the sign but does not contain advertising copy.

(2120) "Mansard roof" means a sloped roof or roof-like facade architecturally able to be treated as a building wall.

(2221) "Marquee" means a permanent structure attached to, supported by, and projecting from a building and providing protection from the weather elements, but does not include a projecting roof. For the purposes of this chapter, a freestanding permanent roof-like structure providing protection from the elements, such as a service station gas pump island, will also be considered a marquee.

(2322) "Marquee sign" means any sign which forms part of or is integrated into a marquee and which does not extend beyond the limits of the marquee.

(2423) "Monument sign" means a sign above grade which is mounted or attached to a wide base or grade. These signs are composed of a sign face and a sign base. The base and architectural detail must be consistent with the character of the primary structure.

(2524) "Multiple-building complex" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business ~~or a single structure containing more than one business with separating walls and at least one outside access for each business located on different properties but which with shared a common lot, accesses, and/or parking facility facilitates.~~

(2625) "~~Multiple-tenant complex~~ Business Property" means a single property structure housing more than one retail business, office, or commercial venture, ~~which does not incorporate a separate outside access for each enterprise in a single structure; but not including residential apartment buildings or shopping centers.~~

(2726) "Off-premises directional sign" means a sign erected for the purpose of directing pedestrian or vehicular traffic to a facility, service, or business located on other premises.

(2827) "On-premises sign" means a sign which carries only advertisements strictly applicable to a lawful use of the premises on which it is located, including signs or sign devices indicating the business transacted, principal services rendered, and goods sold or produced on the premises, name of the business, name of the person, firm, or corporation occupying the premises.

(2928) "Perimeter" means the boundary lines used to define the extent of an area.

(3029) "Person" means any person, firm, partnership, association, corporation, company, institution, or organization.

(3130) "Pole sign" means any freestanding sign more than five feet in height that does not meet the definition of monument sign. These signs are composed of the sign cabinet or base and the sign pole or pylon by which it connects to the ground.

(3231) "Portable sign" means a sign which is not permanently affixed and is designed for or capable of being moved, except those signs explicitly designed for people to carry on their person.

(3332) "Premises" means the real estate (as a unit) which is involved by the sign or signs mentioned in this chapter.

(3433) "Projecting sign" means a sign which is attached to and projects more than one foot from a structure or building face.

(3534) "Public commercial parking area" means an open area other than a street, alley, or private parking area serving the occupants, patrons, or employees of a dwelling, hotel, business, or apartment to which the private parking area is appurtenant, which area is used for the parking of more than four automobiles.

(3635) "Reader Board" means a sign face designed with readily changeable letters allowing frequent changes of copy either manually or electronically.

(3736) "Real estate sign" means a portable or freestanding sign erected by the owner or his agent advertising the real estate upon which the sign is located for rent, lease, or sale or directing to the property.

(38) "Revolving sign" means a sign which rotates or turns in motion in a circular pattern.

(~~39~~37) "Roof line" means the top edge of a roof or parapet; the top line of a building silhouette.

(4038) "Roof sign" means a sign supported by and erected on or above the roof line of a building or structure.

(39) "Shopping center" means a grouping of retail business and/or service uses on a single development site consisting of 5 acres or more housed in multiple structures or a single building with common parking facilities.

(~~41~~40) "Sign" means any visual communication device, structure, or fixture which is visible from off premises and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, institution, organization, business, or building. Painted wall designs or patterns which do not represent a product, service, or trademark or which do not identify the user are not considered signs.

(4241) "Sign area" means the entire area within a circle or polygon enclosing the extreme limits of the advertising message together with any frame or decoration forming an integral part of the display or used to differentiate the sign from the background against which it is placed. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single square or rectangular figure is the area of the sign. Multi-sided signs, signs composed of two or more sides of equal area attached to each other but occupying different planes, shall have their areas computed by excluding the area of one side from the sum of the areas of all other sides. The total surface area of spherical or cylindrical signs is the sign area.

(~~43~~42) "Sign height" means the vertical distance from grade to the highest point of a sign or any vertical projection thereof, including its supporting columns.

(4443) "Sign structure" means any structure which supports or is designed to support any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of the building.

(44) "Single Business Property" means a single structure housing one business located on a single property without shared access and/or parking facilities.

(45) "Street" means a right-of-way, dedicated to the public use, which provides vehicular access to adjacent properties.

(46) "Street frontage" means the linear frontage of a single parcel of property or common development site abutting a public street.

(47) "Temporary construction sign" means a sign jointly erected and maintained on premises undergoing construction, by an architect, contractor, subcontractor, and/or materialman, upon which property the individual is furnishing labor or material.

(48) "Temporary sign" means any sign or advertising display constructed of cloth, canvas, light fabric, paper, cardboard, or other light materials, with or without frames, intended to be displayed for a limited time only. Signs painted upon window surfaces which are readily removed by washing shall be considered temporary signs.

(49) "Under marquee sign" means a sign attached to and suspended from the underside of a marquee or canopy.

(50) "Wall sign" means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached and supported throughout its entire length, with the exposed face of the sign parallel to the plane of the wall or facade. Signs incorporated into mansard roofs, marquees, or canopies shall be treated as a wall sign.

Sec. 7. DMMC 18.42.050 and section 3(A) of Ordinance No. 584 as amended by section 1 of Ordinance No. 637 as amended by section 1 of Ordinance No. 1139 are amended to read as follows:

Exemptions. The following shall not require a permit; these exemptions shall not be construed as relieving the owner of a sign from the responsibility of its erection and maintenance and its compliance with the provisions of this chapter or any other law or ordinance regulating the same:

(1) The changing of the advertising copy or message on a lawfully erected, painted, or printed sign, theater marquee, or similar signs specifically designed for the use of replaceable copy;

(2) Painting, repainting or cleaning of a lawfully erected sign structure or the changing of the advertising copy or message thereon and other normal maintenance unless a structural or electrical change is made;

(3) Temporary decorations customary for special holidays, such as Christmas and Independence Day, erected entirely on private property;

(4) Real estate subject to the following standards:

(a) Signs shall not exceeding eight (8) square feet in residential zones and twenty-four (24) square feet in commercial zones;

(b) Signs shall be limited to one sign per street frontage on the premises for sale, lease, or rent, and three directional signs to such property;

(c) Portable off-premises directional real estate signs announcing directions to an open house at a specified residence that is offered for sale or rent are permitted only when:

(i) Signs are not placed on trees, foliage, utility poles, or regulatory, directional, or informational signs;

(ii) Each sign does not exceed four (4) square feet in area and thirty-six (36) inches in height;

(iii) The agent or seller is physically present at the property for sale or rent;

(iv) The total number of directional signs is limited to three (3);

(v) Each sign in the right-of-way is placed in a manner that does not interfere with vehicle, bicycle, wheelchair, or pedestrian views or travel;

(vi) Signs do not block views; and

(vi) The signs may only be in place between during the hours of the open house.

(5) On-premises information signs guiding or directing traffic onto or off of a lot or within a lot, incidental signs, and internal information signs ~~such as "vacancy," "no soliciting,"~~ not over eight square feet in area ~~which are non-electrical and non-illuminated,~~ and do not exceed six feet in height. The information or copy displayed by or on any internal informational sign shall be limited to only those letters and/or symbols necessary to convey the required message in as brief a manner as reasonably possible and shall not advertise in any manner the facility occupying the premises nor goods or services available nor hours of operation;

(6) Political signs subject to the following restrictions;

(a) Political signs promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may

be displayed on private property. Such signs shall be removed within ten (10) days following the election; provided, that signs promoting successful candidates in a primary election may remain displayed on private property until ten (10) days following the immediately subsequent general election.

(b) It is prohibited for any person to paste, paint, affix or fasten a political sign on any utility pole or on any public building or structure.

(c) Political signs may be posted within public right-of-way only if the signs do not create a traffic obstruction or hazard. Additionally, signs shall not be located in a manner that interferes with vehicle, bicycle, wheelchair, or pedestrian views or travel. Signs shall not be placed in the street median. Political signs in the right-of-way are limited to a maximum surface area of four (4) square feet and a maximum height of five (5) feet. A political sign promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election must be removed within ten (10) days following an election; provided, that political signs promoting successful candidates in a primary election may remain displayed until ten (10) days following the immediately subsequent general election.

(d) It shall be the responsibility of the candidate to have the signs removed.

- (7) One nonelectrical and non-illuminated business identification sign containing no advertising matter over four square feet in area, ~~which is permanently affixed on a plane parallel to a wall;~~

- (8) One on-premises non-illuminated bulletin board not over twelve (12) square feet in area for a charitable or religious organization;

-____(9) For each street frontage of the premises, one non-illuminated temporary construction sign denoting the architect, engineer, and/or contractor when placed on work under construction, and not exceeding thirty-two (32) square feet in area;

-____(10) Memorial signs or tablets, names of buildings, and date of erection when cut into a masonry surface or when constructed of bronze or other noncombustible materials;

-____(11) Non-electrical identification signs which contain no more than the name and address of the dweller or tenant of a residence shall be allowed. Only one such sign not over two square feet in area shall be allowed for each street frontage of a residential dwelling within the city;

-____(12) Portable signs located in the public right-of-way subject to the following standards:

- (a) Signs may not be affixed to the ground, including through the use of stakes or other means that may damage property;

(b) No more than two (2) signs are allowed per business and no person may have more than two (2) signs at any one (1) time;

(c) Sign area shall neither exceed six (6) square feet per sign face nor thirty-six (36) inches in height;

(d) Signs are allowed only during the hours of operation of the business or for the duration of special events and must be taken indoors each day;

(e) Signs may not be placed on or attached to other objects, including but not limited to buildings, structures, trees, plants, utility poles, utility boxes, utility equipment, or other signs;

(f) Signs shall not be placed in a manner that interferes with vehicle, bicycle, wheelchair, or pedestrian views or travel;

(g) Signs shall not be placed in street medians;

(h) Signs shall not be placed in a manner that will damage City landscaping, irrigation or other City infrastructure or obstruct a drainage system. Any damage as the result of the placement of the portable will be the responsibility of the owner of the sign.

(i) Signs shall not be handwritten, and must be typed or professionally prepared and maintained in good condition so as to preserve the aesthetic value of the total environment; and

(j) Signs shall have a name and contact phone number or other contact information on them.

(123) Signs used exclusively for:

(a) Display of official notices used by any court, public body, or official, or for the posting of notices by any public officer in the performance of a public duty, or by any person in giving legal notice;

(b) Official directional, warning, or information signs of a public or semipublic nonprofit entity erected by or with the approval of the city; provided, however, the design of such signs shall be subject to the approval of the ~~superintendent of public works in consultation with the community development department~~ City Manager or designee. All such signs shall be installed by or under the direction of the ~~city department of public works~~ City Manager or designee and may be removed by the ~~department of public works~~ City if they become damaged, unsightly, or otherwise fall into a state of disrepair. Upon such removal, replacement signs may be installed. The ~~city~~ City manager ~~Manager~~ is authorized to establish a fee schedule for labor and materials expended from public funds for installation of signs and/or posts.

(14) Traffic directional and warning signs installed by a government entity;

(15) Signs not intended to be viewed from and not readable from off premises;

(16) Window merchandise displays;

(17) Point-of-purchase advertising displays, such as product dispensers;

(18) National flags, flags of political subdivisions and symbolic flags of an institution;

(19) Barber poles;

(20) Historic site markers and plaques;

(21) Gravestones;

(22) Structures intended for separate use, such as phone booths

(23) Identification signs upon recycling collection containers or other collection containers for public, charitable or nonprofit organizations;

(24) Lettering or symbols painted directly onto or flush-mounted magnetically onto an operable motor vehicle operating in the normal course of business.

(25) Sculptures, fountains, mosaics, or other public art features that do not incorporate advertising or identification of a business or product;

(26) Temporary construction signs subject to the following standards:

(a) Sign shall not exceed 32 square feet;

(b) No more than one sign is allowed per street frontage;

(c) Sign shall be removed upon completion of the project, except as provided in DMMC 18.42.120.

Sec.8. DMMC 18.42.060 and section 3(B) of Ordinance No. 584 is amended to read as follows:

Application. Applications for sign permits shall be made to the ~~code administrator~~City Manager or designee upon building permit forms provided by the city.

(1) Applications for sign permits shall be accompanied by:

(a) Two site (plat) plans showing the location of the affected lot, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

(b) Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, calculations for dead load and wind pressure, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

(c) Written consent of the owner of the building, structure, or property where the sign is to be erected;

(d) A permit fee as set by written administrative directive.

(2) Exceptions.

(a) The ~~code administrator~~City Manager or designee may waive submission of plans and specifications when the structural aspect is of minor importance.

(b) If the sign to be installed is to replace a nonconforming sign, the permit and plan check fees may be

waived at the discretion of the ~~code administrator~~City Manager or designee.

Sec. 9. DMMC 18.42.070 and section 3(C) of Ordinance No. 584 is amended to read as follows

Inspections.

(1) All signs controlled by this chapter are subject to periodic inspection by the ~~code administrator~~inspector. The ~~code administrator~~inspector shall keep records reflecting inspection dates and results thereof.

(2) Footing inspections shall be made by the ~~code administrator~~inspector for all signs having footings.

(3) Every new sign shall bear the permit number and date of issue prominently and permanently affixed.

(4) Every temporary sign requiring a permit shall bear a legible notation of its expiration date.

(5) If the inspector is required to reinspect a new installation due to no fault of his own, a reinspection fee shall be charged in accordance with administration directive.

Sec. 10. DMMC 18.42.090 and section 3(E) of Ordinance No. 584 as amended by section 1 of Ordinance No. 873 as amended by section 2 Ordinance No. 1139 are amended to read as follows

Special use permits. The ~~community development department~~City Manager or designee is authorized to grant a special use permit for the following purposes:

(1) Temporary signs, banners and/or posters not exceeding 40 square feet, strings of pennants, ribbons, flags, streamers, balloons, spinners, or other devices of a carnival nature may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days within a three-month period. No

more than three types of temporary signs may be displayed at any one time.

(2) Temporary signs exceeding 40 square feet but not exceeding 200 square feet may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 45 days. Only five such permits shall be issued to any business during a calendar year. The total aggregate of temporary signs shall be no more than 400 square feet.

(3) Inflatable displays exceeding 40 square feet and searchlights may be permitted for temporary or special events, such as a grand opening, but such use shall not exceed 10 days. Only three such permits shall be issued to any business during a calendar year.

(4) Off-premises signs in the Pacific Highway South business district. Such permit may be granted in consideration of the removal of off-premises signage in the downtown business district.

(5) Off-premises directional signs advertising group sales of single-family residences or condominiums; provided, the following conditions shall apply:

(a) Each sign permitted under this section may contain two sign faces, each of which is no larger than 16 square feet, and no more than two signs per group sale shall be permitted;

(b) The maximum height of any such sign shall be eight feet from grade;

(c) The maximum duration of any such sign shall be 90 days or whenever the property advertised in the sign is sold, whichever occurs first; provided, the special permit may be renewed and reissued for additional 90-day periods if the property advertised in the sign has not been sold.

(d) An applicant who is granted a permit under this section shall relinquish the general privilege to place

three off-premises directional signs per property under the provisions of DMMC 18.42.050(4) and ~~DMMC 18.42.220~~ but shall be permitted to place an additional three off-premises directional signs for the entire group sale; provided, such signs comply with DMMC 18.42.050(4).

Sec. 11. DMMC 18.42.100 and section 3(F) of Ordinance No. 584 is amended to read as follows:

~~**Application - Generally Purpose.** Application may be made to the community development department for special consideration whereby deviations from the~~ requirements and restrictions of this chapter may be permitted modified by the City Manager or designee when an applicant is using a comprehensive design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. Comprehensive design may be used on an existing building where the facade is being altered, new construction or in freestanding signs. ~~The exception in this article is based on an exceptional effort toward creating harmony between the sign, the building, and the site where it is located through use of a consistent design theme which complements and enhances the surrounding development and natural beauty of the area.~~

Sec. 12. DMMC 18.42.110 and section 3(F)(1) of Ordinance No. 584 is amended to read as follows:

Application - Supplementary material. Applications for comprehensive design plan permits shall be submitted ~~to the code administrator~~ on forms provided by the ~~city~~ City Manager or designee and shall be accompanied by the following:

(1) A narrative describing the proposed plan, including, but not limited to, the following information:

(a) How the physical components of the sign structure relate to the copy area, detailing legibility and readability factors based on traffic speed, sign placement, and letter size;

(b) How the sign(s) relate to the immediate surroundings, including buildings, other signs, landscaping, and other decorative features;

(c) How the sign or signs relate to the desired land use characteristics promoted by the comprehensive plan and this chapter ~~and the natural beauty within and surrounding the city;~~

(d) How the elements and design of the sign(s) promote and enhance the overall design theme established by the adopted design guidelines for the Marina District or the Pacific Ridge Neighborhood ~~of the city;~~

(e) Evaluation of potential adverse effects on adjacent property.

(2) A site plan and colored renderings of the sign(s) and building faces on which the signs will be mounted. Graphic submittals shall illustrate how the total sign proposal will appear from the street(s) from which the signage is intended to be seen.

(3) Regular sign permit application.

Sec. 13. DMMC 18.42.120 and section 3(F)(2) of Ordinance No. 584 is amended to read as follows:

Criteria for granting. ~~In evaluating the proposed plan, the community development department~~ The City Manager or designee shall employ the following criteria when evaluating the proposed comprehensive signage plan;

(1) Whether the proposal manifests an exceptional effort toward creating visual harmony between the sign, buildings, and other components of the subject property through the use of a consistent design theme;

(2) Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;

(3) Whether the sign placement and size obstructs or interferes with any other signs or property in the area or obstructs natural or scenic views;

(4) Whether the proposed sign or signs is/are better coordinated, more harmonious with surrounding development including other signage and the architectural concepts employed in the building's site then could be installed under existing criteria in this chapter;

~~(5) In the downtown Des Moines business district, whether the proposal promotes the city's contemporary northwest nautical theme through use of the following:~~

~~—— (a) Restrained use of nautical design features in the sign design, including but not limited to: ships, sails, fish, whales, water, international signal flags, seabirds, and seashells; or~~

~~—— (b) Use of piling, ropes, and other nautical elements integrated into the sign structure to provide a waterfront village appearance; or~~

~~—— (c) Use of wood-carved signs. The contemporary northwest nautical theme is based on Des Moines' waterfront village history and is not a nautical theme of cute artifact.~~

Sec. 14. DMMC 18.42.130 and section 4(part) of Ordinance No. 584 as amended by section 3 of Ordinance No. 1237 are amended to read as follows:

Applicability. The regulations in ~~DMMC 18.42.140 through 18.42.270~~ Article IV shall apply in all zones and to all signs governed by this chapter, subject to the specific regulations of each zone.

Sec. 15. DMMC 18.42.150 and section 4(B) of Ordinance No. 584 are amended to read as follows:

Prohibited signs. The following signs are prohibited:

- (1) Abandoned or obsolete signs;
- (12) Signs or sign structures, which by coloring, shape, wording, or location resemble or conflict with traffic-control signs or devices;
- (23) Signs that create a safety hazard for pedestrian or vehicular traffic;
- (34) All flashing signs, ~~except changing message centers;~~
- ~~(4) Portable signs;~~
- (5) Signs attached to or placed on a vehicle or trailer parked on public or private property; provided, however, that this provision shall not be construed as prohibiting the identification of a firm or its products on a vehicle operating during the normal course of business. Franchised buses and taxis are exempt from this provision;
- (6) Off-premises signs, except real estate signs, political signs, or portable signs as expressly allowed in DMMC 18.42.050, public service/civic event signs, garage sale signs, and off-premises signs permitted by special use permit as provided in DMMC 18.42.090;
- (8) Any sign affixed to or painted on trees, rocks, or other natural features, or utility poles and the like including advertising signs affixed to or painted on fences;
- (8) Roof signs;

(9) All portable ~~Reader~~ Board signs;

(10) Strings of pennants, banners, posters, ribbons, streamers, balloons, spinners, searchlights, or other devices of a carnival nature, except as provided in DMMC 18.42.090;

____ (11) Home occupation signs.

(13) Any sign that is not specifically permitted by this chapter.

Sec. 16. DMMC 18.42.270 and section 4(N) of Ordinance No. 584 are amended to read as follows:

Placement. All signs, except real estate directional signs, political signs, portable signs expressly ~~approved~~ allowed under DMMC 18.42.050-~~(12)~~, and off-premises signs approved under DMMC 18.42.090, must be located on the premises of the business that they advertise. Advertising signs located on premises other than the premises of the business they advertise are forbidden, notwithstanding single ownership of more than one premises, except where the premises are contiguous. For the purposes of this section "contiguous" means that such buildings are joined and/or interior access provided from one to the other. ~~No sign may be located in a public right-of-way.~~

Sec. 17. DMMC 18.42.290 and section 5(A) of Ordinance No. 584 as amended by section 5 of Ordinance No. 1267 are amended to read as follows:

Applicability. In addition to the provisions in Article IV, the regulations in ~~DMMC 18.42.290 through 18.42.325~~ Article V ~~will~~ shall apply within the various zones.

Sec. 18. DMMC 18.42.290 and section 5(A) of Ordinance No. 584 as amended by section 5 of Ordinance No. 1267 are amended to read as follows:

Residential. The following signs are permitted in all residential zones:

(1) One (1) nonelectrical identification sign per street frontage not exceeding two (2) square feet which contains no more than the name and address of the dweller or tenant of the residence;

(2) One (1) nonelectric identification sign per entrance to a subdivision; providing, that the sign does not exceed twenty-four (24) square feet in area;

(3) Except in the PR-R zone where a wall sign for a nonresidential use within a mixed-use development may be illuminated, one (1) nonelectric identification sign, not exceeding (twenty-four) (24) square feet, per street frontage for nonresidential uses allowed in the residential zones;

(4) Community centers, schools, and churches are permitted one readerboard sign not exceeding twenty-four (24) square feet, not exceeding eight (8) feet in height;

(5) Temporary signs not exceeding sixteen (16) square feet per street frontage for nonresidential uses in a residential zone;

(6) In areas zoned for multiple-family residences, other than duplexes, one nonelectric identification sign not exceeding twenty-four (24) square feet per street frontage and appropriate to the architectural design and landscape;

(7) In the PR-R zone, onsite real estate signs for the individual dwellings shall be displayed together within or on a sign cabinet or display

board. One (1) display cabinet or board shall be allowed per street frontage;

(8) No pole signs shall be permitted and monument signs may not exceed ten (10) feet in height except by special use permit. No off-premises signs shall be permitted except real estate directional signs are permitted as authorized by this chapter.

(9) Internally illuminated signs shall be constructed using individual letters/characters, or sign cabinets with an opaque field or background so that only the individual letters/characters are illuminated.

Sec. 19. DMMC 18.42.300 and section 5(B) of Ordinance No. 584 amended by section 2 of Ordinance No. 1237 is each amended to read as follows:

Neighborhood ~~commercial~~ Commercial zone
Zones. (N-C) The following signs are permitted in the Nneighborhood Ceommercial Zzone (N-C) and commercially zoned properties located in the Redondo Neighborhood:

(1) One nonelectrical and nonilluminated business identification sign containing no advertising matter more than four square feet in area which is permanently affixed to a wall;

(2) Total sign area for a single business shall not exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet and freestanding signs may not exceed 40 square feet. No freestanding sign shall exceed the height of the primary use structure;

(3) Revolving Ssigns ~~that rotate or have rotating or moving parts~~ are prohibited;

(4) Temporary signs are permitted as provided in DMMC 18.42.050 and DMMC 18.42.240;

(5) Projecting signs are prohibited.

Sec. 20. DMMC 18.42.320 and section 5(D) of Ordinance No. 584 is amended to read as follows:

~~Downtown—business~~Marina ~~D~~district. The following signs are permitted on commercially zoned properties within the Marina District as established by the Des Moines Comprehensive Plan in all commercial zones within the district defined by South 216th Street on the north, South 232nd Street on the south, 10th Avenue South on the east, and Puget Sound on the west:

(1) Each public commercial parking lot may have one sign per street frontage not exceeding 24 square feet in sign area.

(2) ~~Signs that rotate or have rotating or moving part(s), are prohibited~~Reader Board signs and Changeable Message Center signs are permitted as per the requirements established in Section 3 of this Ordinance.

(3) Projecting signs may not project further than six feet from the surface of the building ~~and freestanding signs may not exceed 18 feet in height; however, under no circumstance shall a freestanding sign exceed the height of the primary use structure.~~

(4) Freestanding signs may not exceed 15 feet in height as measured from the sidewalk grade.

(5) No more than one freestanding is permitted for properties with less than 300 feet of street frontage. Multiple business properties or multi-building complexes with over 300 feet of street frontage and more than one vehicular access is allowed one additional freestanding sign; provided that the total allowable sign area is not exceed and the signs are over 100 feet apart.

(45) Each single business property is permitted a total sign area not to exceed two square feet per lineal foot of street frontage, up to a maximum of 200 square feet. Freestanding signs may not exceed 50 square feet. ~~Businesses housed in multiple-tenant buildings or within a multiple-building complex are subject to the regulations pertaining to such buildings or complexes.~~

~~(5) Each multiple-tenant building is permitted one freestanding sign not to exceed 100 square feet in area. Total sign area for the property may not exceed two square feet per lineal foot of street frontage up to a maximum of 250 square feet.~~

(6) Each ~~multiple-building~~ complex business property or multi-building complex is permitted one freestanding sign not to exceed one square foot per lineal foot of street frontage up to a maximum of 100 square feet. Each business within ~~the complex~~ shall be permitted a wall sign not to exceed one square foot per lineal foot of wall of street frontage; provided, however, that each business must be guaranteed a minimum of ~~shall be permitted at least 32-24~~ square feet regardless of ~~wall frontage~~ street frontage.

(7) Gasoline price signs shall not be located in, nor project over the public right-of-way, and shall not be hand written. Such signs may be freestanding or attached to canopy columns. The area of the price sign shall not count towards the allowed total wall or freestanding signage.

(78) Temporary signs shall be permitted as provided in DMMC 18.42.050 and DMMC 18.42.240.

~~(8) All signs in this district must be approved by the community development department to ensure that the sign promotes the city's~~

~~northwest nautical theme as described in DMMC
18.42.120(5).~~

Sec. 21. DMMC 18.42.340 and section 6(A) of Ordinance No. 584 as amended by section 1 of Ordinance No. 791 are amended to read as follows:

Removal of unlawful signs-Notice. The ~~code administrator~~City Manager or designee may order the removal of any sign erected, installed, or maintained in violation of this chapter. The ~~expression "code administrator" shall include any City employee acting under the direction of the code administrator.~~

(1) **Signage, General.** Any property owner or occupant erecting or maintaining signage not in compliance with the provisions of this chapter, except portable signs which are regulated in subsection (2) of this section, shall be given written notice, by certified letter, specifying the violation and a direction to correct the violation or remove the sign within 30 days. Such notice shall be given to the holder of the sign permit or, if no permit exists, to the named owner of the land where the sign is erected. In the event the violation is not corrected within the 30-day period, the ~~code administrator~~City Manager or designee shall thereupon revoke the permit and remove, or cause the removal of the sign, and shall assess all costs and expenses incurred against the named owner of the sign and/or named owner of the land. Any sign which is a source of immediate peril to persons or property may be removed summarily and without notice. Alternatively, this subsection may be enforced pursuant to chapter 18.72 DMMC.

(2) **Portable Signage.** Portable signage includes any sign not permanently affixed; real estate signs; political signs; portable reader~~Reader~~ ~~Board~~ signs; streamers; pennants; banners; signs attached to or mounted on trees,

fences, utility poles, or vehicles parked in proximity to a business with the purpose of attracting attention to such business; or any similar signs. Portable signs in violation of this chapter located on site must be removed upon 24-hour notice. Such notice shall be given by delivering a written notice of violation to the owner, occupant, or person ostensibly in charge or control of the real property upon which the sign is located. Such notice shall state the violation and shall require that the violation be corrected within twenty-four (24) hours. In the event the violation is not corrected within twenty-four (24) hours, the ~~code administrator~~City Manager or designee shall cause the sign or signs to be impounded. If the portable sign is located off site of the premises to which the sign reasonably relates, or if ownership of the sign cannot be reasonably determined, no notice of violation shall be provided and the sign shall be impounded forthwith. In the event a sign is removed, there shall be a removal fee ~~of \$10.00~~ and a storage fee ~~of \$2.50 per day or fraction of a day as set by~~ Administrative Order of the City Manager. No sign shall be returned until the removal and storage fee is paid in full. The sign shall be stored for not less than ten (10) days, and thereafter the ~~code administrator~~City Manager or designee shall dispose of the sign in any manner. No cause of action shall be maintained against the city for damage to signs properly impounded, whether such damage occurred during the impoundment or storage. A second violation occurring within a 12-month period shall be consider a Class 1 civil infraction. A third violation of this subsection occurring within a 12-month period shall result in a criminal prosecution and immediate impoundment of the sign without notice. This enforcement provision supersedes the processes contained in DMMC 18.72.060, and provides for immediate prosecution pursuant to DMMC 18.72.070. For such repeat offenses sign alteration or substitution shall be no defense.

Sec. 22. DMMC 18.42.350 and section 6(C) of Ordinance No. 584 as amended by section 8 of Ordinance No. 1267 are amended to read as follows

Nonconforming signs

(1) Nonconforming signs that were legally and permanently installed prior to ~~December 19, 1983~~February 24, 2011, shall be allowed to continue in use so long as they are continuously maintained, are not relocated, are not structurally altered or made more nonconforming in any way. ~~However, no permit shall be issued for a new freestanding or wall sign as long as any nonconforming signs exist on that property.~~

(2) Nonconforming off-premises signs shall be abated in accordance with DMMC 18.48.090

NEW SECTION Sec. 23. Repealer.

(1) The previously codified provisions of Chapter 12.16 DMMC are repealed, and:

(a) Section 1 of Ordinance No. 542 as amended by section 1 of Ordinance No. 1079;

(b) Section 2 of Ordinance No. 542 as amended by section 2 of Ordinance No. 1079;

(c) Section 3 of Ordinance No. 1079; and

(d) Section 4 of Ordinance No. 542 as amended by section 51 of Ordinance No. 1009 as amended by section 4 of Ordinance No. 1079 are each repealed.

(2) DMMC 18.42.020 and section 1(part) of Ordinance No. 584

(3) DMMC 18.42.220 and section 4(I) of Ordinance No. 584

(4) DMMC 18.42.230 and section 4(J) of Ordinance No. 584

(5) DMMC 18.42.240 and section 4(K) of Ordinance No. 584 as amended by section 3 of Ordinance 1139

(6) DMMC 18.42.260 and Section 4(M) of Ordinance 584

(7) DMMC 18.42.310 and section 5(C) of Ordinance No. 584 as amended by section 6 of Ordinance No. 1267.

(8) DMMC 18.42.325 and section 10 of Ordinance No. 920.

(9) DMMC 18.42.327 and section 7 of Ordinance No. 1267

(10) DMMC 18.42.330 and Section 6(part) of Ordinance No. 584.

(11) DMMC 18.42.370 and Section 6(B) of Ordinance No. 584

NEW SECTION Sec. 24. Codification.

(1) Section 1 of this ordinance shall be codified as a new section in Article IV of chapter 18.42 DMMC entitled "**Signs prohibited over right-of-way.**"

(2) Section 2 of this ordinance shall be codified as a new section in Article IV of chapter 18.42 DMMC entitled "**Electronic Reader Board and Message Center Signs.**"

(3) Section 3 of this ordinance shall be codified as a new section after DMMC 18.42.300 and before DMMC 18.42.320 in Article V of chapter 18.42 DMMC entitled "**Commercial Zones.**"

Sec. 25. 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.

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

Sec. 26. 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 ____, 2011 and signed in authentication thereof this ____ day of ____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

RESOLUTION NO. 1142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 10-117 which updates and amends the City of Des Moines' Sign Code codified in chapter 18.42 DMMC.

WHEREAS, the City Council is considering updating chapter 18.42 DMMC relating to the sign code and associated text amendments, and

WHEREAS, a public hearing is necessary to receive public comment regarding this proposal, and

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

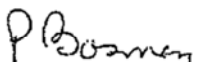
THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

The matter of amendments to chapter 18.42 DMMC, *Signs*, is set for a public hearing before the City Council on Thursday, March 24, 2011, at 7:30 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

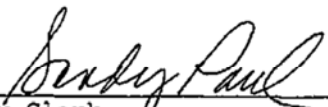
ADOPTED BY the City Council of the City of Des Moines, Washington this 27th day of January, 2011 and signed in authentication thereof this 27th day of January, 2011.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Updating DMMC to Reflect Actual
Financial Accounting

FOR AGENDA OF: March 24, 2011

DEPT. OF ORIGIN: Finance

ATTACHMENTS:
Draft Ordinance 11-014

DATE SUBMITTED: March 9, 2011

CLEARANCES:

☒ Finance

☒ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this report is to request Council's adoption of Draft Ordinance No. 11-014 that repeals sections of chapter 3.48 DMMC pertaining to funds that are no longer in use.

Suggested Motions:

1. "I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 11-014 on first reading."
2. "I move to enact Draft Ordinance No. 11-014, relating to revenue and finance and repealing DMMC 3.48.010, 3.48.020, 3.48.040, 3.48.060, 3.48.080, 3.48.100, and 3.48.110 .

Background

Ordinance No. 1144 adopted September 14, 1995 codified the City's existing fund accounting structure. Draft Ordinance No. 11-014 repeals sections of chapter 3.48 DMMC for funds that are no longer in use. The following funds would be repealed with the adoption of Draft Ordinance No. 11-014:

DMMC 3.48.010	Airport Defense Fund
DMMC 3.48.020	Arterial Street Fund
DMMC 3.48.040	Community Development Block Grant Fund
DMMC 3.48.060	Marina Advance Moorage Deposit Fund
DMMC 3.48.080	Park Fund
DMMC 3.48.100	Revenue Stabilization Cumulative Reserve Fund

DMMC 3.48.110 Senior Services Division Enhancement Trust Fund

Recommendation

Staff recommends that the City Council adopt Draft Ordinance 11-014.

FINANCE DIRECTOR'S FIRST DRAFT 3/08/2011

DRAFT ORDINANCE NO. 11-014

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to revenue and finance, removing obsolete sections from chapter 3.48 DMMC, and repealing DMMC 3.48.010, 3.48.020, 3.48.040, 3.48.060, 3.48.080, 3.48.100, and 3.48.110.

WHEREAS, Title 3 DMMC, Revenue and Finance, contains outdated provisions, and

WHEREAS, the City Council desires to continue its process of updating the DMMC by repealing obsolete portions, and

WHEREAS, the City Council finds that this Ordinance is appropriate and necessary for the preservation of the public health and welfare; now therefore,

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

Sec. 1. Repealed. DMMC 3.48.010 and section 19 of Ordinance No. 1144 creating an "airport defense fund" are hereby repealed.

Sec. 2. Repealed. DMMC 3.48.020 and section 20 of Ordinance No. 1144 creating an "arterial street fund" are hereby repealed.

Sec. 3. Repealed. DMMC 3.48.040 and section 22 of Ordinance No. 1144 creating a "community development block grant fund" are hereby repealed.

Sec. 4. Repealed. DMMC 3.48.060 and section 24 of Ordinance No. 1144 creating a "marina advance moorage deposit fund" are hereby repealed.

Sec. 5. Repealed. DMMC 3.48.080 and section 26 of Ordinance No. 1144 creating a "park fund" are hereby repealed.

Sec. 6. Repealed. DMMC 3.48.100 and section 28 of Ordinance No. 1144 creating a "revenue stabilization cumulative reserve fund" are hereby repealed.

Ordinance No. ____
Page 2 of 2

Sec. 7. Repealed. DMMC 3.48.110 and section 29 of Ordinance No. 1144 creating a "senior services division enhancement trust fund" are hereby repealed.

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

Sec. 9. Effective date. This ordinance shall take effect and be in full force (5) five 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 ____, 2011 and signed in authentication thereof this ____ day of ____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Junk Vehicle Ordinance

FOR AGENDA OF: March 24, 2011

DEPT. OF ORIGIN: Legal

ATTACHMENTS: 1. Draft Ordinance No. 10-137
2. RCW 46.55.240

DATE SUBMITTED: 3/16/2011

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDATION

The purpose of this agenda item is to update the Junk Vehicle Ordinance (Chapter 7.32 DMMC) to provide a more effective and efficient means of dealing with problem properties. Junk vehicles on private property are considered a nuisance and the City has the authority to compel their removal. These amendments update the current Junk Vehicle Ordinance to streamline and clarify the process of removing them from private property.

TWO MOTIONS:

FIRST MOTION: "To suspend Rule 26(a) in order to enact Draft Ordinance No. 10-137 on first reading."

SECOND MOTION: "To enact Draft Ordinance No. 10-137 clarifying and updating enforcement mechanisms to reduce the number of junk vehicles on private property."

BACKGROUND

The purpose of the City's Junk Vehicle Ordinance is to preserve the character and safety of the City's neighborhoods by eliminating as nuisances junk vehicles from private property. The Draft Ordinance provides procedures that better enable the City to remove junk vehicles from property if the owner is unwilling or unable to do so. The Draft Ordinance's basic framework is structured around Chapter 46.55

RCW which sets state requirements for towing and impounding vehicles that have been classified as public nuisances.

In 2010, the City Attorney's office conducted a study related to the nuisance code provisions of the DMMC and found that in order to maximize effectiveness and efficiency, changes needed to be made. Specific problems that were identified included lack of clear guidance as to how to classify a junk vehicle, unclear enforcement mechanisms, and several loopholes that allowed property owners to take advantage of the current system.

The following proposed changes would address these issues and provide for a clear, concise, and effective means of reducing the public nuisance of junk vehicles on private property.

DISCUSSION

The first issue to be addressed is clarifying what a junk vehicle is and providing clear standards for code enforcement to be able to classify a vehicle as "junk". The DMMC mirrors state law when defining a junk vehicle as a vehicle meeting at least three of the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable;
- (d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

Currently, our code does not define "apparently inoperable" leaving this element open to interpretation by the code enforcement officer as well as the court. By defining this required element with clear and identifiable standards, it will be easier for the code enforcement officer to identify and prove that a vehicle should be classified as "junk". This improved definition will also assist the court in ruling on whether the classification was made properly.

The second issue identified was a lack of standard enforcement mechanisms. The code as written allows for the City to abate the nuisance, issue an infraction or charge the individual vehicle owner or property owner with a crime. No distinction is made as to when each method should be employed. By allowing the City to either issue a non-criminal infraction or charge the person with a crime, the City could be exposing itself to an Equal Protection claim under the Federal Constitution. As such, the City has not pursued criminal charges against those who have violated the code.

The proposed amendments allow the City to take one of two courses of action based on a case by case basis and make a calculated decision as to what method would be most effective to solve the problem. The City is allowed to abate the nuisance, by following specific procedures, and remove the vehicles from the property. At this point, the City would attempt to recoup the expense by placing a lien on the

homeowner's property. While effective in some situations, this method is costly and time consuming, and may not work in a situation involving renters or where the individual does not have equity in their home.

The second method would enable the code enforcement officer to issue citations to an individual. If the problem is not resolved, and two citations are found committed within one year, the third citation would result in a criminal prosecution. In many cases, the threat of arrest may be enough to compel the individual to clean up their property, but if it does not, the City would have the ability to follow through and make an arrest. Any plea bargain or condition of sentencing would likely involve requirements that the individual remove the junk vehicles from the property. This method would be more cost effective for the City than abatement and the threat of arrest may accomplish more than the threat of abatement. Additionally, by setting clear standards as to when a criminal charge can be instituted, any Equal Protection argument would be addressed.

The third issue relates to "loopholes" in the DMMC that allow junk vehicle owners to avoid City enforcement measures by temporarily cleaning up the property. Over the last few years, several property owners have temporarily cleaned up their property after receiving a citation from the City and then provided photographs to the Court of the property in a compliant condition. Under the DMMC as written, this would require the City to dismiss any abatement procedures and would also negatively impact any prosecution of the citations. After the case had been dismissed, the junk vehicles promptly returned to the property.

By removing language allowing a landowner to keep one junk vehicle on their property for 14 days and the requirement that any abatement proceeding be dismissed if the property is cleaned 48 hours prior to the hearing, the City would be removing the loopholes from the DMMC. The City Attorney's office maintains the discretion to dismiss an action if the property is cleaned, however, by mandating a dismissal in the DMMC; some people in the past have taken advantage of this. The City's ultimate goal is compliance with the code and in many instances would be willing to reduce or dismiss charges if the problem is resolved prior to going to court. It has been the experience of City staff that some individuals have taken advantage of these exceptions. By removing them, the City would have the increased ability and discretion to appropriately deal with problem properties.

ALTERNATIVES

1. Pass the Draft Ordinance as written.
2. Pass the Draft Ordinance with amendments.
3. Do not pass the Draft Ordinance and keep the Junk Vehicle Ordinance as currently written.

FINANCIAL IMPACT

There would be no financial impact if this Draft Ordinance is passed.

CONCLUSION

Police, Code Enforcement, and Legal recommend passage of the Draft Ordinance.

CITY ATTORNEY'S SECOND DRAFT 02/7/2011

DRAFT ORDINANCE NO. 10-137

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON regarding junk vehicles, amending chapter 7.32 DMMC.

WHEREAS, junk and inoperable vehicles are located throughout the City, and

WHEREAS, citizens and property owners have expressed frustration and concern over the number of these vehicles located in their neighborhoods and throughout the city, and

WHEREAS, these vehicles contribute to blight in the community, degrade the quality of life of Des Moines residents, and impact public welfare, and

WHEREAS, existing regulations regarding junk vehicles do not adequately provide for efficient enforcement measures, and

WHEREAS; the City Council finds that it is in the public interest to use the City's police powers to increase enforcement capabilities relating to junk vehicles as provided in this Draft Ordinance; now therefore,

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

Sec. 1. DMMC 7.32.010 and section 2 of Ordinance No. 1283 are amended to read as follows:

Definitions.

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

(2) "Apparently inoperable" means that the vehicle does not appear to comply with requirements for safe and legal operation on public streets or highways with regard to expired or a lack of current licensing, a lack of brakes,

lights, tires, safety glass, or other safety equipment or other circumstances or conditions that are evidence that the vehicle is not currently operable, including, but not limited to, a vehicle having its passenger compartment filled with trash or debris, vegetation growing inside, around, or on the vehicle, or other evidence that the vehicle has not been moved for an extended period of time.

(23) "Director" means the director of the department in charge of code enforcement or his or her designee or any designated alternate who is empowered by ordinance or by the city manager to enforce this chapter including assigned code enforcement officials.

~~(3) "Vehicle" means a motorized or nonmotorized vehicle or device for carrying passengers, goods or equipment, including but not limited to, automobiles, trucks, motorcycles, bicycles, boats, tractors, campers, trailers, or devices of a similar nature or any components of such devices.~~

(4) "Junk vehicle" means a vehicle meeting at least three of the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including, but not limited to, any of the following: a broken window or missing windshield or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable; or
- (d) Has an approximate fair market value equal only to the approximate value of the scrap value.

(5) "Landowner" means an owner of private property, or a person in possession or control of private property.

(6) "Vehicle" means a motorized or nonmotorized vehicle or device for carrying passengers, goods or equipment, including but not limited to, automobiles, trucks, motorcycles, bicycles, boats, tractors, campers, trailers, utility trailers or devices of a similar nature or any components of such devices.

Sec. 2. DMMC 7.32.020 and section 2 of Ordinance No. 1057 are amended to read as follows:

Junk vehicles prohibited.

(1) No person shall keep, permit, or allow a junk vehicle to be placed, maintained, or stored on real property. ~~in a residential zone.~~

~~(2) A violation of or failure to comply with this section is a class 1 civil infraction~~

~~(3) Each day upon which a violation occurs constitutes a separate offense.~~

Sec. 3. DMMC 7.32.030 and section 4 of Ordinance No. 1283 are amended to read as follows:

Exceptions.

(1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or

(2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to the provisions of RCW 46.80.130.

~~(3) At any one time, a landowner may have on his or her premises only one junk vehicle outside an enclosed building for a period not to exceed 14 days.~~

Sec. 4. DMMC 7.32.040 and section 5 of Ordinance No. 1283 are amended to read as follows:

Abatement and removal of junk vehicles on private property.

(1) Voluntary ~~correction~~compliance. Whenever the director determines that a vehicle is a public nuisance and in violation of this chapter, a reasonable attempt shall be made to secure voluntary ~~correction~~compliance from the landowner and the vehicle's registered owner.

(2) Issuance of notice of civil violation. If the director does not obtain voluntary ~~correction of the public nuisance~~compliance with this chapter, the director ~~may~~shall issue a notice of civil violation to the landowner of record and the vehicle's last registered owner of record in accordance with the provisions of DMMC 1.28.040.

(3) Content. For violations of this chapter, the notice of civil violation to the fullest extent reasonably possible shall contain the following information:

(a) The name and address of the landowner of record upon whose property the vehicle is located;

(b) The name and address of the vehicle's last registered owner of record provided license or vehicle identification numbers are available and/or readily capable of obtaining;

(c) The vehicle description, including the license plate number and/or the vehicle identification number, the model year, the make, and the factors which render the vehicle a public nuisance;

(d) The street address or a description sufficient for identification of the property where the vehicle is located;

(e) The required corrective action and a date and time by which the correction must be completed;

(f) The date, time, and location of a hearing before the Des Moines ~~m~~Municipal eCourt judge on the question of abatement and removal of the vehicle or part thereof as a public nuisance which will be at least 10 days but no more than 45 days from the date the notice is issued;

~~(g) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the required corrective action is completed at least 48 hours prior to the scheduled hearing;~~

(~~h~~) A statement indicating the city may remove, impound, and dispose of the vehicle, and assess all costs and expenses of administration, removing, impounding, and disposing of the vehicle against the landowner or the registered owner as ordered by the Des Moines ~~m~~Municipal eCourt judge; and

(~~i~~) A statement that a monetary penalty pursuant to DMMC 1.28.040(5) in an amount per day for each violation shall be assessed against the landowner and/or the vehicle's registered owner as specified and ordered by the Des Moines ~~m~~Municipal eCourt judge in accordance with DMMC 1.28.040.

(4) Service of notice. The notice shall be mailed by certified mail, with a five day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(5) Landowner responsibility disclaimer. The landowner ~~may~~must appear in person at the hearing or present a written statement prior to the hearing to deny responsibility for the vehicle's presence on the property. If the Des Moines Municipal eCourt judge~~judge~~ determines that the vehicle was placed on the property without the landowner's consent and that the landowner has not subsequently acquiesced in its presence, then the costs and expenses of administration, removing, impounding, and disposing of the vehicle shall not be assessed against the landowner or otherwise attempted to be collected from said landowner.

(6) Removal by the City. Pursuant to the Des Moines Municipal eCourt's judge's~~judge's~~ orders, the vehicle or part thereof may be removed at the request of a law enforcement officer with notice to the Washington State Patrol and the Washington Department of Licensing that the vehicle has been wrecked. The city may use any lawful means to cause the vehicle to be removed from the private property and disposed of to a licensed motor vehicle wrecker or hulk hauler or scrap processor.

(7) Recovery of costs and expenses.

(a) The costs of removal and disposal shall be assessed against the last registered owner if the identity of the owner can be determined unless the owner in the transfer of ownership complied with RCW 46.12.101 and RCW 46.12.650, or against the landowner of record of the property on which the vehicle is stored, or both. If both the owner of the vehicle and the landowner are assessed the costs of removal, then liability for the costs shall be their joint and separate obligation.

(b) Pursuant to law, the City shall file a lien for the cost of any abatement proceedings and all other related costs against the real property on which the monetary penalty was imposed or any of the work of abatement was performed, except no lien shall attach to the real property if the landowner was found not responsible in the ruling issued by the Des Moines Municipal Court. Any claim of lien shall contain sufficient information regarding the Notice of Violation and Abatement, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

(b~~c~~) The costs of administration and of removal and disposal of the vehicle may also be recovered pursuant to DMMC 1.28.060(4).

(118) Entry of private property. Using any lawful means, the City may enter upon the subject property and remove or correct the condition that is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition. When a law enforcement officer or public official has probable cause to believe that a nuisance created by public nuisance vehicles exists on any property in violation of this chapter, he or she may request permission to enter the premises to

inspect for evidence thereof if the landowner is present. If permissive entry cannot be obtained, the law enforcement officer or prosecuting attorney may apply to a court of competent jurisdiction for a warrant to enter the property, notwithstanding the inability to locate the landowner.

(89) Conflict of provision. This notice and related requirements of this section are intended to supplement those of DMMC 1.28-060; however, should a conflict exist, the provisions of this section shall prevail.

Sec. 5. DMMC 7.32.050 and section 6 of Ordinance No. 1283 are amended to read as follows:

Violation - Penalty.

(1) Any violation of any provision of this chapter is a class 1 civil violation ~~infraction~~ and shall be prosecuted as provided in ~~chapter DMMC 1.28-24. DMMC,~~ for which a monetary penalty may be assessed and abatement may be required as provided therein.

(2) ~~In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor. If the same individual receives two (2) committed findings for violating this chapter within one (1) year, the third (3rd) violation within one (1) year from the date of the original citation shall constitute a misdemeanor.~~

(3) The violation of this chapter shall also entitle the City to abate or impound the nuisance in accordance with DMMC 7.32.040 and DMMC 1.28.

(4) Each day upon which a violation occurs constitutes a separate offense.

NEW SECTION. Sec. 6. Severability - Construction.

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

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

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2011 and signed in authentication thereof this ____ day of _____, 2011.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

RCW 46.55.240

Local ordinances — Requirements. (*Effective until July 1, 2011.*)

(1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with *RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored. A city, town, or county may also provide for the payment to the tow truck operator or wrecker as a part of a neighborhood revitalization program.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles.

[2010 c 8 § 9084; 1994 c 176 § 2; 1991 c 292 § 3; 1989 c 111 § 17; 1987 c 311 § 20; 1985 c 377 § 24.]

Notes:

***Reviser's note:** RCW 46.12.101 was recodified as RCW 46.12.650 pursuant to 2010 c 161 § 1211, effective July 1, 2011.

Attachment 2

RCW 46.55.240

Local ordinances — Requirements. (*Effective July 1, 2011.*)

(1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.650, or the costs may be assessed against the owner of the property on which the vehicle is stored. A city, town, or county may also provide for the payment to the tow truck operator or wrecker as a part of a neighborhood revitalization program.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles.

[2010 c 161 § 1122; 2010 c 8 § 9064; 1994 c 176 § 2; 1991 c 292 § 3; 1989 c 111 § 17; 1987 c 311 § 20; 1985 c 377 § 24.]

Notes:

Reviser's note: This section was amended by 2010 c 8 § 9064 and by 2010 c 161 § 1122, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- Intent -- Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session -- 2010 c 161: See notes following RCW 46.04.013.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

SHB 1997 – An act relating to providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development

ATTACHMENTS:

1. SHB 1997
2. House Bill Report SHB 1997
3. Seattle Times story on HB 1997, published March 13, 2011
4. Opinion in favor of HB 1997 published March 14, 2011 in the Seattle Times
5. Editorial against HB 1997 published March 14, 2011 in the Seattle Times

FOR AGENDA OF: March 24, 2011, 2011

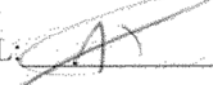
DEPT. OF ORIGIN: Administration

DATE SUBMITTED: March 18, 2011

CLEARANCES:

☐ _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to allow the City Council to review, discuss, and, if it chooses to do so, endorse SHB 1997, an act relating to providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development, sponsored by Representative Tina Orwall.

Suggested Motion

“I move that the Des Moines City Council endorse SHB 1997 as adopted by the State House of Representatives, urge the State Senate to pass and the Governor to sign the bill, and direct staff to modify the City Council’s 2011 Intergovernmental Policies and Positions accordingly.”

Alternative Motion

“I move that the Des Moines City Council endorse the following provisions of SHB 1997: _____, urge the Legislature to pass and the Governor to sign a bill containing these provisions, and direct staff to modify the City Council’s 2011 Intergovernmental Policies and Positions accordingly”

Background and Discussion

Representative Tina Orwall, representing the 33rd Legislative District, which includes the northern 2/3 of Des Moines, introduced HB 1997 to provide economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development. The attached bill report for SHB 1997 provides a thorough background on the issues and a detailed summary of the bill as it was approved by the State House of Representatives. A similar bill was introduced and passed in the Senate, SSB 5834; however staff has learned that of the two, SHB 1997 will most likely be the bill that will be moving forward in the legislative process.

Alternatives

Council may choose to endorse the SHB 1997 as it is currently written or to only endorse particular sections of the bill. Council may also choose not to endorse the bill at all.

Financial Impact

None.

Recommendation

None.

Concurrence

None.

SUBSTITUTE HOUSE BILL 1997

State of Washington

62nd Legislature

2011 Regular Session

By House Ways & Means (originally sponsored by Representatives Orwall, Kenney, Goodman, Fitzgibbon, Maxwell, Santos, and Pedersen)

READ FIRST TIME 03/01/11.

1 AN ACT Relating to providing economic development by funding
2 tourism promotion, workforce housing, art and heritage programs, and
3 community development; amending RCW 67.28.180, 82.14.049, 82.14.360,
4 36.38.010, and 36.100.220; and adding a new section to chapter 67.28
5 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 Sec. 1. RCW 67.28.180 and 2010 1st sp.s. c 26 s 8 are each amended
8 to read as follows:

9 (1) Subject to the conditions set forth in subsections (2) and (3)
10 of this section, the legislative body of any county or any city, is
11 authorized to levy and collect a special excise tax of not to exceed
12 two percent on the sale of or charge made for the furnishing of lodging
13 that is subject to tax under chapter 82.08 RCW.

14 (2) Any levy authorized by this section (~~shall be~~) is subject to
15 the following:

16 (a) Any county ordinance or resolution adopted pursuant to this
17 section (~~shall~~) must contain, in addition to all other provisions
18 required to conform to this chapter, a provision allowing a credit

1 against the county tax for the full amount of any city tax imposed
2 pursuant to this section upon the same taxable event.

3 (b)(i) In the event that any county has levied the tax authorized
4 by this section and has, prior to June 26, 1975, either pledged the tax
5 revenues for payment of principal and interest on city revenue or
6 general obligation bonds authorized and issued pursuant to RCW
7 67.28.150 through 67.28.160 or has authorized and issued revenue or
8 general obligation bonds pursuant to the provisions of RCW 67.28.150
9 through 67.28.160, such county (~~shall be~~) is exempt from the
10 provisions of (a) of this subsection, to the extent that the tax
11 revenues are pledged for payment of principal and interest on bonds
12 issued at any time pursuant to the provisions of RCW 67.28.150 through
13 67.28.160 (~~(- PROVIDED, That))~~. However, so much of (~~such~~) the
14 pledged tax revenues, together with any investment earnings thereon,
15 not immediately necessary for actual payment of principal and interest
16 on such bonds may be used: ((+i+)) (A) In any county with a population
17 of one million five hundred thousand or more, for repayment either of
18 limited tax levy general obligation bonds or of any county fund or
19 account from which a loan was made, the proceeds from the bonds or loan
20 being used to pay for constructing, installing, improving, and
21 equipping stadium capital improvement projects, and to pay for any
22 engineering, planning, financial, legal and professional services
23 incident to the development of such stadium capital improvement
24 projects, regardless of the date the debt for such capital improvement
25 projects was or may be incurred; ((+ii+)) (B) in any county with a
26 population of one million five hundred thousand or more, for repayment
27 or refinancing of bonded indebtedness incurred prior to January 1,
28 1997, for any purpose authorized by this section or relating to stadium
29 repairs or rehabilitation, including but not limited to the cost of
30 settling legal claims, reimbursing operating funds, interest payments
31 on short-term loans, and any other purpose for which such debt has been
32 incurred if the county has created a public stadium authority to
33 develop a stadium and exhibition center under RCW 36.102.030; or
34 ((+iii+)) (C) in other counties, for county-owned facilities for
35 agricultural promotion until January 1, 2009, and thereafter for any
36 purpose authorized in this chapter.

37 (ii) A county is exempt under this subsection with respect to city
38 revenue or general obligation bonds issued after April 1, 1991, only if

1 such bonds mature before January 1, 2013. If any county located east
2 of the crest of the Cascade mountains has levied the tax authorized by
3 this section and has, prior to June 26, 1975, pledged the tax revenue
4 for payment of principal and interest on city revenue or general
5 obligation bonds, the county is exempt under this subsection with
6 respect to revenue or general obligation bonds issued after January 1,
7 2007, only if the bonds mature before January 1, 2021. Such a county
8 may only use funds under this subsection (2)(b) for constructing or
9 improving facilities authorized under this chapter, including county-
10 owned facilities for agricultural promotion, and must perform an annual
11 financial audit of organizations receiving funding on the use of the
12 funds.

13 (iii) As used in this subsection (2)(b), "capital improvement
14 projects" may include, but not be limited to a stadium restaurant
15 facility, restroom facilities, artificial turf system, seating
16 facilities, parking facilities and scoreboard and information system
17 adjacent to or within a county owned stadium, together with equipment,
18 utilities, accessories and appurtenances necessary thereto. The
19 stadium restaurant authorized by this subsection (2)(b) (~~shall~~) must
20 be operated by a private concessionaire under a contract with the
21 county.

22 (c)(i) No city within a county exempt under (~~subsection (2)~~)(b)
23 of this (~~section~~) subsection may levy the tax authorized by this
24 section so long as said county is so exempt.

25 (ii) (~~If bonds have been issued under RCW 43.99N.020 and any~~
26 ~~necessary property transfers have been made under RCW 36.102.100,~~) No
27 city within a county with a population of one million five hundred
28 thousand or more may levy the tax authorized by this section (~~before~~
29 ~~January 1, 2021~~)).

30 (iii) However, in the event that any city in a county described in
31 (c)(i) or (ii) of this subsection (~~(2)(c)~~) has levied the tax
32 authorized by this section and has, prior to June 26, 1975, authorized
33 and issued revenue or general obligation bonds pursuant to the
34 provisions of RCW 67.28.150 through 67.28.160, such city may levy the
35 tax so long as the tax revenues are pledged for payment of principal
36 and interest on bonds issued at any time pursuant to the provisions of
37 RCW 67.28.150 through 67.28.160.

1 (3) Any levy authorized by this section by a county that has
2 (~~levied the tax authorized by this section and has, prior to June 26,~~
3 ~~1975, either pledged the tax revenues for payment of principal and~~
4 ~~interest on city revenue or general obligation bonds authorized and~~
5 ~~issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized~~
6 ~~and issued revenue or general obligation bonds pursuant to the~~
7 ~~provisions of RCW 67.28.150 through 67.28.160 shall be~~) a population
8 of one million five hundred thousand or more is subject to the
9 following:

10 (a) Taxes collected under this section in any calendar year before
11 2013 in excess of five million three hundred thousand dollars (~~shall~~)
12 may only be used as follows:

13 (i) (~~Seventy five percent from January 1, 1992, through December~~
14 ~~31, 2000, and~~) Seventy percent from January 1, 2001, through December
15 31, 2012, for art museums, heritage and preservation programs, cultural
16 museums, heritage museums, the arts, and the performing arts. Moneys
17 spent under this subsection (3)(a)(i) (~~shall~~) must be used for the
18 purposes of this subsection (3)(a)(i) in all parts of the county.

19 (ii) (~~Twenty five percent from January 1, 1992, through December~~
20 ~~31, 2000, and~~) Thirty percent from January 1, 2001, through December
21 31, 2012, for the following purposes and in a manner reflecting the
22 following order of priority: Stadium purposes as authorized under
23 subsection (2)(b) of this section; acquisition of open space lands;
24 youth sports activities; and tourism promotion. If all or part of the
25 debt on the stadium is refinanced, all revenues under this subsection
26 (3)(a)(ii) (~~shall~~) must be used to retire the debt.

27 (b) From January 1, 2013, through December 31, 2015, (~~in a county~~
28 ~~with a population of one million or more,~~) all revenues under this
29 section (~~shall~~) must be used to retire the debt on the stadium, or
30 deposited in the stadium and exhibition center account under RCW
31 43.99N.060 after the debt on the stadium is retired.

32 (c) From January 1, 2016, through December 31, 2020, (~~in a county~~
33 ~~with a population of one million or more,~~) all revenues under this
34 section (~~shall~~) must be deposited in the stadium and exhibition
35 center account under RCW 43.99N.060.

36 (d) (~~At least seventy percent of moneys spent under (a)(i) of this~~
37 ~~subsection for the period January 1, 1992, through December 31, 2000,~~
38 ~~shall be used only for the purchase, design, construction, and~~

1 remodeling of performing arts, visual arts, heritage, and cultural
2 facilities, and for the purchase of fixed assets that will benefit art,
3 heritage, and cultural organizations. For purposes of this subsection,
4 fixed assets are tangible objects such as machinery and other equipment
5 intended to be held or used for ten years or more. Moneys received
6 under this subsection (3) (d) may be used for payment of principal and
7 interest on bonds issued for capital projects. Qualifying
8 organizations receiving moneys under this subsection (3) (d) must be
9 financially stable and have at least the following:

10 (i) A legally constituted and working board of directors;
11 (ii) A record of artistic, heritage, or cultural accomplishments;
12 (iii) Been in existence and operating for at least two years;
13 (iv) Demonstrated ability to maintain net current liabilities at
14 less than thirty percent of general operating expenses;
15 (v) Demonstrated ability to sustain operational capacity subsequent
16 to completion of projects or purchase of machinery and equipment; and
17 (vi) Evidence that there has been independent financial review of
18 the organization.)) On and after January 1, 2021, revenues under this
19 section in a county of one million five hundred thousand or more must
20 be deposited in a special MLK workforce housing, arts and preservation,
21 convention and trade center, and community development fund as provided
22 in section 4 of this act.

23 (e) At least forty percent of the revenues distributed pursuant to
24 (a) (i) of this subsection for the period January 1, 2001, through
25 December 31, 2012, ((shall)) must be deposited in an account and
26 ((shall)) must be used to establish an endowment. Until January 1,
27 2013, principal in the account shall remain permanent and irreducible.
28 Beginning January 1, 2013, principal in the account may be used for the
29 purposes of (a) (i) of this subsection. The earnings from investments
30 of balances in the account may only be used for the purposes of (a) (i)
31 of this subsection.

32 (f) School districts and schools ((shall)) may not receive revenues
33 distributed pursuant to (a) (i) of this subsection.

34 (g) Moneys distributed to art museums, cultural museums, heritage
35 museums, the arts, and the performing arts, and moneys distributed for
36 tourism promotion ((shall be)) are in addition to and may not be used
37 to replace or supplant any other funding by the legislative body of the
38 county.

1 (h) As used in this section, "tourism promotion" includes
2 activities intended to attract visitors for overnight stays, arts,
3 heritage, and cultural events, and recreational, professional, and
4 amateur sports events. Moneys allocated to tourism promotion in a
5 county with a population of one million or more (~~shall~~) must be
6 allocated to nonprofit organizations formed for the express purpose of
7 tourism promotion in the county. Such organizations (~~shall~~) must use
8 moneys from the taxes to promote events in all parts of the county.

9 (i) No taxes collected under this section may be used for the
10 operation or maintenance of a public stadium that is financed directly
11 or indirectly by bonds to which the tax is pledged. Expenditures for
12 operation or maintenance include all expenditures other than
13 expenditures that directly result in new fixed assets or that directly
14 increase the capacity, life span, or operating economy of existing
15 fixed assets.

16 (j) No ad valorem property taxes may be used for debt service on
17 bonds issued for a public stadium that is financed by bonds to which
18 the tax is pledged, unless the taxes collected under this section are
19 or are projected to be insufficient to meet debt service requirements
20 on such bonds.

21 (k) If a substantial part of the operation and management of a
22 public stadium that is financed directly or indirectly by bonds to
23 which the tax is pledged is performed by a nonpublic entity or if a
24 public stadium is sold that is financed directly or indirectly by bonds
25 to which the tax is pledged, any bonds to which the tax is pledged
26 (~~shall~~) must be retired. This subsection (3)(k) does not apply in
27 respect to a public stadium under chapter 36.102 RCW transferred to,
28 owned by, or constructed by a public facilities district under chapter
29 36.100 RCW or a stadium and exhibition center.

30 (l) The county (~~shall~~) may not lease a public stadium that is
31 financed directly or indirectly by bonds to which the tax is pledged
32 to, or authorize the use of the public stadium by, a professional major
33 league sports franchise unless the sports franchise gives the right of
34 first refusal to purchase the sports franchise, upon its sale, to local
35 government. This subsection (3)(l) does not apply to contracts in
36 existence on April 1, 1986.

37 (4) If a court of competent jurisdiction declares any provision of

1 (~~this~~) subsection (3) of this section invalid, then that invalid
2 provision (~~shall be~~) is null and void and the remainder of this
3 section is not affected.

4 Sec. 2. RCW 82.14.049 and 2008 c 264 s 4 are each amended to read
5 as follows:

6 (1) The legislative authority of any county may impose a sales and
7 use tax, in addition to the tax authorized by RCW 82.14.030, upon
8 retail car rentals within the county that are taxable by the state
9 under chapters 82.08 and 82.12 RCW. The rate of tax (~~shall be~~) is
10 one percent of the selling price in the case of a sales tax or rental
11 value of the vehicle in the case of a use tax. Proceeds of the tax
12 (~~shall~~) may not be used to subsidize any professional sports team and
13 (~~shall~~) must be used solely for the following purposes:

14 (~~(1)~~) (a) Acquiring, constructing, maintaining, or operating
15 public sports stadium facilities;

16 (~~(2)~~) (b) Engineering, planning, financial, legal, or
17 professional services incidental to public sports stadium facilities;

18 (~~(3)~~) (c) Youth or amateur sport activities or facilities; (~~or~~

19 ~~(4)~~) (d) Debt or refinancing debt issued for the purposes of (a)
20 of this subsection (~~(1) of this section~~); or

21 (e) For deposit into a special MLK workforce housing, arts and
22 preservation, convention and trade center, and community development
23 fund as provided in section 4 of this act.

24 (2) In a county with less than one million five hundred thousand,
25 at least seventy-five percent of the tax imposed under this section
26 (~~shall~~) must be used for the purposes of (~~subsections (1), (2), and~~
27 ~~(4)~~) subsection (1)(a) through (d) of this section. In a county of
28 one million five hundred thousand or more, at least seventy-five
29 percent of the tax imposed under this section (~~shall~~) must be used to
30 retire the debt on the stadium under RCW 67.28.180(2)(b)(ii), until
31 that debt is fully retired, and at least seventy-five percent must be
32 deposited as provided under this subsection (1)(e) after the debt is
33 fully retired.

34 (3) A county with a population of one million five hundred thousand
35 or more may not impose the tax authorized under this section beginning
36 on the first day of the second month following the date on which: (a)
37 The county does not impose both taxes authorized under RCW 82.14.360

1 through December 31, 2015, and the tax authorized under RCW
2 82.14.360(2) on or after January 1, 2016; or (b) the distribution
3 described under section 1(3)(d) of this act is repealed, modified, or
4 otherwise not in law.

5 Sec. 3. RCW 82.14.360 and 2008 c 86 s 104 are each amended to read
6 as follows:

7 (1) The legislative authority of a county with a population of one
8 million five hundred thousand or more may impose a special stadium
9 sales and use tax upon the retail sale or use within the county by
10 restaurants, taverns, and bars of food and beverages that are taxable
11 by the state under chapters 82.08 and 82.12 RCW. The rate of the tax
12 (~~shall~~) may not exceed five-tenths of one percent of the selling
13 price in the case of a sales tax, or value of the article used in the
14 case of a use tax. The tax authorized under this subsection is in
15 addition to any other taxes authorized by law and (~~shall~~) may not be
16 credited against any other tax imposed upon the same taxable event. As
17 used in this section, "restaurant" does not include grocery stores,
18 mini-markets, or convenience stores. Except as provided in subsection
19 (6) of this section, a county may not impose the tax authorized in this
20 subsection after December 31, 2015.

21 (2) The legislative authority of a county with a population of one
22 million five hundred thousand or more may impose a special stadium
23 sales and use tax upon retail car rentals within the county that are
24 taxable by the state under chapters 82.08 and 82.12 RCW. The rate of
25 the tax (~~shall~~) may not exceed two percent of the selling price in
26 the case of a sales tax, or rental value of the vehicle in the case of
27 a use tax. The tax imposed under this subsection is in addition to any
28 other taxes authorized by law and (~~shall~~) may not be credited against
29 any other tax imposed upon the same taxable event.

30 (3)(a) Except as provided in (b) of this subsection, the revenue
31 from the taxes imposed under the authority of this section (~~shall~~)
32 must be used for the purpose of principal and interest payments on
33 bonds, issued by the county, to acquire, construct, own, remodel,
34 maintain, equip, reequip, repair, and operate a baseball stadium.
35 Revenues from the taxes authorized in this section may be used for
36 design and other preconstruction costs of the baseball stadium until
37 bonds are issued for the baseball stadium. The county (~~shall~~) must

1 issue bonds, in an amount determined to be necessary by the public
2 facilities district, for the district to acquire, construct, own, and
3 equip the baseball stadium. The county (~~shall have~~) has no
4 obligation to issue bonds in an amount greater than that which would be
5 supported by the tax revenues under this section, RCW 82.14.0485, and
6 36.38.010(4) (a) and (b). If the revenue from the taxes imposed under
7 the authority of this section exceeds the amount needed for such
8 principal and interest payments in any year, the excess (~~shall~~) must
9 be used solely:

10 (~~(a)~~) (i) For early retirement of the bonds issued for the
11 baseball stadium; and

12 (~~(b)~~) (ii) If the revenue from the taxes imposed under this
13 section exceeds the amount needed for the purposes in (a) of this
14 subsection in any year, the excess (~~shall~~) must be placed in a
15 contingency fund which may only be used to pay unanticipated capital
16 costs on the baseball stadium, excluding any cost overruns on initial
17 construction.

18 (b) After the bonds issued for the construction of the baseball
19 stadium are retired, the revenue from the taxes imposed under the
20 authority of this section must be deposited in a special MLK workforce
21 housing, arts and preservation, convention and trade center, and
22 community development fund as provided in section 4 of this act.

23 (4) The proceeds of any bonds issued for the baseball stadium
24 (~~shall~~) must be provided to the district.

25 (5) As used in this section, "baseball stadium" means "baseball
26 stadium" as defined in RCW 82.14.0485.

27 (~~(6) (The taxes imposed under this section shall expire when the~~
28 ~~bonds issued for the construction of the baseball stadium are retired,~~
29 ~~but not later than twenty years after the taxes are first collected.)~~)
30 A county may not impose either tax authorized under this section
31 beginning on the first day of the second month following the date on
32 which: (a) The distribution into a special MLK workforce housing, arts
33 and preservation, tourism promotion facilities, and community
34 development fund as provided in section 2(1)(e) of this act is
35 repealed, modified, or otherwise not in law; or (b) the distribution
36 described under section 1(3)(d) of this act is repealed, modified, or
37 otherwise not in law.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 67.28 RCW
2 to read as follows:

3 (1) As provided in subsection (2) of this section, revenue
4 deposited in a special MLK workforce housing, arts and preservation,
5 convention and trade center, and community development fund, as
6 provided in RCW 67.28.180(3)(d), 82.14.049, and 82.14.360, must be used
7 only for affordable workforce housing; the expansion, construction,
8 repair, or maintenance of a convention and trade center; art museums,
9 cultural museums, heritage museums, and heritage and preservation
10 programs; the arts; the performing arts; and community development.

11 (2) Beginning in calendar year 2012, the county must distribute
12 money in the account annually as follows:

13 (a)(i) Through calendar year 2020, three million dollars for art
14 museums, cultural museums, heritage museums, heritage and preservation
15 programs, the arts, and the performing arts. The funds must be broadly
16 and equitably distributed throughout the county, and provide increased
17 outreach to underserved communities;

18 (ii) Beginning with calendar year 2021, 37.5 percent of the
19 revenues described under RCW 67.28.180(3)(d) must be used for the
20 purposes of (a)(i) of this subsection;

21 (b)(i) Through calendar year 2020, five million dollars each year
22 for distributions to nonprofit organizations or public housing
23 authorities for affordable workforce housing near or at transit
24 stations.

25 (ii) Beginning with calendar year 2021, 37.5 percent of the
26 revenues described under RCW 67.28.180(3)(d) must be used for the
27 purposes of (b)(i) of this subsection;

28 (c) One million dollars for the Pioneer Square-International
29 District community preservation and development authority under RCW
30 43.167.060 for projects requested by the community preservation and
31 development authority and approved by the county legislative authority.
32 The projects must have a historic preservation, economic
33 revitalization, or tourism-related purpose. Beginning in calendar year
34 2013, and every year thereafter, the amount distributed under this
35 subsection (2)(c) must be adjusted by the immediately preceding
36 October-to-October change in the consumer price index; and

37 (d) The remainder for the construction, expansion, or repair of a
38 public facilities district created under chapter 36.100 RCW to operate

1 a convention and trade center transferred from a public nonprofit
2 corporation under RCW 36.100.230(1); however, distributions under this
3 subsection (2)(d) are allowed only to the extent that estimated future
4 distributions under (a), (b), and (c) of this subsection can be made in
5 their full amount.

6 (3) Beginning in calendar year 2013, and through calendar year
7 2020, the amounts distributed under subsection (2)(a)(i) and (b)(i) of
8 this section must be adjusted by the immediately preceding October-to-
9 October change in the consumer price index.

10 (4) For the purposes of this section, the following definitions
11 apply:

12 (a) "Affordable workforce housing" means housing for a single
13 person, family, or unrelated persons living together whose income is at
14 or below eighty percent of the median income, adjusted for household
15 size, for the county where the housing is located.

16 (b) "Consumer price index" means the Seattle-Tacoma-Bremerton
17 consumer price index for all urban consumers (CPI-U) available from the
18 bureau of labor statistics of the United States department of labor.

19 (5) Money deposited in a special MLK workforce housing, arts and
20 preservation, convention and trade center, and community development
21 fund under this section may not be used to acquire or construct a
22 stadium facility used by a professional sports franchise or to acquire,
23 construct, repair, or improve a stadium used primarily by a state
24 university.

25 **Sec. 5.** RCW 36.38.010 and 1999 c 165 s 20 are each amended to read
26 as follows:

27 (1) Any county may by ordinance enacted by its county legislative
28 authority, levy and fix a tax of not more than one cent on twenty cents
29 or fraction thereof to be paid for county purposes by persons who pay
30 an admission charge to any place, including a tax on persons who are
31 admitted free of charge or at reduced rates to any place for which
32 other persons pay a charge or a regular higher charge for the same or
33 similar privileges or accommodations; and require that one who receives
34 any admission charge to any place shall collect and remit the tax to
35 the county treasurer of the county(~~(--PROVIDED--)~~). However, no county
36 (~~(shall)~~) may impose such tax on persons paying an admission to any

1 activity of any elementary or secondary school or any public facility
2 of a public facility district under chapter 35.57 or 36.100 RCW for
3 which a tax is imposed under RCW 35.57.100 or 36.100.210.

4 (2) As used in this chapter, the term "admission charge" includes
5 a charge made for season tickets or subscriptions, a cover charge, or
6 a charge made for use of seats and tables, reserved or otherwise, and
7 other similar accommodations; a charge made for food and refreshments
8 in any place where any free entertainment, recreation, or amusement is
9 provided; a charge made for rental or use of equipment or facilities
10 for purpose of recreation or amusement, and where the rental of the
11 equipment or facilities is necessary to the enjoyment of a privilege
12 for which a general admission is charged, the combined charges
13 ~~((shall))~~ must be considered as the admission charge. ~~((it shall))~~
14 Admission charge also includes any automobile parking charge where the
15 amount of such charge is determined according to the number of
16 passengers in any automobile.

17 (3) Subject to subsections (4) and (5) of this section, the tax
18 ~~((herein))~~ authorized ~~((shall))~~ in this section is not ~~((be))~~ exclusive
19 and ~~((shall))~~ does not prevent any city or town within the taxing
20 county, when authorized by law, from imposing within its corporate
21 limits a tax of the same or similar kind ~~((:--- PROVIDED, That))~~.
22 However, whenever the same or similar kind of tax is imposed by any
23 such city or town, no such tax ~~((shall))~~ may be levied within the
24 corporate limits of such city or town by the county.

25 (4) Notwithstanding subsection (3) of this section, the legislative
26 authority of a county with a population of one million or more may
27 exclusively levy taxes on events in baseball stadiums constructed on or
28 after January 1, 1995, that are owned by a public facilities district
29 under chapter 36.100 RCW and that have seating capacities over forty
30 thousand at the rates of:

31 (a) Not more than one cent on twenty cents or fraction thereof, to
32 be used for the purpose of paying the principal and interest payments
33 on bonds issued by a county to construct a baseball stadium as defined
34 in RCW 82.14.0485. If the revenue from the tax exceeds the amount
35 needed for that purpose, the excess ~~((shall))~~ must be placed in a
36 contingency fund which ~~((may only))~~ must be used ~~((to pay unanticipated~~
37 ~~capital costs on the baseball stadium, excluding any cost overruns on~~

1 ~~initial construction~~) exclusively by the public facilities district to
2 fund repair, reequipping, and capital improvement of the baseball
3 stadium; and

4 (b) Not more than one cent on twenty cents or fraction thereof, to
5 be used for the purpose of paying the principal and interest payments
6 on bonds issued by a county to construct a baseball stadium as defined
7 in RCW 82.14.0485. The tax imposed under this subsection (4)(b)
8 (~~shall~~) expires when the bonds issued for the construction of the
9 baseball stadium are retired, but not later than twenty years after the
10 tax is first collected.

11 (5) Notwithstanding subsection (3) of this section, the legislative
12 authority of a county that has created a public stadium authority to
13 develop a stadium and exhibition center under RCW 36.102.050 may levy
14 and fix a tax on charges for admission to events in a stadium and
15 exhibition center, as defined in RCW 36.102.010, constructed in the
16 county on or after January 1, 1998, that is owned by a public stadium
17 authority under chapter 36.102 RCW. The tax (~~shall be~~) is exclusive
18 and (~~shall~~) precludes the city or town within which the stadium and
19 exhibition center is located from imposing a tax of the same or similar
20 kind on charges for admission to events in the stadium and exhibition
21 center, and (~~shall~~) precludes the imposition of a general county
22 admissions tax on charges for admission to events in the stadium and
23 exhibition center. For the purposes of this subsection, "charges for
24 admission to events" means only the actual admission charge, exclusive
25 of taxes and service charges and the value of any other benefit
26 conferred by the admission. The tax authorized under this subsection
27 (~~shall be~~) is at the rate of not more than one cent on ten cents or
28 fraction thereof. Revenues collected under this subsection (~~shall~~)
29 must be deposited in the stadium and exhibition center account under
30 RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the
31 construction of the stadium and exhibition center are retired. After
32 the bonds issued for the construction of the stadium and exhibition
33 center are retired, the tax authorized under this section (~~shall be~~)
34 is used exclusively to fund repair, reequipping, and capital
35 improvement of the stadium and exhibition center. The tax under this
36 subsection may be levied upon the first use of any part of the stadium
37 and exhibition center but (~~shall~~) may not be collected at any
38 facility already in operation as of July 17, 1997.

1 Sec. 6. RCW 36.100.220 and 1999 c 165 s 18 are each amended to
2 read as follows:

3 (1) A public facility district may levy and fix a tax on any
4 vehicle parking charges imposed at any parking facility that is owned
5 or leased by the public facility district as part of a regional center,
6 as defined in RCW 35.57.020, or a baseball stadium, as defined in RCW
7 82.14.0485. No county ((or)) city or town within which the regional
8 center or baseball stadium is located may impose a tax of the same or
9 similar kind on any vehicle parking charges at the facility.

10 (2) For the purposes of this section, "vehicle parking charges"
11 means only the actual parking charges exclusive of taxes and service
12 charges and the value of any other benefit conferred.

13 (3) The tax authorized under this section ((shall)) must be at the
14 rate of not more than ten percent. The tax authorized by this section
15 with respect to a parking facility associated with a baseball stadium
16 must be used exclusively to fund repair, reequipping, and capital
17 improvement of the baseball stadium, and is not subject to the
18 requirements of RCW 36.100.010(4).

--- END ---

HOUSE BILL REPORT

SHB 1997

As Passed House:

March 4, 2011

Title: An act relating to providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development.

Brief Description: Providing economic development by funding tourism promotion, workforce housing, art and heritage programs, and community development.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Orwall, Kenney, Goodman, Fitzgibbon, Maxwell, Santos and Pedersen).

Brief History:

Committee Activity:

Ways & Means: 2/22/11, 2/25/11 [DPS].

Floor Activity:

Passed House: 3/4/11, 55-42.

Brief Summary of Substitute Bill

- Directs stadium-related tax sources in King County to a dedicated account once the obligations for stadium debt are paid.
- Requires that money in the dedicated account be used for arts and heritage programs, affordable housing provided by nonprofit organizations and housing authorities, community development, and the Washington State Convention Center.
- Disallows the use of money in the dedicated account for acquiring or constructing a stadium used by a professional sports franchise or for acquiring, constructing, repairing, or improving a facility used by a state university.
- Eliminates the 75 percent dedication of the 1 percent car rental tax to public stadium facilities for all counties except King County.

HOUSE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Rick Peterson (786-7150).

Background:

In King County the 2 percent state-shared hotel-motel tax is used for retiring the debt on the Kingdome, arts and heritage programs, and after 2015 (or earlier if the debt is repaid) for repaying the debt on the football stadium and exhibition center and for youth athletic facility grants to cities, counties, or nonprofit organizations if sufficient money is available. King County is exempt from providing a tax credit for similar city hotel-motel taxes. As a result, King County benefits from a double credit against state sales for hotel stays in Bellevue. The double credit is scheduled to stop at the end of 2012.

Also scheduled to stop at the end of 2012 is the distribution of a portion of the 2 percent state-shared hotel-motel tax to arts and heritage programs. Forty percent of these distributions are deposited into a county permanent and irreducible arts fund (Permanent Arts Fund) of which only the earnings on the fund may be spent on current programs. In addition to the 2 percent hotel-motel tax, the debt on the professional football stadium and exhibition hall is being retired by revenue from a credit against the state sales tax of 0.016 percent of taxable retail sales in King County and additional lottery games.

In 1995 the Legislature authorized financing for a new baseball stadium in King County. The state's contribution included a credit against the state sales tax of 0.017 percent of taxable retail sales in King County, sports-themed lottery revenues, and commemorative ballpark license plates. King County was authorized to impose a special 0.5 percent sales tax on food and beverages in King County restaurants, taverns, and bars; a 2 percent sales tax on car rentals in King County; and admission taxes at the new ballpark. The baseball team also contributed to the construction of the facility. One of the 5 percent admissions taxes is dedicated to paying unanticipated capital costs excluding cost overruns on the initial construction. The 0.017 percent sales tax credit, the 0.5 percent tax on restaurant meals, the lottery revenue, and the 2 percent car rental tax all end when construction bonds are paid. The authority for a second 5 percent admissions tax, which was never imposed, also ends when the construction bonds are paid.

The baseball stadium was developed by the Washington State Major League Baseball Stadium Public Facilities District. Public facility districts are authorized to impose certain taxes with approval of the voters of the district including a tax of up to 10 percent on parking at facilities owned or leased by the public facility district.

All counties are authorized to impose a 1 percent car rental tax. The revenue from the 1 percent car rental tax may be used for public stadium facilities and youth or amateur sports activities or facilities.

In 2007 the Legislature established the Pioneer Square–International District community preservation and development authority within the boundaries of the Pioneer Square–International District within the City of Seattle.

All counties are authorized to impose a 1 percent car rental tax. The revenue from the 1 percent car rental tax may be used for public stadium facilities and youth or amateur sports activities or facilities. However, 75 percent of the revenue must be used for public stadium facilities.

Summary of Substitute Bill:

After current obligations to stadium debt are paid, revenue from the 2 percent state-shared hotel-motel tax in King County is directed to a new local fund in King County: MLK Workforce Housing, Arts and Preservation, Convention and Trade Center, and Community Development Fund (Fund). The following revenue will also be deposited into the Fund: the 0.5 percent restaurant tax (until December 31, 2015, when it expires), the 2 percent car rental tax (which is extended indefinitely), and 75 percent of the 1 percent car rental tax. The authorization to extend the restaurant tax and the 2 percent car rental tax is contingent on the following distribution of funds.

Beginning in 2012, distributions from the Fund are made as follows:

1. through 2020, \$3 million per year (adjusted for inflation) to art museums, cultural museums, heritage museums, heritage and preservation programs, the arts, and the performing arts, and, after 2020, 37.5 percent of the 2 percent state-shared hotel-motel tax;
2. through 2020, \$5 million per year (adjusted for inflation) to nonprofit organizations or public housing authorities for affordable workforce housing near transit stations, and, after 2020, 37.5 percent of the 2 percent state-shared hotel-motel tax;
3. \$1 million (adjusted for inflation) to the Pioneer Square–International District community preservation and development authority for historic preservation, economic revitalization, or tourism-related purposes; and
4. the remainder for construction, expansion, or repair of the Washington State Convention Center.

The use of funds for the purpose of acquiring or constructing a stadium used by a professional sports franchise or the use of funds for the purpose of acquiring, constructing, repairing, or improving a facility used by a state university is not allowed.

Beginning January 1, 2013, the principal of the Permanent Arts Fund may be used for current programs.

The 75 percent dedication of the 1 percent car rental tax to public stadium facilities is eliminated for all counties except King County.

The Washington State Major League Baseball Stadium Public Facilities District is authorized to impose the 10 percent parking tax at a parking facility owned or leased by the district without voter approval. The revenue from the tax must be used for repair, re-equipping, and capital improvement of the baseball stadium. The permitted uses of the county 5 percent admissions charge is changed to fund repair, re-equipping, and capital improvement of the baseball stadium.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will allow taxes raised in King County to help the local economy and the state economy by creating jobs and promoting prosperity. The bill will allow the expansion of the state convention center. This will increase employment statewide by about 4,500 construction jobs and 3,000 permanent jobs. It will draw 130,000 more people to the region. The current facility is falling behind due to size limitations. Arts funding will end next year unless additional funding is provided. The arts create a \$1.75 billion economic impact. The additional money for workforce housing will also create new jobs. The bill is about people—people that work downtown in hotels and restaurants. Two additional downtown hotels will also be built. The focus is on tourism. High rents and low vacancy rates means that low-income workers pay over \$1,000 per month in rent. This is the eighth year for working on the 4Culture funding fix. The ability to access the arts endowment is important. The \$3 million per year plus drawing from reserves will allow a continuation of the current funding levels. Please accommodate other tourism and economic development projects. Federal Way has made significant progress on a 500 to 700 seat performing arts/conference center. It will generate over 200 ongoing jobs. Please support economic development in the Pioneer Square—International District. Through funds from 4Culture historical organizations present, protect, and interpret the history of the county. Heads in beds means butts in seats—increased tourism is important for theaters.

(With concerns) We support tourism but please allow a portion of the money to go to public health. There has been a severe decline in the county's public health budget (-22 percent.) Many public health activities support tourism. Sea-Tac has 11,000 hotel rooms and next to Seattle they are the second largest source of hotel/motel tax revenue in the county. The direction of tourism spending by King County may not reflect the priorities of Sea-Tac. Please include funding for human services. Please relieve the other counties from the requirement to spend 75 percent of 1 percent rental car tax on public stadium facilities. Pierce County no longer owns a stadium and would like spend the money on youth sports activities.

(Opposed) In 1995 the voters turned down funding for the stadium. When the Legislature adopted these taxes, they promised the taxes would expire when the stadium was paid off. Sixty percent of the car rental tax is imposed on local people. These are low-income people,

small business, and nonprofits. The total tax on rental cars is now 19.2 percent. Our customers need a break. Please allow the rental car tax to expire.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Dow Constantine, King County Executive; Lee Newgent, Seattle-King County Building and Construction Trades Council; George Allen, Greater Seattle Chamber of Commerce; Harry Hoffman, Housing Development Consortium; Louise Miller; Bruce Beckett, Washington Restaurant Association; Matt Larson, City of Snoqualmie; Hyeok Kim, InterIm Community Development Association; Josh Labelle, Seattle Theater Group; Johnny O'Brady, Local 619; Stefan Moritz, Unite Here; and John Chaney, Association of King County Historical Organizations.

(With concerns) Sofia Aragon, Washington State Nurses Association; Joe Daniels, City of SeaTac; Kelsey Beck, King County Health Community Coalition; Jean Burbidge, Federal Way City Council; and Nick Federici, Washington Low Income Housing Alliance.

(Opposed) Shane Skinner, Enterprise Car Rental.

Persons Signed In To Testify But Not Testifying: None.

The Seattle Times

Winner of a 2010 Pulitzer Prize

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Taxes may still be on deck after Safeco Field paid off

State lawmakers again are pushing to extend some of the taxes used to build Safeco Field. They want to use the money for other favored causes, including a \$600 million convention-center expansion, low-income housing and the arts.

By Jim Brunner

Seattle Times political reporter



When state lawmakers passed a controversial plan to raise taxes for a new Mariners stadium in 1995, they said the taxes would expire when the stadium bonds were retired.

But with Safeco Field set to be paid off this year, lawmakers are pushing to keep some of those taxes alive to pay for other favored causes, including a \$600 million convention-center expansion, low-income housing and the arts.

A proposal that recently cleared the state House would extend a 0.5 percent tax on King County restaurant meals until 2015. It also would extend a 2 percent car-rental tax permanently. Absent legislative action, both taxes would end this year.

Supporters of HB 1997 say the taxes, collected only in King County, should keep flowing to pay for other local priorities. They are touting the expansion of the Washington State Convention Center, in particular, as a way to create construction jobs in a down economy.

"This is a really important bill to get people from my district back to work," said Rep. Tina Orwall, D-Des Moines, the main sponsor of the bill.

But critics say lawmakers will only fuel public distrust by extending taxes that were sold as temporary.

"When the tax was introduced, our customers were promised these taxes would expire. The promise comes due this fall," said Shane Skinner, business manager for Enterprise Rent-A-Car in the state.

Skinner said the Seattle area has the fifth-highest car-rental taxes in the country, with a rate of more than 19 percent. And the business no longer is tourist-driven, Skinner added, citing an industry survey that found more than 60 percent of car renters are local.

Attachment #3

In addition to car-rental and restaurant taxes, Orwall's bill would redirect hotel taxes now devoted to paying off Safeco Field, Qwest Field and the Kingdome. (The hotel tax was not scheduled to expire.)

All told, the plan would raise nearly \$1 billion over 24 years without adding new taxes, according to a legislative staff estimate.

A broad coalition backs the idea, including business, labor, arts and housing groups.

When the bill passed the House on a 55-42 vote, it enjoyed overwhelming support from King County lawmakers, with most of the opposition and speeches about keeping tax promises coming from Republicans who live elsewhere.

The convention center would receive the biggest chunk of money under Orwall's proposal — enough to issue about \$150 million in bonds toward an expansion.

But to get enough votes, the bill also calls for setting aside money for other causes dear to key lawmakers.

It would devote \$3 million a year for affordable-housing groups, jumping to \$10 million in 2021. That's a nod to House Speaker Frank Chopp, D-Seattle, a longtime ally of advocates of low-income housing.

The bill also would give \$1 million a year to an obscure Seattle public-development authority focused on Pioneer Square and the Chinatown International District. That's a pet project of Rep. Sharon Tomiko Santos, D-Seattle.

The bill is only the latest in several years of fruitless efforts to divvy up tens of millions in stadium-related taxes.

It began with King County arts and heritage groups, which have been trying for seven years to persuade lawmakers to grant them a long-term funding source. The groups receive about \$9 million a year from a county hotel tax but stand to lose it next year as the money is shifted to pay off the remaining debts on the Kingdome, then Qwest Field.

A proposal in the state Senate, SB 5834, would try to deal with the arts issue without including any money for low-income housing, the convention center or other interests.

The bill, which passed the Senate, would not extend the restaurant or car-rental taxes. After the stadium bonds are paid off in 2020, it would shift some of the county hotel taxes to the arts, solving their long-term funding needs. The rest of the money would be available for other purposes.

Sen. Ed Murray, D-Seattle, said his bill simply is "an attempt to get arts out of this food fight" — referring to several years of entanglements between arts groups, pro sports teams and others seeking a slice of the lucrative stadium taxes.

Previously, the owners of the Sonics — first Howard Schultz's local partnership then Clay Bennett's Oklahoma City group — unsuccessfully demanded money to build a new arena. In 2009, University of Washington boosters tried to snag some of the money for a Husky Stadium renovation.

Lawmakers, weary of public anger over taxpayer funding of stadiums, have killed various stadium-tax bills every year since 2005.

It's not clear whether this year will be any different. Some basketball fans hoped Orwall's bill could provide money for an NBA arena to lure a new franchise to Seattle or Bellevue.

But HB 1997 explicitly prohibits any of the tax money from being used to pay for new sports stadiums or even renovations to collegiate stadiums.

County Executive Dow Constantine's office said he has no plans to try to use that money for an NBA arena.

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The Seattle Times

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Guest columnist

Extend visitor taxes to support convention center

The Washington State Convention Center needs to be expanded to generate more jobs and economic activity in King County. Guest columnists Anthony Anton, Phil Bussey and Howard Cohen argue that taxes set to expire should be extended for the convention center and arts, culture and tourism programs

By Anthony Anton, Phil Bussey and Howard Cohen

Special to The Times

CREATING jobs is the surest way out of this recession.

Investing in our ability to compete is how we build prosperity for the people of Washington state. And we expect our elected leaders to step up and use the various tools at their disposal to create jobs.

That's why the local business community and the restaurant and hotel industry support a proposal now before the state Legislature to redirect a set of visitor taxes to fund expansion of the Washington State Convention Center, support arts and culture programs and promote tourism.

The revenues to support these activities come from continuing a set of existing visitor taxes in King County. These are taxes on tourism that are largely paid by tourists, and whose revenues are used to promote tourism and to create facilities that attract more visitors.

We supported the original enactment of these taxes when what is now Safeco Field was first proposed, because of the promise that the revenues would be reinvested to create jobs and economic development by attracting even greater numbers of visitors. House Bill 1997 honors that promise.

The Convention Center expansion will draw 130,000 additional visitors to King County every year. Direct spending from these visitors is estimated to be a quarter billion dollars each year. The project itself will create 4,500 temporary construction jobs and 3,000 permanent jobs.

The expansion is needed because the facility is small, and currently ranks 68th in size in North America. But demand is strong. It has the highest utilization and generates more revenue per square foot than any other.

HB1997 will support arts and culture, activities that are also proven economic producers, generating \$1.75 billion in business activity in our state's economy in 2009 and supporting nearly 30,000 jobs in King County alone. Funding for arts and culture is due to expire in 2012.

Of the taxes this proposal relies upon, it is important to note that extra sales tax paid by bar and restaurant patrons in King County to fund Safeco Field construction will end in 2015 under HB 1997. The certainty of this expiration is very important to restaurant owners, most of whom are small businesses.

Attachment #4

Hotel/motel and car rental taxes are largely paid by tourists. We support this effort to draw more of those visitors to Washington state, to create prosperity for the people who live here.

Anthony Anton is the president and CEO of the Washington Restaurant Association; Phil Bussey is the President and CEO of the Greater Seattle Chamber of Commerce; Howard Cohen is the president of the Seattle Hotel Association.

The Seattle Times

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Washington state lawmakers should let stadium taxes expire

State lawmakers in Olympia forget their promise to retire Safeco Field taxes once the bonds are paid off. It's a terrible promise to break. The taxes should expire later this year.

OF all the afflictions to hit state lawmakers in Olympia this year, one of the most troubling is a rampant outbreak of amnesia.

Lawmakers promised 15 years ago to end stadium taxes once the bonds on Safeco Field were paid. The bonds are expected to be retired later this year. The promise was not subtle. It was written clearly into the legislation and touted as one reason taxpayers should not worry about the stadium plan.

The legislation says: "The taxes imposed under this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the taxes are first collected."

In simple legislative-ese, that means the 0.5 percent restaurant sales tax and the 2 percent car-rental tax should end.

But in the fog of budgeting, memories have gone blank. Lawmakers either do not remember or do not respect what King County taxpayers were told.

Along comes state Rep. Tina Orwall, D-Des Moines, with House Bill 1997, which abandons the earlier pledge and attempts to continue some Safeco taxes. The bill would extend the restaurant tax through 2015 and the car-rental tax indefinitely.

The legislation turns the Safeco tax package into a piñata for lawmakers to smash and dole out to a grab bag of projects: expansion of the Washington State Convention & Trade Center, low-income housing, a favorite of House Speaker Frank Chopp, and the arts.

The restaurant industry, which originally wanted the taxes to sunset, has agreed to go along with the food and beverage tax extension. But that was only part of the equation.

The legislation breaks a vow with people paying the taxes who were told in plain English that the taxes would go away when the stadium was paid for. This is no time to be assigning that money to the next pending desire.

Pass the smelling salts. Lawmakers need to snap to their senses and allow the taxes to expire, as promised.

Attachment #5