

STUDY SESSION DES MOINES CITY COUNCIL - March 6, 2003 - 7:30 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

DISCUSSION ITEMS:

Motion to pay \$22,065 failed 4-3

DISCUSSION LEADER:

GOAL:

EST. TIME:

✓ 1. RCAA Final Billing

City Council

Decision

30 Minutes

✓ 2. Draft Ordinance No. 02-264 Traffic Impact Fees

Public Works Director

Approval

45 Minutes

continued to future for 3 amendments

✓ 3. Draft Resolution No. 03-013 Amend Council
Rule 36 Video Taping of Council Meetings

Councilmember Wasson

Discussion/Direction

20 Minutes

no motion made

✓ 4. Draft Ordinance No. 03-070 Hotel/Motel Tax

City Attorney

Direction

30 Minutes

passed to 2d reading

Richard Brown

✓ 5. Draft Ordinance No. 01-192 Hotel/Motel -
Check-In Identification Requirements

City Attorney

Direction

30 Minutes

passed to 2d reading

John O. Linn

NEXT MEETING DATE: Regular Meeting March 13, 2003

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

SUBJECT: Hotel/Motel Tax

FOR AGENDA OF: March 6, 2003DEPT. OF ORIGIN: Legal

ATTACHMENTS: Draft Ordinance No. 03-070

DATE SUBMITTED: February 27, 2003

CLEARANCES:

☒ Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AT**S-1*
passed to 2nd reading
3rd sunset
*delete (2) (\$)*PURPOSE AND RECOMMENDATION

The purpose of this report is to submit, for City Council consideration, Draft Ordinance No. 03-070 establishing a "lodging tax advisory committee." This is a required first step if the City Council wants to consider the imposition of a "hotel-motel" tax for the purpose of tourist promotion, acquisition or operation of tourism-related facilities, or any other uses authorized by Chapter 67.28 RCW.

It is recommended that the Council discuss Draft Ordinance No. 03-070 at the study session of March 7, 2003 and pass Draft Ordinance No. 03-070 in its current or amended form to a second reading for enactment.

MOTION: "To pass Draft Ordinance No. 03-070, relating to the establishment of a lodging tax advisory committee, to a second reading for enactment."

BACKGROUND

Most cities have had the authority to levy a "hotel-motel" or lodging tax of up to two (2%) percent since 1973. The "basic" two percent tax may be imposed under RCW 67.28.180 on all charges for furnishing lodging at hotels, motels, and similar establishments (including bed and breakfasts and RV parks) for a continuous period of less than one month. Most cities in King County, including Des Moines, may only levy a one (1%) percent tax because RCW 67.28.181(1) requires that the hotel-motel tax may be levied only so long as the total applicable taxes do not exceed twelve (12%) percent. Cities in King County, other than Seattle, have an 8.2% sales tax, a 2% hotel-motel tax for the Kingdome/new football stadium,

and a 2.8% hotel-motel tax for the convention center. These add up to 13 percent. Subtracting the 2% credit against the state sales tax brings the figure down to 11%, leaving room for a one (1%) tax.

Funds collected from this special hotel-motel tax may be used solely for paying for tourism promotion and for the acquisition and/or operation of tourism-related facilities. "Tourism promotion" is defined as:

Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

RCW 67.28.1817 requires that if a city with a population of over 5,000 wishes to impose a new hotel-motel tax, raise the rate of an existing tax, repeal an exemption from the hotel-motel tax, or change the use of the tax proceeds, it must first form a lodging tax advisory committee with the following requirements:

- The committee must have at least five (5) members, appointed by the city council;
- The committee membership must include at least:
 - two representatives of businesses that are required to collect the hotel-motel tax;
 - two people who are involved in activities that are authorized to be funded by the tax; and
 - one elected city official who serves as chairperson of the committee.
- Organizations representing hotels and motels and organizations involved in activities that can be funded by the tax may recommend people for membership;
- The number of committee members from organizations representing the hotels and motels and the number from organizations involved in activities that can be funded must be equal;
- A city's committee may include a non-voting county official; and
- The council must review the membership of the committee annually.

Any new hotel-motel tax proposal or proposal to modify an existing hotel-motel tax proposal must be submitted to the lodging tax advisory committee for review and comment with the following requirements:

- The submission must occur at least forty-five (45) days before final action will be taken on the city's proposal. Even if the committee finishes its work before the 45 days are up, the city still must wait 45 days; and
- The committee's comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and of the extent to which it will affect the long-run stability of the fund to which the hotel-motel taxes are credited;

If the advisory committee does not submit comments before the time that final action is to be taken on the proposal, the city may go ahead and take final action.

DISCUSSION

Establishment of this lodging tax advisory committee is not optional if the Council wants to impose a hotel-motel tax. It is a requirement of the enabling legislation for the local hotel-motel tax (RCW 67.28.180).

ALTERNATIVES

1. Council can pass the ordinance, as drafted, onto a second reading.
2. Council can amend the ordinance and pass the amended ordinance onto a second reading.
3. Council can vote not to pass the ordinance.
4. Council can direct staff to redraft the ordinance.
5. Council can take no action.

Taking no action will preclude the imposition of a hotel-motel tax.

FINANCIAL IMPACT

There will be no financial impact by simply establishing the lodging tax advisory committee. Estimated revenues from a 1% hotel-motel tax, if ultimately imposed by the Council after review by the committee, could be significant for the benefit of local tourism, but will be addressed at such time, if ever, as an ordinance to impose a hotel-motel tax is proposed.

RECOMMENDATION

Administration recommends adoption of draft ordinance 03-070.

CITY ATTORNEY'S FIRST DRAFT 02/25/03

DRAFT ORDINANCE NO. 03-070

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to boards and committees; establishing a lodging tax advisory committee; providing for appointment, membership, and scope of duties of the committee; and codifying this ordinance as a new chapter 4.52 DMMC.

WHEREAS, RCW 67.28.180 provides that cities are authorized to levy and collect a special excise tax of not to exceed two (2%) percent on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapter 82.08 RCW, and

WHEREAS, RCW 67.28.1817 provides that before proposing imposition of a new tax under Chapter 67.28.180 RCW or an increase in the rate of, repeal of an exemption from, or a change in the use of revenue received under any such tax, the City shall establish a lodging tax advisory committee that shall advise the City Council regarding any such tax imposition, and

WHEREAS, the city council finds it to be in the public interest to establish a lodging tax advisory committee; now therefore,

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

Sec. 1. Establishment of Lodging Tax Advisory Committee.
There is established a lodging tax advisory committee ("committee"), that shall advise the city council regarding the imposition of any new tax under Chapter 67.28.180 RCW or any increase in the rate of, repeal of an exemption from, or change in the use of revenue received from any such tax.

Sec. 2. Committee - Composition.

(1) The committee shall consist of at least five members, appointed by the Mayor and confirmed by a majority of the City Council.

(2) The committee membership shall include:

(a) At least two members who are representatives of businesses required to collect tax under RCW 67.28.180.

(b) At least two members who are persons involved in activities authorized to be funded by revenue received under RCW 67.28.180.

(c) One member who shall be a member of the City Council and who shall serve as chair of the committee.

(d) Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection and persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection.

(3) Organizations representing businesses required to collect tax under RCW 67.28.180, organizations involved in activities authorized to be funded by revenue received under RCW 67.28.180, and local agencies involved in tourism promotion may submit recommendations for membership on the committee.

(4) The number of members who are representatives of businesses required to collect tax under RCW 67.28.180 shall equal the number of members who are involved in activities authorized to be funded by revenue received under RCW 67.28.180.

gr (5) ~~The committee may include one nonvoting member who is an elected official of King County.~~

(6) The Mayor and the City Council shall review the membership of the advisory committee annually and make changes as appropriate.

Sec. 3. Scope of Duties.

(1) Any proposal for the imposition by the City of a tax under RCW 67.28.180 or any proposal for the increase in the rate of, repeal of an exemption from, or change in the use of revenue received from any such tax shall be submitted to the committee for review and comment.

(2) The submission shall occur at least forty-five days before final action on or passage of the proposal by the City Council. The advisory committee shall submit comments on the

proposal in a timely manner through the City's applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815.

(3) Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the City from acting on the proposal. The City is not required to submit an amended proposal to an advisory committee under this section.

Sec. 4. Codification. Sections 1 through 3 of this ordinance shall be codified as a new chapter 4.52 DMMC.

Sec. 5. 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. 6. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

Ordinance No. 03-070
Page 4 of 4

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD/03-070

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Hotel/Motel Licensing

ATTACHMENTS: Draft Ordinance No. 01-192

FOR AGENDA OF: March 6, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: March 4, 2003

CLEARANCES:

☒ Legal

☒ Police

APPROVED BY CITY MANAGER

FOR SUBMITTAL: _____

PURPOSE AND RECOMMENDATION

The purpose of this proposed ordinance is to establish a licensing endorsement and registration requirement for overnight lodgings in an effort to help combat crime against persons, property, society, and host businesses. Hotels and motels with high numbers of police calls for service will be required to employ aggressive measures to assist in deterring crime as a condition of their general business license and business license endorsement approval.

It is recommended that the council discuss Draft Ordinance No. 01-192 at the study session of March 6, 2003, and pass Draft Ordinance No. 01-192 in its current or amended form to a second reading.

MOTION: "To pass Draft Ordinance No. 01-192, creating a new chapter in section 5 DMMC, establishing a hotel/motel licensing endorsement requirement, and implementing procedures for revocation or denial of renewal of a business license for hotel/motel operators who are in violation of the provisions provided in this ordinance, to a second reading."

BACKGROUND AND CONCLUSION

The hotel/motel industry historically experiences criminal activities of the type, severity, and frequency that is of concern to public safety. This draft ordinance establishes a partnership between the Des Moines Police Department and the hotel and motel industry in an effort to promote hotel and motel

safety. The Police Department has recommended the measures contained in Draft Ordinance No. 01-192 in order to effectively deter crime within the industry. The annual number of police calls from an individual hotel/motel establishment will determine which requirements will be placed on each hotel or motel location.

The Police Department in researching this topic has been in contact with various communities in our area exploring how they have dealt with similar problems in their community. Most notably the cities of Tukwila and Fife have reduced calls for service and made their communities safer by employing similar measures as proposed in this draft ordinance.

Historically calls for service to these businesses are much higher than adjacent businesses. Police have met with some problem businesses to suggest better practices and have had limited success. While some motel/hotel owners and managers actively and aggressively manage their business, others appear to be satisfied by merely having rooms rented regardless to the impact on the community.

The Police Department has received frequent complaints from the community at large from what they believe to be the negative impact of poor management and business practices by some motels in our community. The Police Department has responded and investigated many incidents of criminal behavior occurring at these businesses. These include homicide, sexual assault, robbery, drug dealing, identity theft, gang activity and prostitution to list but a few. It is common to recover stolen cars and fugitives from justice at these businesses. Often the complexity of and sheer volume of calls for service at these businesses divert attention and resources of the police department that could be utilized elsewhere in the community if only preventive measures had been employed by the operators of these businesses.

CITY ATTORNEY'S FIRST DRAFT 03/03/03

DRAFT ORDINANCE NO. 01-192

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, providing for the licensing of overnight lodgings in order to ensure the safety of citizens, providing for severability, establishing an effective date, and adding a new chapter to Title 5 of the Des Moines Municipal Code.

WHEREAS, the type, severity, and frequency of police calls for service at hotels and motels that have experienced significant criminal activity are a real and compelling concern to the City of Des Moines, the citizens of Des Moines, visitors to Des Moines, and the hotel and motel industry itself, and

WHEREAS, hotel and motel safety are also the concern of both the hotel and motel industry and the Police Department, with safety measures to include strategies for combating crimes against persons, crimes against property, crimes against society, crimes against the host business, and reducing civil liability, and

WHEREAS, it has been statistically demonstrated that some hotels and motels are responsible for a disproportionate number of police calls for service, and

WHEREAS, it is reasonable to require those hotels and motels with higher numbers of police calls for service to employ certain measures designed to assist in deterring crime as a condition for business license approval within the City, and

WHEREAS, the Police Department has identified and recommended certain measures that have been demonstrated to effectively deter crime, and

WHEREAS, those hotels and motels that have initiated aggressive crime prevention measures have found those measures to be effective deterrents to crime, and

WHEREAS, it has been recognized by the hotel and motel industry and the crime prevention community that the level of employee access into the privacy and safety of its patrons is of such significance as to require higher levels of employee

screening for those hotels and motels with higher numbers of police calls for service, and

WHEREAS, crime prevention programs work by not only reducing crime, but affording participants the opportunity to focus their interests, reach their goals, and become good neighbors, and

WHEREAS, the City Council believes it is time to form a partnership between the City of Des Moines Police Department and the hotel and motel industry to promote hotel and motel safety; now therefore,

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

Sec. 1. Findings. The recitals set forth above are by this reference incorporated herein as the City Council's findings.

Sec. 2. 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) "Hotel" means a building or portion thereof, and the associated parking and landscaping, designed or used for the transient rental of five or more units for sleeping purposes. A hotel may provide a central kitchen and dining room and accessory shops and services catering to the general public. The term hotel does not include institutions housing persons under legal restraint or requiring medical attention or care.

(3) "Motel" means a building or buildings, detached, or in connected units, or designed as a single structure, and the associated parking and landscaping, the building units of which are used as individual sleeping or dwelling units having individual private toilet facilities, which may or may not have individual kitchen facilities, designed primarily for the accommodation of transient automobile travelers. The term motel includes tourist cabins, tourist courts, motor lodges, auto

courts, cabin courts, motor inns, and similar lodgings. The term motel does not include accommodations for travel trailers.

(4) "Call for service" means:

(a) any report to the Des Moines Police Department from or concerning a hotel or motel in connection with an incident occurring at that hotel or motel; and

(b) any on-view incident observed by police concerning a hotel or motel,

which report or on-view incident is responded to by a police officer.

(5) "Police" means any authorized agent of the Des Moines Police Department or other law enforcement agency having jurisdiction.

(6) "Police Department" means the Police Department of the City of Des Moines.

Sec. 3. General license requirements.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a license issued pursuant to RCW Chapter 70.62.

(2) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a business license issued pursuant to Des Moines Municipal Code Chapter 5.04.

Sec. 4. City of Des Moines business license endorsement requirement.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without an additional business license endorsement issued pursuant to this chapter.

(2) All hotels and motels may be issued a business license endorsement under the provisions of this chapter. Based

upon an individual hotel or motel's annual calls for service per room, however, a hotel or motel must comply with additional requirements designed to deter crime in order to obtain or maintain its business license endorsement. The calls for service for each hotel and motel will be monitored from July 1 of the current calendar year through June 30 of the following calendar year. Crime statistics for each hotel and motel will be kept on an annual basis from July 1 of the current calendar year through June 30 of the following calendar year. The time between July and December will allow hotels and motels time to comply with all the requirements of their group level necessary to receive a business license endorsement at year's end for the next calendar year.

(3) Each hotel or motel licensee will be notified of its annual number of calls for service per room no later than July 31 of each calendar year. Any additional requirements placed on a hotel or motel under this chapter must be met or substantially in progress, as determined and verified by the Des Moines Police Department, before the next calendar year's business license endorsement will be issued. The Police Department business license endorsement required herein shall be made upon a form prepared by the Police Department upon application by the licensee. The business license endorsement form must be presented to the City Clerk by every hotel or motel licensee, as a condition of eligibility for the general business license required by DMMC Chapter 5.04.

Sec. 5. Annual calls for police service less than or equal to 0.25 calls per room. Hotels or motels whose semi-annual calls for service are less than or equal to 0.25 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Every hotel and motel operator, and the clerk at time of guest registration, must obtain and record the full names; full dates of birth including day, month, and year; and current addresses of all room occupants; and the make, model, and license number of the vehicle being used by every room occupant. Names and addresses of all room occupants over the age of sixteen must be verified by obtaining a copy of a valid driver's license, passport, or other form of government approved picture

identification. The records required by this section shall be kept available for a period of not less than one year for inspection by any police or code enforcement officer at any reasonable time, or in a police or fire emergency at any time of day or night.

(2) At the request of an establishment, the Des Moines Police Department will provide the hotel or motel with inspection services and advice concerning Crime Prevention Through Environmental Design Standards.

(3) At the request of the hotel or motel, the Des Moines Police Department will provide training for the hotel or motel staff, in cooperation with management, regarding the recognition of criminal behavior.

(4) At the request of the hotel or motel, the Des Moines Police Department will keep the hotel or motel management apprised of police activity that occurs on the property.

Sec. 6. Annual calls for police service greater than 0.25 calls per room but less than or equal to 1.00 calls per room. Hotels or motels whose annual calls for service are greater than 0.25 calls per room but less than or equal to 1.00 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in section 5 of this ordinance.

(2) Have a representative available on the premises at all times.

(3) Install and operate a surveillance camera (with recorder) in the lobby for twenty-four (24) hours per day, seven (7) days per week.

(4) Undergo a Des Moines Police Department crime prevention assessment of their property to be conducted by the Des Moines Police Crime Prevention Unit using standards from the Crime Prevention Through Environmental Design (CPTED) program.

Sec. 7. Annual calls for police service greater than 1.00 calls per room. Hotels or motels whose annual calls for service are greater than 1.00 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business s license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in sections 5 and 6 of this ordinance.

(2) Provide the Des Moines Police Department with the names and dates of birth of all owners, managers, and employees to allow for background checks.

(3) Hold semi-annual employee training sessions, assisted by the Des Moines Police Department.

(4) Provide 24-hour front desk personnel.

(5) Enforce the following guest rules:

(a) Rooms cannot be rented for less than a six-hour period.

(b) No room may be used for drunkenness, fighting, or breaches of the peace. No room may be used if loud noises come from that room. Loud noises are those noises that disturb the tranquility of the neighborhood or those noises that would be disturbing to a reasonable person.

(c) Alcohol may not be consumed in common areas except for designated banquet or reception rooms or areas.

(6) Maintain a daily key log. Each key that is found to be missing must have its corresponding lock re-keyed prior to the room being rented. Each master key that is found to be missing will require the establishment to re-key all corresponding locks.

(7) Issue parking passes to all vehicles to be allowed to park on the premises with each pass marked with the issue date and expiration date.

(8) Require all guests who stay more than thirty days to fill out an Application for Tenancy in a form provided by the Des Moines Police Department.

(9) Participate in the Des Moines Police Department "Criminal Trespass Program." Participation shall mean the facility shall be registered in the "Criminal Trespass Program."

(10) Remove all graffiti and repair all vandalism within seven (7) days of occurrence.

(11) Permit an annual inspection by the City of Des Moines Building Official to ensure that guestrooms are maintained according to Uniform Health Code and Uniform Fire Code, including tamper-resistant smoke detectors meeting National Fire Protection Agency (NFPA) standards.

(12) Follow Crime Prevention Through Environmental Design (CPTED) standards for landscaping/plant maintenance. These standards will be provided by the Des Moines Police Department.

(13) Install lighting in all common areas with minimum maintained lighting of 1.5 foot-candles at ground level.

(14) Install and operate video monitoring equipment in all parking lots, monitored and recorded at the front desk twenty-four (24) hours per day, seven (7) days per week.

(15) Submit to scheduled semi-annual audits by the City of Des Moines Police Department to verify compliance with the above-referenced requirements.

Sec. 8. Enforcement. If the Chief of Police finds that any hotel or motel has violated or failed to comply with any provisions of this chapter, the Chief shall make a written record of such finding and shall specify therein the particulars; and will inform the Des Moines City Manager. Upon recommendation of the Chief of Police, the City Manager may revoke, or deny renewal of, the City of Des Moines business license endorsement for that hotel or motel for a period not less than ninety (90) days or not more than one (1) year. This determination shall be made in consultation with the Police

Chief and shall be based on the severity of the violation(s). Revocation, or denial of renewal, of the hotel or motel business license endorsement under this chapter shall require revocation of the hotel or motel City of Des Moines general business license under DMMC 5.04.060, or denial of renewal of the hotel or motel City of Des Moines general business license under DMMC 5.04.070. The City Manager will provide the hotel or motel with notice of the decision to revoke, or deny renewal of, the City of Des Moines business license as required under DMMC 5.04.060 and DMMC 5.04.070.

Sec. 9. Appeals. Upon notice of revocation or denial of renewal of a business license based upon the provisions of this chapter, the hotel or motel operator shall be entitled to appeal to the hearing examiner under DMMC 5.04.060 and DMMC 5.04.070, and the provisions of the hearing examiner code, DMMC Chapter 18.94. The applicant or license holder must appeal as required under DMMC 18.94.113, filing a notice of appeal within ten days of the decision that is being challenged.

Sec. 10. Remedies cumulative. The remedies provided for herein for failure to comply with this chapter shall be cumulative and in addition to any other remedy at law or equity.

Sec. 11. Codification. This ordinance shall be codified as a new chapter in Title 5 DMMC.

Sec. 12. 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. 13. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

Ordinance No. ____
Page 9 of ____

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

DRAFTORD:01-192

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

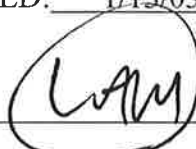
SUBJECT: Amendment of Council Rule 36,
Videotaping of Council Meetings

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

FOR AGENDA OF: March 6, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: 1/13/03

CLEARANCES:
[X] Legal 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

RECOMMENDATION

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

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

needs 2d

BACKGROUND

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

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

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

DISCUSSION

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

CITY ATTORNEY'S FIRST DRAFT 01/13/02

DRAFT RESOLUTION NO. 03-013

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

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

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

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

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

and

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

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

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

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

Resolution No. ____
Page 2 of ____

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

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES:03-013



Opinion

CHRISTINE O. GREGOIRE

ATTORNEY GENERAL OF WASHINGTON

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

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

November 30, 1998

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

AGO 1998 No. 15

Dear Mr. Gaylord:

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

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

BRIEF ANSWER

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

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

ANALYSIS

1. Introduction

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

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

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

2. Open Public Meetings

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

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

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

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies[.]

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

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

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

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

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

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

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

orderly conduct. RCW 42.30.050 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Belcher, 569 F. Supp. at 383.

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

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

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

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

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

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

conduct of the meeting.

3. Executive Sessions

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

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

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

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

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

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

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

4. Other Public Meetings

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

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

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

5. Private Meetings

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

of the University stating:

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

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

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

Very truly yours,

CHRISTINE O. GREGOIRE

Attorney General

WILLIAM B. COLLINS

Sr. Assistant Attorney General

Footnotes

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

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

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

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

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

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

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

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

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

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

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

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

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

Denis Staab

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

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

Subject: Video Taping and the press:

Dear Mayor Wasson and City Council Members,

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

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

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

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

Thank you for your considerations in this matter,

Brett Fish

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

01/14/2003

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

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Codification section**AGENDA ITEM**

SUBJECT: Traffic Impact Fees

AGENDA OF: March 6, 2003

ATTACHMENTS:

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 26, 2003

A. Third Draft of Ordinance No. 02-264 adopting the use of traffic impact fees.

CLEARANCES:

☒ Finance☒ Public Works☒ Legal

B. Original Agenda Item December 12, 2002 with attachments concerning impact fees

APPROVED BY CITY MANAGER
FOR SUBMITTAL:**Purpose and Recommendation:**

The purpose of this agenda item is for the approval of Third Draft Ordinance 02-264 adopting the use of traffic impact fees.

Suggested Motion

"I move to approve the Third Draft of Ordinance 02-264 establishing a transportation impact fee service area, imposing impact fees to finance part of the costs of improvements to serve new development, provide disposition of such impact fees and establish an appeal process."

Background:

At the January 30th Council meeting, Council agreed impact fees were necessary, but discussion ensued as to the amount to charge developers. Council tabled the ordinance until March 6th for final consideration, then directed the Council Public Safety and Transportation (PS&T) Committee to discuss the funding level and bring back to the full Council a recommendation for an impact fee rate. It was felt that the rate should work toward the goal of funding the City's transportation's needs due to development, yet not be so cost prohibitive to developers doing business in our City that a significant amount of development moves outside the City as a result the fee. The Draft Ordinance is very similar to the Traffic Impact Fee Ordinance, which has been successfully used by the City of SeaTac for a number of years.

Discussion:

On February 6th, the PS&T Committee met and discussed various options taking into consideration other cities' rates in the region for assessing impact fees. After careful consideration, the PS&T Committee's recommended option to be presented to the Council via Draft Ordinance 02-264 is a phased-in rate. The original 2001 base rate of \$2,539 per new PM peak hour trip as computed by methodologies recommended by the City's consultant, The Transpo Group, would first be adjusted yearly by inflation. For the calendar years 2003 through 2005, the impact fee rate would be phased in at a percentage of the then-current base rate as

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follows: 70% in 2003, 80% in 2004, and 90% in 2005. For 2006 and all subsequent years, the impact fees will be paid in the amount of 100% of the then-current base rate. This proposal would provide an incentive for development to occur in the near term, before the full rate goes into effect. The Ordinance spells out the establishment of a service area and a method of imposing impact fees on development, including disposition of impact fee revenue, refunds if applicable, and an appeal process if the developer does not agree with the fee.

Alternatives:

Beginning the rate at 100%, which many Council members felt was too onerous for a new fee of this type. It would also be possible for Council to set the rate at any level under 100%; however, a lower rate would not provide as much funding for critical transportation projects.

Financial Impact:

Adopting a traffic impact fee program itself does not incur cost to the City. However, traffic impact fees are the only revenue source available to the City at this time that will cover a significant portion of the costs incurred by the need for transportation improvements caused by growth within the City of Des Moines. Traffic impact fees will only be charged on new growth that adds additional trips to the transportation system.

Recommendation/Conclusion:

The PS&T Committee, after evaluating transportation needs and funding options, recommends that Council adopt the use of traffic impact fees based on the stepped rate phased in over the course of four years starting at 70% in 2003 and stepping up to 100% in 2006.

Concurrence:

Finance and Legal

CITY ATTORNEY'S FIRST DRAFT 11/21/02
CITY ATTORNEY'S SECOND DRAFT 12/12/02
CITY ATTORNEY'S THIRD DRAFT 02/20/03

DRAFT ORDINANCE NO. 02-264

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation impact fee service area, imposing impact fees therein to finance part of the costs of improvements to serve new development, providing for the disposition of such impact fees, and establishing an appeal process.

WHEREAS the City is authorized by RCW 82.02, the Growth Management Act ("the GMA"), and by RCW 39.92, the Local Transportation Act, to require new growth and development within the City of Des Moines to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees, and

WHEREAS, as part of the Greater Des Moines Comprehensive Plan the City has adopted a Comprehensive Transportation Plan which identifies deficiencies in public transportation facilities and identifies the means by which such deficiencies could be eliminated, and

WHEREAS, the City Council has found and determined that it is in the best interests of the City, in order to ensure a fair and predictable method for allocating the share of the cost of such new public facilities, to impose impact fees on the new growth and development activities; now therefore,

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

Sec. 1. 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) "Building permit" means any written authorization from the City which authorizes the commencement of development activity.

(3) "City" means the City of Des Moines, Washington.

ATTACHMENT A

(4) "City Comprehensive Plan" means the Greater Des Moines Comprehensive Plan, adopted pursuant to the GMA.

(5) "Development activity" means any construction or expansion of a building or structure that creates additional demand on and/or need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the Comprehensive Transportation Plan to the Greater Des Moines Comprehensive Plan or of the applicable code or regulation of the City.

(6) "GMA" means the Washington State Growth Management Act, codified as RCW 82.02.050 through 82.02.090, as now in existence, or as hereinafter amended.

(7) "Hearing Examiner" means the Hearing Examiner of the City of Des Moines, pursuant to Chapter 18.94 of the Des Moines Municipal Code.

(8) "Impact fee" means a payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City, but does not include any permit or application fee.

(9) "Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

(10) "Public facilities" as used in this section refers to public streets, roads and rights-of-way owned or operated by the City for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

(11) "Service area" means the development impact fee service area of the City identified in Section 3.

(12) "Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets, roads, alleys and right-of-ways within the City and street

services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements.

Sec. 2. Transportation impact fees established. There is established, subject to the provisions of this chapter, a transportation impact fee program.

Sec. 3. Establishment of service area. The City hereby establishes, as the service area for development impact fees, the City of Des Moines, including all property located within the corporate limits of the City. The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles.

Sec. 4. Imposition of impact fee on development activity.

(1) The City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the calendar year 2001 base rate of Two Thousand Five Hundred Thirty Nine dollars (\$2,539.00) per new p.m. peak hour trip, as computed using methodologies from the most current edition of the Institute of Transportation Engineers Trip Generation Manual or other industry sources approved by the Public Works Director. This impact fee base rate shall be adjusted annually based on the construction cost index for the Seattle area as reported in the March issue of the Engineering News Record periodical. Based upon the above impact fee base rate and adjustments, the base rate as of January 1, 2003 will be Two Thousand Six Hundred Fifteen dollars (\$2,615.00) per peak p.m. trip. For the calendar years 2003 through 2005, the impact fee shall be phased-in as follows: for the calendar year 2003, the impact fee shall be paid in the amount of Seventy percent (70%) of the then-current base rate; for the calendar year 2004, the impact fee shall be paid in the amount of Eighty percent (80%) of the then-current base rate; and for the calendar year 2005, the impact fee shall be paid in the amount of Ninety percent (90%) of the then-current base rate. For the calendar year 2006, and for all subsequent years, the impact fee shall be paid in the amount of One Hundred percent (100%) of the then-current base rate.

(2) Such impact fees shall:

currently adopted
as identified in the Comprehensive Plan
(as amended)

(a) Only be imposed for system improvements that are reasonably related to new development; and,

(b) Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and,

(c) Be used for system improvements that will reasonably benefit new development; and,

(d) Be used for facilities identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program."

(3) Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the Comprehensive Transportation Plan element of the Greater Des Moines Comprehensive Plan and incorporated herein by this reference.

(4) The impact fees imposed pursuant to this chapter shall be assessed by the City after the effective date of this ordinance. A final assessment, based upon the actual building permit to be issued, shall be made, and the fee shall be due and payable in full at the time of issuance of the permit.

(5) Failure to pay the impact fees for a given development activity at the time that such impact fees are due and payable shall result in denial of the building permit for which the owner has applied.

(6) The impact fee program shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program." The value for which credit shall be given is the estimated value used

for Impact Fee calculation in the Comprehensive Transportation Plan.

Sec. 5. Disposition of impact fee revenues.

(1) The impact fees collected pursuant to the provisions of this chapter shall be deposited into an impact fee fund. Pending application as provided in this chapter, the monies deposited in the impact fee fund shall be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of monies in each account in the impact fee fund shall be retained in such account.

(2) The impact fees deposited in each account in the impact fee fund, and the interest and profit received from the investments therefrom shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the Greater Des Moines Comprehensive Plan and Comprehensive Transportation Plan, and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extra-ordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

(3) The City shall prepare an annual report on the impact fee fund which shows the source and amount of all monies collected, earned or received and the public facilities that were financed in whole or in part by impact fees.

Sec. 6. Refunds.

(1) The City shall, in accordance with RCW 82.02.080, refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected.

(2) The City shall also refund to the current owner of property of which an impact fee has been paid all impact fees paid with respect to such property if the development activity

for which the impact fee was imposed did not occur and no impact has resulted; provided, that if some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund shall be available under this section.

*Partial develop
assess
refund*

(3) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the City Manager or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to paragraph 2 of this section only, shall be the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in paragraph 1 of this section, whichever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations and for which no application for a refund has been made within the one (1) year claim period, shall be retained by the City and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.

Sec 7. Appeals.

(1) The determination of the City Manager or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final, however an owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain a building permit and, after such payment, file an appeal regarding the amount of the impact fee to the Hearing Examiner within ten (10) days of the City's final decision under the provisions of the hearing examiner code, Chapter 18.94 DMMC.

(2) Appeal regarding the amount of the impact fee imposed on any development activity may only be made by the owner of the property where such development activity shall occur.

Sec. 8. Severability - Construction.

Ordinance No. ____
Page 7 of ____

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

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

NEW SECTION. Sec. 9. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

AGENDA ITEM

SUBJECT: Traffic Impact Fees

ATTACHMENTS:

1. Draft Ordinance No. 02-264 Adopting the use of traffic impact fees
2. Comparison of traffic impact fees charged by other cities
3. Map of projects
4. Chart of Impact Fee Calculation and Recommended Cost
5. Potential Impact Fees per Unit of Development
6. Pacific Ridge Core Transportation Projects

AGENDA OF: December 12, 2002

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: December 6, 2002

CLEARANCES:

[X] Finance

[X] Public Works

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation:

The purpose of this agenda item is get input from the full Council regarding the use of traffic impact fees, and to approve the first reading of Draft Ordinance 02-264. This agenda item will come back for a second reading with adjustments based on the Council's direction.

Suggested Motions

"I move to approve the first reading of Draft Ordinance 02-264 adopting the use of traffic impact fees."

Background:

The analysis of the present and future transportation needs has been studied and is included in the Comprehensive Transportation Plan which was presented to Council for a public hearing and approved at the December 5th meeting. The plan lists around \$100 million (in 2001 dollars) in capital projects which should be done between 2001 and 2020. While the City has done relatively well at getting grant funding to cover part of its transportation projects, grants require matches, and some times grants are not available. In order to accomplish the critical projects, an additional source of funding is needed. Existing Arterial Street funding does not even cover keeping up with pavement maintenance on existing streets.

While there are only limited sources of funding available to pay for street projects due to State law, the City of Des Moines is even more limited due to our residential tax base. As the Council Public Safety and Transportation Committee discovered when they evaluated the alternatives to finance transportation needs, there really is only one source at this point in time that has the possibility of raising a significant amount of money, and that is traffic impact fees. But it should be kept in mind that even if the traffic impact fees are at the optimum level, they still will only raise approximately one third of the needed funding. The rest must come from grant funding and, in some cases, lower priority projects will not be constructed.

ATTACHMENT B

It also needs to be pointed out that the Washington State Growth Management Act (GMA) requires that Cities have a legitimate plan for building transportation projects needed as a result of growth. GMA allows agencies to implement impact fee programs to help offset the cost of transportation facilities needed to accommodate growth. To meet basic GMA requirements, an impact fee shall be:

- Related to improvements to serve new development, not existing deficiencies.
- Assessed proportionally to the impacts of new development.
- Allocated for new improvements that reasonably benefit new development.
- Spent on facilities identified in the capital facilities plan.

It is important to note that impact fees are not limited to new capital projects. An agency may impose impact fees to cover costs of previous improvements, provided they meet the above criteria. As identified in the above criteria, impact fees can only be used for improvements that are needed due to future growth. Therefore, the costs for non-capital projects such as annual maintenance and operations are not included in an impact fee program. The cost of roadway capacity-added projects can be assessed as impact fees proportional to the relative impact of new development to total growth. In that way the fee is fair to the developers since it is based on a measurement of how much they are expected to affect the road system in the City.

Based on the growth which is projected in the Greater Des Moines Comprehensive Plan which feeds into the Comprehensive Transportation Plan (CTP) travel demand model, total PM peak hour trip generation within the city of Des Moines is expected to increase significantly between 1998 and 2020. The 1998-2020 growth in trip generation accounts for 43.9 percent of the total 2020 traffic generation within the City. Only the basic roadway capacity-added improvement projects are included in the impact fee program (see Attachment 3). To keep an impact fee program relatively simple, the city would base it on a single, city-wide district versus the concept of multiple districts which some other cities use. This decision made by the Public Safety and Transportation Committee reflects an analysis based on a three-district concept that showed all districts to be within 15 percent of the city-wide average. In implementing a traffic impact fee program, the city would use methodologies for computing new PM peak trips based on the most current edition of the Institute of Transportation Engineers Trip Generation Manual or, for businesses not clearly described in this manual, other industry sources or technical studies as approved by the Public Works Director. Examples of how this proposed fee will affect development is shown on Attachment 5.

It does need to be pointed out that the City of Des Moines does have an approved localized traffic impact fee program in the Pacific Ridge area which was instituted last year as a way to provide needed local street improvements in order to serve the development in that specific area. The "core transportation projects" for Pacific Ridge are shown in Attachment 6. According to Ordinance 1298, development within the "Mitigation Boundary" will receive special treatment when and if city-wide impact fees are adopted. The residential developments located east of Pacific Highway South are to pay the highest Pacific Ridge Transportation Mitigation Fee and thus are exempted from the city-wide fee. New development that fronts along the Pacific Highway south Corridor are to pay a reduced Pacific Ridge Transportation Mitigation Fee which is to be credited toward a city-wide fee. As a result of the conditions associated with Ordinance 1298, the overall City transportation fees are estimated be about \$6,750,000 less than the total calculated in Attachment 4, or about \$30 million.

The analysis used to calculate the city-wide transportation impact fee is a complicated, detailed computation which splits out the projects that are needed as a result of growth within the city of

Des Moines, from those City projects that are due to present deficiencies and do not add capacity, projects related to maintenance, and projects needed because of surrounding regional growth (see Attachment 4). A detailed description of the process used to determine the impact fee is included on pages 70 to 74 of the recently approved Comprehensive Transportation Plan. The reason for the complexity of the fee computation is to ensure that it is fair to the developers and will withstand legal scrutiny. The City's consultant on the Plan, The Transpo Group, is very familiar with those fees and the related calculation as they have worked with a number of Washington cities that have adopted a similar transportation fee plan.

Any adopted impact fee program also would need to meet the following provisions, per the GMA:

- Payments shall be held in a reserve account and may only be expended to fund capital improvements needed to mitigate a development's direct impact;
- Payments shall be expended within six years; and
- Provide refunds, with interest, if funds are not expended within six years.

The impact fee program "shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified by the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity" (RCW 82.02.060(3)). As an example, a developer constructing required frontage improvements along an arterial street project included in the impact fee calculation would get a credit against the fees.

The impact fee program assumes that a given amount of development in the City will occur by 2020. If development levels assumed in the Comprehensive Transportation Plan take longer to actualize within the City, then the funding from impact fees will not match the Comprehensive Transportation Plan. However, if significant levels of forecast development are not in place by 2020, then several of the impact-fee eligible projects will not be needed because the traffic volumes will be lower.

Discussion:

Traffic impact fees have been discussed by the City of Des Moines City Council for many years and were recommended in the adopted 1993 Comprehensive Transportation Plan. A detailed analysis of needs caused by growth is contained in the "Developer Transportation Impact Fees" section of the recently adopted Comprehensive Transportation Plan (page 70). After a Council Public Safety and Transportation (PS&T) Committee review of the possible methods of financing transportation needs, it became obvious that traffic impact fees are the only way to cover these growth-induced needs at this time. Furthermore, Des Moines needs traffic impact fees as a source for grant matches. To even apply for grants, the City must identify a source of matching funds. Most grants require a match of between 20% and 30%.

The beauty of traffic impact fees is that development pays its own way, thus protecting the existing businesses and citizens from a situation of ever-worsening congestion. New development is assured that the money will go to specific projects that will offset the effects of growth that they themselves are creating. In this way, development is not only helping the City of Des Moines to address growth, but is also investing in its own future. Many cities have had traffic impact fees in effect for ten years and, if anything, it has made their cities the kind of places where a lot of development has taken place (e.g. Redmond, Auburn, Bellevue, and SeaTac).

There are various approaches which different cities have take to funding their transportation projects which are needed to meet the growth in their cities and thus comply with GMA. Much depends on the funding options available to the cities, the size of their staff, and what the Councils are willing to back. Attachment 2 is a list of some of the surrounding cities and other related examples, and what they are doing or plan to do to fund transportation needs and meet GMA. On one end of the scale is Kent which has a large industrial/commercial area which can support large local improvement districts (LID's), a big staff to assemble them, and a Council which is willing to grant approval even when there is loud opposition. Federal Way and Tukwila are in the process of studying transportation impact fees and are expecting to go to their Councils early next year. Burien is following the same path, but is not quite as far along. SeaTac and Auburn have had traffic impact fees for some time; however, they are both supplementing the expansion of their street system using other funding (parking fees at SeaTac and other tax revenues at Auburn). As a result, both these cities have chosen to only charge impact fees at a level of about one half the full rate. On the other hand, there are a number of cities who are successfully charging the full rate. Maple Valley is in a financial position very similar to Des Moines. They do not have alternate funding for transportation. As a result, they are assessing the full rate and have not noticed a change in their pace of development. Their fee is actually higher than what is being proposed by the Des Moines Comprehensive Transportation Plan.

Given the high level of transportation need in Des Moines and given the fact that we do not have an alternate source to fill in the funding void, Maple Valley is probably a better template for what the City of Des Moines should do.

Alternatives:

Cities are mandated to provide revenue to provide the transportation improvements needed to serve future growth under the GMA law. Traffic Impact fees are the best option for providing the revenue required for the City of Des Moines to address the requirements of this law. Council can choose to institute a traffic impact at a lower amount as some other cities have done. The problem with this approach is that the City of Des Moines does not have an alternate source of funds to make up the resultant shortfall.

Financial Impact:

Adopting a traffic impact fees program itself does not incur cost, however, traffic impact fees are the only revenue source at this time that will cover a significant portion of the costs incurred by the need for transportation improvements caused by growth in future City of Des Moines traffic demands. Traffic impact fees will only be charged on new growth, which will add additional trips to the transportation system.

Recommendation/Conclusion:

The PS&T Committee, after evaluating transportation needs and funding options, recommends that Council adopt the use of traffic impact fees.

Concurrence:

Finance and Legal

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation impact fee service area, imposing impact fees therein to finance part of the costs of improvements to serve new development; providing for the disposition of such impact fees, and establishing an appeal process.

WHEREAS the City is authorized by RCW 82.02, the Growth Management Act ("the GMA"), and by RCW 39.92, the Local Transportation Act, to require new growth and development within the City of Des Moines to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees; and

WHEREAS, as part of the Greater Des Moines Comprehensive Plan the City has adopted a Comprehensive Transportation Plan which identifies deficiencies in public transportation facilities and identifies the means by which such deficiencies could be eliminated; and

WHEREAS, the City Council has found and determined that it is in the best interests of the City, in order to insure a fair and predictable method for allocating the share of the cost of such new public facilities, to impose impact fees on the new growth and development activities;

Now, Therefore:

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

NEW SECTION Sec. 1. Definitions.

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.

"Building permit" means any written authorization from the City which authorizes the commencement of development activity.

"City" means the City of Des Moines, Washington.

"City Comprehensive Plan" means the Greater Des Moines Comprehensive Plan, adopted pursuant to the GMA.

"Development activity" means any construction or expansion of a building or structure that creates additional demand on and/or need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the Comprehensive Transportation Plan to the Greater Des Moines Comprehensive Plan or of the applicable code or regulation of the City.

"GMA" means the Washington State Growth Management Act, codified as RCW 82.02.050 through 82.02.090, as now in existence, or as hereinafter amended.

"Hearing Examiner" means the Hearing Examiner of the City of Des Moines, pursuant to Chapter 18.94 of the Des Moines Municipal Code.

"Impact fee" means a payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City, but does not include any permit or application fee.

"Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

"Public facilities" as used in this section refers to public streets, roads and rights-of-way owned or operated by the City for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

"Service area" means the development impact fee service area of the City identified in Section 3.

"Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets, roads, alleys and right-of-ways within the City and street services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements.

NEW SECTION. Sec. 2. Transportation impact fees established.

There is established, subject to the provisions of this chapter, a transportation impact fee program.

NEW SECTION. Sec. 3. Establishment of service area.

The City hereby establishes, as the service area for development impact fees, the City of Des Moines, including all property located within the corporate limits of the City. The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles.

NEW SECTION. Sec. 4. Imposition of impact fee on development activity.

A. The City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the calendar year 2001 rate of Two Thousand Five Hundred Thirty Nine (\$2,539.00) per peak p.m. trip, as computed using methodologies from the most current edition of the Institute of Transportation Engineers Trip Generation Manual or other industry sources approved by the Public Works Director. This impact fee shall be adjusted annually based on the construction cost index for the Seattle area as reported in the Engineering News Record periodical.

B. Such impact fees shall:

1. Only be imposed for system improvements that are reasonably related to new development; and,
2. Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and,

3. Be used for system improvements that will reasonably benefit new development; and,
4. Be used for facilities identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program."

B. Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the Comprehensive Transportation Plan element of the Greater Des Moines Comprehensive Plan and incorporated herein by this reference.

C. The impact fees imposed pursuant to this chapter shall be assessed by the City at the time of the application for the building permit, and shall be due and payable, in whole at the time of issuance of such permit without interest.

D. Failure to pay the impact fees for a given development activity at the time of assessment shall result in denial of the building permit for which the owner has applied.

E. The impact fee program shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program." The value for which credit shall be given is the estimated value used for Impact Fee calculation in the Comprehensive Transportation Plan.

NEW SECTION Sec. 5. Disposition of impact fee revenues.

A. The impact fees collected pursuant to the provisions of this chapter shall be deposited into an impact fee fund. Pending application as provided in this chapter, the monies deposited in the impact fee fund shall

be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of monies in each account in the impact fee fund shall be retained in such account.

B. The impact fees deposited in each account in the impact fee fund, and the interest and profit received from the investments therefrom shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the Greater Des Moines Comprehensive Plan and Comprehensive Transportation Plan. and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extra-ordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

C. The City shall prepare an annual report on the impact fee fund which shows the source and amount of all monies collected, earned or received and the public facilities that were financed in whole or in part by impact fees.

NEW SECTION Sec. 6. Refunds.

A. The City shall, in accordance with RCW 82.02.080, refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected.

B. The City shall also refund to the current owner of property of which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was imposed did not occur and no impact has resulted; provided, that if some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred,, and no refund shall be available under this section.

C. Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the City Manager or designee within one (1) year of the date the

right to claim the refund arises, which, for purposes of refund claims authorized pursuant to paragraph B of this section only, shall be the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in paragraph A of this section, which ever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations and for which no application for a refund has been made within the one (1) year claim period, shall be retained by the City and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.

NEW SECTION Sec 7. Appeals.

A. The determination of the City Manager or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final, however an owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain a building permit and, after such payment, file an appeal regarding the amount of the impact fee to the Hearing Examiner within ten (10) days of the City's final decision under the provisions of the hearing examiner code, DMMC Chapter 18.94.

B. Appeal regarding the amount of the impact fee imposed on any development activity may only be taken by the owner of the property where such development activity shall occur.

NEW SECTION Sec. 8. Termination date of authority to collect and expend impact fees.

The City's authority to collect and expend impact fees pursuant to this chapter shall be effective until the earlier of (a) the repeal of the ordinance codified in this chapter, or (b) the determination by the State of Washington of the authorization to collect and expend impact fees.

NEW SECTION. Sec. 9. Severability - Construction.

A. 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.

B. 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. 10. Effective date.

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

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 200_ and signed in authentication thereof this ____ day of _____, 200_.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published:

Effective Date:

Status of Transportation Impact Fees in Other Cities	
Arlington	\$1,038 per pm peak trip
Auburn	Auburn currently charges only a portion of their calculated impact fee need.
Des Moines	\$2,539 per pm peak trip proposed
Duvall	\$2,682 per pm peak trip
Federal Way	Hopes to implement a program in early 2003.
Kent	Finances most of their needs through the LID process.
Maple Valley	\$3,599 per pm peak trip Has had a program since incorporation; Started at \$807 per pm peak trip; Raised the fees each year to the current \$1,802 and has adopted an increase to \$3,599 per pm peak trip for 2003; Discussions with their Engineer indicate that the program has been successful and they continue to see development.
SeaTac	\$1,020 per pm peak trip Finances some of their needs through parking fees.
Tukwila	Plans to investigate a program in 2003.

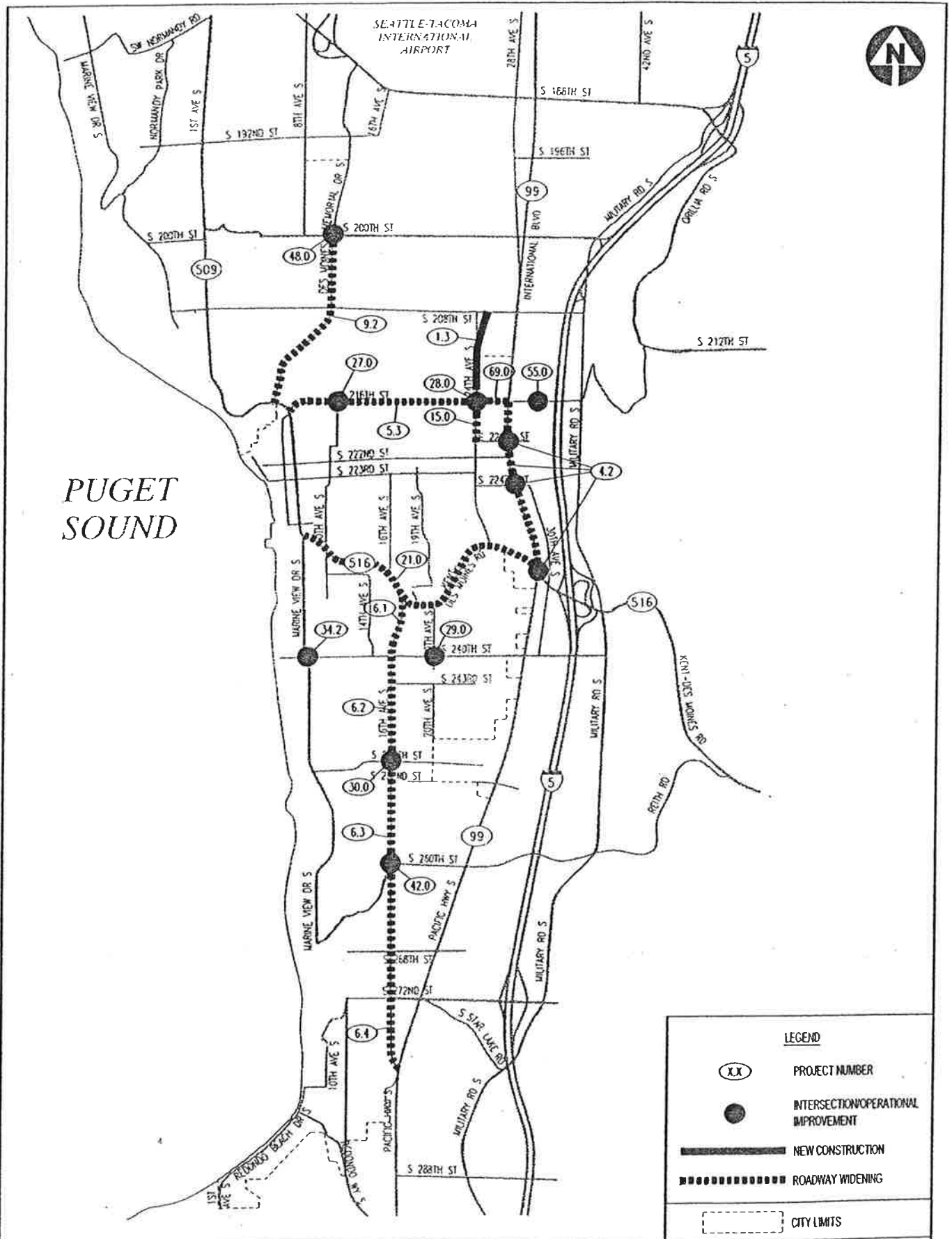


Figure 17

Potential Intersection and Roadway Capacity Improvement Projects for Traffic Impact Fee Program

City of Des Moines Comprehensive Transportation Plan

ATTACHMENT 3

IMPACT FEE CALCULATION

		<u>Percent of Total Cost</u>
Total Cost ¹ (2001-2020)	\$112,763,500	100%
Less-Non Capacity Capital Projects	-\$51,470,000	46%
Less-Non Capital (Art., Main., NTC, etc.)	<u>-\$13,883,500</u>	<u>12%</u>
Capacity-Added Projects	\$47,410,000	42%
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Less City/Regional Share (through traffic growth)	<u>-\$10,429,000</u>	<u>9%</u>
Maximum Potential Impact Fee Funding	\$36,981,000	33%

¹ Estimated total project cost in 2001 dollars. Costs are conceptual and take into consideration, if necessary, ROW acquisition costs but do not include costs associated with mitigating potential environmental impacts.

Basic Roadway Capacity - Added Project (City-Wide)

Maximum Potential Impact Fee Funding ²	\$36,981,000
Total New PM Peak Hour Trips	14,563
Cost per PM Peak Hour Trip	\$2,539

² Estimated total project costs in 2001 dollars. Costs are conceptual and take into consideration, if necessary, ROW acquisition costs, but do not include costs associated with mitigating potential environmental impacts.

POTENTIAL IMPACT FEES per UNIT OF DEVELOPMENT

Land Use	Average PM Peak			City-Wide	
	ITE	Hour Trip	Pass-By	Net New	Average
Land Use	Code	Rate ¹	% ^{2,3}	Trip Rate ⁴	Impact Fee ⁵
Office (per 1,000 gsf)	710	1.49	-	1.49	\$3.78/sq ft
Business Park (per 1,000 gsf)	770	1.29	-	1.29	\$3.28/sq ft
Light Industrial (per 1,000 gsf)	110	0.98	-	0.98	\$2.49/sq ft
Retail					
Shopping Center (per 1,000 gsf, for example, 25,000 gsf)	820	10.06	34%	6.64	\$16.86/sq ft
Quality Restaurant (per 1,000 gsf)	831	7.49	44%	4.19	\$10.65/sq ft
Fast Food Restaurant (per 1,000 gsf)	834	33.48	50%	16.74	\$42.50/sq ft
Gas Station w/ Market (per vehicle fueling position)	845	13.38	56%	5.89	\$14.948/vfp
Supermarket (per 1,000 gsf)	850	11.51	36%	7.37	\$18.70/sq ft
Drive-In Bank (per 1,000 gsf)	912	54.77	47%	29.03	\$73.70/sq ft
Single-Family (per dwelling unit)	210	1.01	-	1.01	\$2,564/DU
Multi-Family (per dwelling unit)	220	0.62	-	0.62	\$1,574/DU

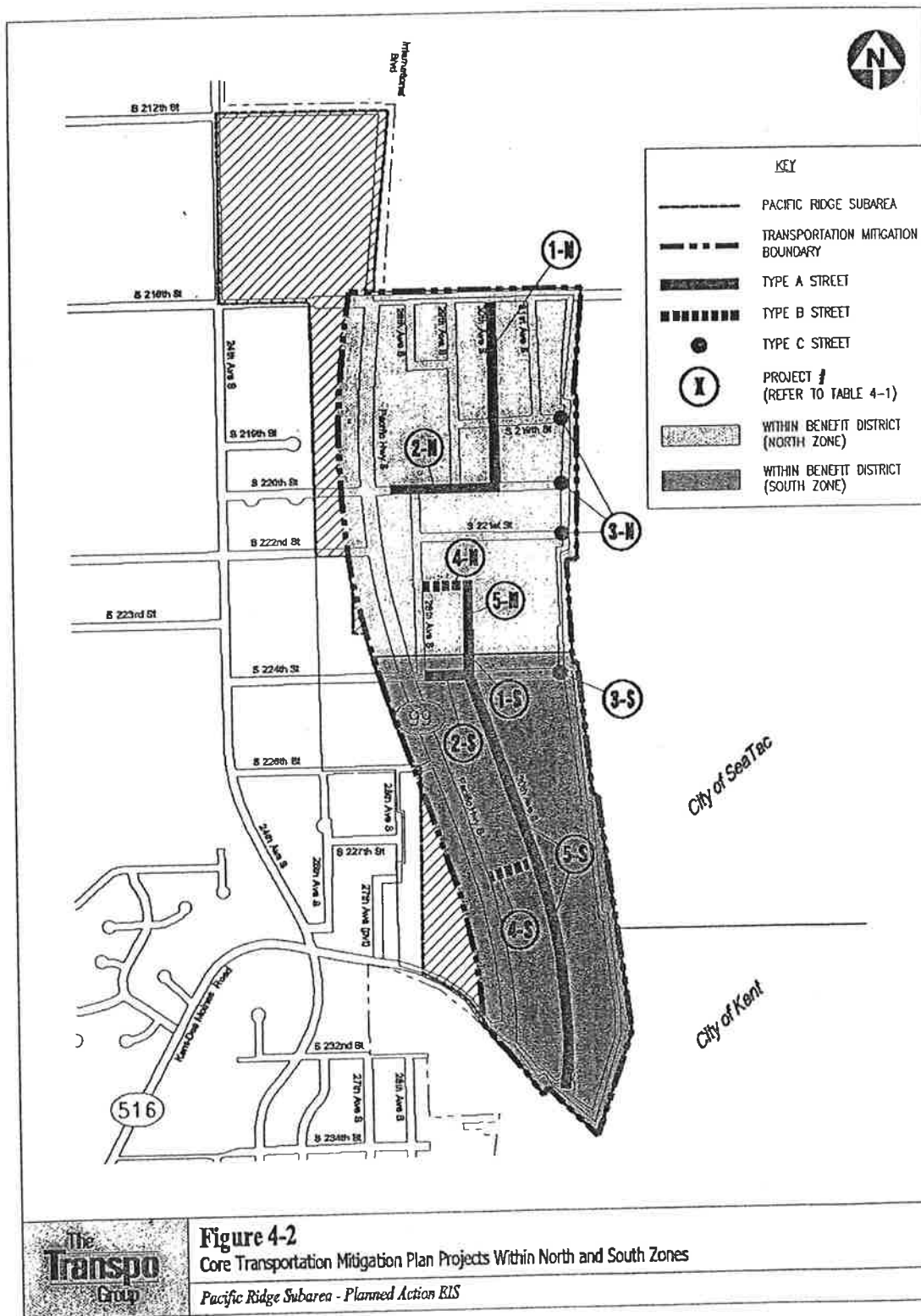
¹ Source: *Trip Generation*, Institute of Transportation Engineers (ITE), 1997. Note: City would apply trip rates based on regression equations where appropriate (see *Trip Generation Handbook*, ITE, 1998).

² A pass-by trip is made as an intermediate stop on the way from an origin to a primary destination. Pass-by trips are attracted from traffic passing on an adjacent street that offers direct access to the development.

³ Pass-by percentages from *Trip Generation Handbook*, ITE, 1998. This publication does not include pass-by percentages for office, business park, light industrial, and single- and multi-family residential. However, it should be noted that King County applies a pass-by percentage to some non-retail land use types, including 15% for office and business park.

⁴ Average PM peak hour trip generation rate x (100 - pass-by percentage) = net new trip rate

⁵ Net new trip rate multiplied by \$2,539 per trip.



CITY ATTORNEY'S FIRST DRAFT 11/21/02
CITY ATTORNEY'S SECOND DRAFT 12/12/02
CITY ATTORNEY'S THIRD DRAFT 02/20/03
CITY ATTORNEY'S FOURTH DRAFT 03/04/03

DRAFT ORDINANCE NO. 02-264

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation impact fee service area, imposing impact fees therein to finance part of the costs of improvements to serve new development, providing for the disposition of such impact fees, ~~((and))~~ establishing an appeal process, and adding a new chapter to Title 12 DMMC.

WHEREAS the City is authorized by RCW 82.02, the Growth Management Act ("the GMA"), and by RCW 39.92, the Local Transportation Act, to require new growth and development within the City of Des Moines to pay a proportionate share of the cost of new facilities to serve such new growth and development through the assessment of impact fees, and

WHEREAS, as part of the Greater Des Moines Comprehensive Plan the City has adopted a Comprehensive Transportation Plan which identifies deficiencies in public transportation facilities and identifies the means by which such deficiencies could be eliminated, and

WHEREAS, the City Council has found and determined that it is in the best interests of the City, in order to ensure a fair and predictable method for allocating the share of the cost of such new public facilities, to impose impact fees on the new growth and development activities; now therefore,

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

Sec. 1. 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) "Building permit" means any written authorization from the City which authorizes the commencement of development activity.

(3) "City" means the City of Des Moines, Washington.

Ordinance No. ____

Page 2 of ____

(4) "City Comprehensive Plan" means the Greater Des Moines Comprehensive Plan, adopted pursuant to the GMA.

(5) "Development activity" means any construction or expansion of a building or structure that creates additional demand on and/or need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the Comprehensive Transportation Plan to the Greater Des Moines Comprehensive Plan or of the applicable code or regulation of the City.

(6) "GMA" means the Washington State Growth Management Act, codified as RCW 82.02.050 through 82.02.090, as now in existence, or as hereinafter amended.

(7) "Hearing Examiner" means the Hearing Examiner of the City of Des Moines, pursuant to Chapter 18.94 of the Des Moines Municipal Code.

(8) "Impact fee" means a payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of the City, but does not include any permit or application fee.

(9) "Owner" means the owner of record of real property. If real property is being purchased under a real estate contract, the purchaser shall be considered the owner of real property if the contract is recorded.

(10) "Public facilities" as used in this section refers to public streets, roads and rights-of-way owned or operated by the City for other governmental entities, including trails, paths, bikeways, other transportation facilities and all attendant improvements.

(11) "Service area" means the development impact fee service area of the City identified in Section 3.

(12) "Transportation facilities" means and refers to streets and roads, but includes all publicly owned streets,

roads, alleys and right-of-ways within the City and street services, traffic control devices, curbs, gutters, sidewalks and related facilities and improvements.

Sec. 2. Transportation impact fees established. There is established, subject to the provisions of this chapter, a transportation impact fee program.

Sec. 3. Establishment of service area. The City hereby establishes, as the service area for development impact fees, the City of Des Moines, including all property located within the corporate limits of the City. The scope of the service area is hereby found to be reasonable and established on the basis of sound planning and engineering principles.

Sec. 4. Imposition of impact fee on development activity.

(1) The City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the calendar year 2001 base rate of Two Thousand Five Hundred Thirty Nine dollars (\$2,539.00) per new p.m. peak hour trip, as computed using methodologies from the most current edition of the Institute of Transportation Engineers Trip Generation Manual or other industry sources approved by the Public Works Director. This impact fee base rate shall be adjusted annually based on the construction cost index for the Seattle area as reported in the March issue of the Engineering News Record periodical. Based upon the above impact fee base rate and adjustments, the base rate as of January 1, 2003 will be Two Thousand Six Hundred Fifteen dollars (\$2,615.00) per peak p.m. trip. For the calendar years 2003 through 2005, the impact fee shall be phased-in as follows: for the calendar year 2003, the impact fee shall be paid in the amount of Seventy percent (70%) of the then-current base rate; for the calendar year 2004, the impact fee shall be paid in the amount of Eighty percent (80%) of the then-current base rate; and for the calendar year 2005, the impact fee shall be paid in the amount of Ninety percent (90%) of the then-current base rate. For the calendar year 2006, and for all subsequent years, the impact fee shall be paid in the amount of One Hundred percent (100%) of the then-current base rate.

(2) Such impact fees shall:

(a) Only be imposed for system improvements that are reasonably related to new development; and,

(b) Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and,

(c) Be used for system improvements that will reasonably benefit new development; and,

(d) Be used for facilities identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program."

(3) Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the Comprehensive Transportation Plan element of the Greater Des Moines Comprehensive Plan and incorporated herein by this reference.

(4) The impact fees imposed pursuant to this chapter shall be assessed by the City after the effective date of this ordinance. A final assessment, based upon the actual building permit to be issued, shall be made, and the fee shall be due and payable in full at the time of issuance of the permit.

(5) Failure to pay the impact fees for a given development activity at the time that such impact fees are due and payable shall result in denial of the building permit for which the owner has applied.

(6) The impact fee program shall provide credits for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the Comprehensive Transportation Plan as "Intersection and Roadway Capacity Improvement Projects for the Traffic Impact Fee Program." The value for which credit shall be given is the estimated value used

for Impact Fee calculation in the Comprehensive Transportation Plan.

Sec. 5. Disposition of impact fee revenues.

(1) The impact fees collected pursuant to the provisions of this chapter shall be deposited into an impact fee fund. Pending application as provided in this chapter, the monies deposited in the impact fee fund shall be invested in any investment authorized for the investment of City funds. All interest and profits derived from the investment of monies in each account in the impact fee fund shall be retained in such account.

(2) The impact fees deposited in each account in the impact fee fund, and the interest and profit received from the investments therefrom shall be expended only for public facilities of the type for which such impact fees were collected, in conformity with the Greater Des Moines Comprehensive Plan and Comprehensive Transportation Plan, and expended or encumbered within six years of receipt by the City, unless written findings by the City Council identify an extra-ordinary and compelling reason for the City to hold the fees for a longer time. The City shall account for annual expenditures and shall comply with this section in successive comprehensive plans, transportation plans and capital facilities plans as appropriate.

(3) The City shall prepare an annual report on the impact fee fund which shows the source and amount of all monies collected, earned or received and the public facilities that were financed in whole or in part by impact fees.

Sec. 6. Refunds.

(1) The City shall, in accordance with RCW 82.02.080, refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected.

(2) The City shall also refund to the current owner of property of which an impact fee has been paid all impact fees paid with respect to such property if the development activity

for which the impact fee was imposed did not occur and no impact has resulted; provided, that if some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund shall be available under this section.

(3) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the City Manager or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to paragraph 2 of this section only, shall be the date of voluntary or involuntary abandonment of the building permit, or the date that notice is given as provided in paragraph 1 of this section, whichever occurs later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund, as a percentage of the interest/profits earned by the fund on an annual basis. Any impact fees not expended within the time limitations and for which no application for a refund has been made within the one (1) year claim period, shall be retained by the City and expended on public facilities of the type for which such impact fees were initially collected, without further limitation as to the time of expenditure.

Sec 7. Appeals.

(1) The determination of the City Manager or designee regarding the applicability of the impact fee to a given development activity within the service area shall be final, however an owner may pay an impact fee imposed pursuant to this chapter under protest in order to obtain a building permit and, after such payment, file an appeal regarding the amount of the impact fee to the Hearing Examiner within ten (10) days of the City's final decision under the provisions of the hearing examiner code, Chapter 18.94 DMMC.

(2) Appeal regarding the amount of the impact fee imposed on any development activity may only be made by the owner of the property where such development activity shall occur.

Sec. 8. Codification. Sections 1 through 7 of this ordinance shall be codified as a new chapter in Title 12 DMMC.

Ordinance No. ____
Page 7 of ____

Sec. ((8))9. 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. ((9))10. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

CITY ATTORNEY'S FIRST DRAFT 11/21/02
CITY ATTORNEY'S SECOND DRAFT 12/12/02
CITY ATTORNEY'S THIRD DRAFT 02/20/03
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DRAFT ORDINANCE NO. 02-264

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Ordinance No. ____
Page 7 of ____

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

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

Sec. ((9))10. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

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

SUBJECT: Hotel/Motel Licensing

ATTACHMENTS: Draft Ordinance No. 01-192

FOR AGENDA OF: March 6, 2003DEPT. OF ORIGIN: LegalDATE SUBMITTED: March 4, 2003

CLEARANCES:

☒ Legal☒ Police

APPROVED BY CITY MANAGER

FOR SUBMITTAL: CTC**PURPOSE AND RECOMMENDATION**

The purpose of this proposed ordinance is to establish a licensing endorsement and registration requirement for overnight lodgings in an effort to help combat crime against persons, property, society, and host businesses. Hotels and motels with high numbers of police calls for service will be required to employ aggressive measures to assist in deterring crime as a condition of their general business license and business license endorsement approval.

It is recommended that the council discuss Draft Ordinance No. 01-192 at the study session of March 6, 2003, and pass Draft Ordinance No. 01-192 in its current or amended form to a second reading.

MOTION: "To pass Draft Ordinance No. 01-192, creating a new chapter in section 5 DMMC, establishing a hotel/motel licensing endorsement requirement, and implementing procedures for revocation or denial of renewal of a business license for hotel/motel operators who are in violation of the provisions provided in this ordinance, to a second reading."

BACKGROUND AND CONCLUSION

The hotel/motel industry historically experiences criminal activities of the type, severity, and frequency that is of concern to public safety. This draft ordinance establishes a partnership between the Des Moines Police Department and the hotel and motel industry in an effort to promote hotel and motel

safety. The Police Department has recommended the measures contained in Draft Ordinance No. 01-192 in order to effectively deter crime within the industry. The annual number of police calls from an individual hotel/motel establishment will determine which requirements will be placed on each hotel or motel location.

The Police Department in researching this topic has been in contact with various communities in our area exploring how they have dealt with similar problems in their community. Most notably the cities of Tukwila and Fife have reduced calls for service and made their communities safer by employing similar measures as proposed in this draft ordinance.

Historically calls for service to these businesses are much higher than adjacent businesses. Police have met with some problem businesses to suggest better practices and have had limited success. While some motel/hotel owners and managers actively and aggressively manage their business, others appear to be satisfied by merely having rooms rented regardless to the impact on the community.

The Police Department has received frequent complaints from the community at large from what they believe to be the negative impact of poor management and business practices by some motels in our community. The Police Department has responded and investigated many incidents of criminal behavior occurring at these businesses. These include homicide, sexual assault, robbery, drug dealing, identity theft, gang activity and prostitution to list but a few. It is common to recover stolen cars and fugitives from justice at these businesses. Often the complexity of and sheer volume of calls for service at these businesses divert attention and resources of the police department that could be utilized elsewhere in the community if only preventive measures had been employed by the operators of these businesses.

CITY ATTORNEY'S FIRST DRAFT 03/03/03

DRAFT ORDINANCE NO. 01-192

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, providing for the licensing of overnight lodgings in order to ensure the safety of citizens, providing for severability, establishing an effective date, and adding a new chapter to Title 5 of the Des Moines Municipal Code.

WHEREAS, the type, severity, and frequency of police calls for service at hotels and motels that have experienced significant criminal activity are a real and compelling concern to the City of Des Moines, the citizens of Des Moines, visitors to Des Moines, and the hotel and motel industry itself, and

WHEREAS, hotel and motel safety are also the concern of both the hotel and motel industry and the Police Department, with safety measures to include strategies for combating crimes against persons, crimes against property, crimes against society, crimes against the host business, and reducing civil liability, and

WHEREAS, it has been statistically demonstrated that some hotels and motels are responsible for a disproportionate number of police calls for service, and

WHEREAS, it is reasonable to require those hotels and motels with higher numbers of police calls for service to employ certain measures designed to assist in deterring crime as a condition for business license approval within the City, and

WHEREAS, the Police Department has identified and recommended certain measures that have been demonstrated to effectively deter crime, and

WHEREAS, those hotels and motels that have initiated aggressive crime prevention measures have found those measures to be effective deterrents to crime, and

WHEREAS, it has been recognized by the hotel and motel industry and the crime prevention community that the level of employee access into the privacy and safety of its patrons is of such significance as to require higher levels of employee

screening for those hotels and motels with higher numbers of police calls for service, and

WHEREAS, crime prevention programs work by not only reducing crime, but affording participants the opportunity to focus their interests, reach their goals, and become good neighbors, and

WHEREAS, the City Council believes it is time to form a partnership between the City of Des Moines Police Department and the hotel and motel industry to promote hotel and motel safety; now therefore,

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

Sec. 1. Findings. The recitals set forth above are by this reference incorporated herein as the City Council's findings.

Sec. 2. 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) "Hotel" means a building or portion thereof, and the associated parking and landscaping, designed or used for the transient rental of five or more units for sleeping purposes. A hotel may provide a central kitchen and dining room and accessory shops and services catering to the general public. The term hotel does not include institutions housing persons under legal restraint or requiring medical attention or care.

(3) "Motel" means a building or buildings, detached, or in connected units, or designed as a single structure, and the associated parking and landscaping, the building units of which are used as individual sleeping or dwelling units having individual private toilet facilities, which may or may not have individual kitchen facilities, designed primarily for the accommodation of transient automobile travelers. The term motel includes tourist cabins, tourist courts, motor lodges, auto

courts, cabin courts, motor inns, and similar lodgings. The term motel does not include accommodations for travel trailers.

(4) "Call for service" means:

(a) any report to the Des Moines Police Department from or concerning a hotel or motel in connection with an incident occurring at that hotel or motel; and

(b) any on-view incident observed by police concerning a hotel or motel,

which report or on-view incident is responded to by a police officer.

(5) "Police" means any authorized agent of the Des Moines Police Department or other law enforcement agency having jurisdiction.

(6) "Police Department" means the Police Department of the City of Des Moines.

Sec. 3. General license requirements.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a license issued pursuant to RCW Chapter 70.62.

(2) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without a business license issued pursuant to Des Moines Municipal Code Chapter 5.04.

Sec. 4. City of Des Moines business license endorsement requirement.

(1) It is unlawful for any person, firm, or corporation to operate a hotel or motel in the City of Des Moines without an additional business license endorsement issued pursuant to this chapter.

(2) All hotels and motels may be issued a business license endorsement under the provisions of this chapter. Based

upon an individual hotel or motel's annual calls for service per room, however, a hotel or motel must comply with additional requirements designed to deter crime in order to obtain or maintain its business license endorsement. The calls for service for each hotel and motel will be monitored from July 1 of the current calendar year through June 30 of the following calendar year. Crime statistics for each hotel and motel will be kept on an annual basis from July 1 of the current calendar year through June 30 of the following calendar year. The time between July and December will allow hotels and motels time to comply with all the requirements of their group level necessary to receive a business license endorsement at year's end for the next calendar year.

(3) Each hotel or motel licensee will be notified of its annual number of calls for service per room no later than July 31 of each calendar year. Any additional requirements placed on a hotel or motel under this chapter must be met or substantially in progress, as determined and verified by the Des Moines Police Department, before the next calendar year's business license endorsement will be issued. The Police Department business license endorsement required herein shall be made upon a form prepared by the Police Department upon application by the licensee. The business license endorsement form must be presented to the City Clerk by every hotel or motel licensee, as a condition of eligibility for the general business license required by DMMC Chapter 5.04.

Sec. 5. Annual calls for police service less than or equal to 0.25 calls per room. Hotels or motels whose semi-annual calls for service are less than or equal to 0.25 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Every hotel and motel operator, and the clerk at time of guest registration, must obtain and record the full names; full dates of birth including day, month, and year; and current addresses of all room occupants; and the make, model, and license number of the vehicle being used by every room occupant. Names and addresses of all room occupants over the age of sixteen must be verified by obtaining a copy of a valid driver's license, passport, or other form of government approved picture

identification. The records required by this section shall be kept available for a period of not less than one year for inspection by any police or code enforcement officer at any reasonable time, or in a police or fire emergency at any time of day or night.

(2) At the request of an establishment, the Des Moines Police Department will provide the hotel or motel with inspection services and advice concerning Crime Prevention Through Environmental Design Standards.

(3) At the request of the hotel or motel, the Des Moines Police Department will provide training for the hotel or motel staff, in cooperation with management, regarding the recognition of criminal behavior.

(4) At the request of the hotel or motel, the Des Moines Police Department will keep the hotel or motel management apprised of police activity that occurs on the property.

Sec. 6. Annual calls for police service greater than 0.25 calls per room but less than or equal to 1.00 calls per room. Hotels or motels whose annual calls for service are greater than 0.25 calls per room but less than or equal to 1.00 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in section 5 of this ordinance.

(2) Have a representative available on the premises at all times.

(3) Install and operate a surveillance camera (with recorder) in the lobby for twenty-four (24) hours per day, seven (7) days per week.

(4) Undergo a Des Moines Police Department crime prevention assessment of their property to be conducted by the Des Moines Police Crime Prevention Unit using standards from the Crime Prevention Through Environmental Design (CPTED) program.

Sec. 7. Annual calls for police service greater than 1.00 calls per room. Hotels or motels whose annual calls for service are greater than 1.00 calls per room are required to meet the following additional conditions, designed to deter crime, to obtain a business s license endorsement to operate in the City of Des Moines:

(1) Conform to the requirements set forth in sections 5 and 6 of this ordinance.

(2) Provide the Des Moines Police Department with the names and dates of birth of all owners, managers, and employees to allow for background checks.

(3) Hold semi-annual employee training sessions, assisted by the Des Moines Police Department.

(4) Provide 24-hour front desk personnel.

(5) Enforce the following guest rules:

(a) Rooms cannot be rented for less than a six-hour period.

(b) No room may be used for drunkenness, fighting, or breaches of the peace. No room may be used if loud noises come from that room. Loud noises are those noises that disturb the tranquility of the neighborhood or those noises that would be disturbing to a reasonable person.

(c) Alcohol may not be consumed in common areas except for designated banquet or reception rooms or areas.

(6) Maintain a daily key log. Each key that is found to be missing must have its corresponding lock re-keyed prior to the room being rented. Each master key that is found to be missing will require the establishment to re-key all corresponding locks.

(7) Issue parking passes to all vehicles to be allowed to park on the premises with each pass marked with the issue date and expiration date.

(8) Require all guests who stay more than thirty days to fill out an Application for Tenancy in a form provided by the Des Moines Police Department.

(9) Participate in the Des Moines Police Department "Criminal Trespass Program." Participation shall mean the facility shall be registered in the "Criminal Trespass Program."

(10) Remove all graffiti and repair all vandalism within seven (7) days of occurrence.

(11) Permit an annual inspection by the City of Des Moines Building Official to ensure that guestrooms are maintained according to Uniform Health Code and Uniform Fire Code, including tamper-resistant smoke detectors meeting National Fire Protection Agency (NFPA) standards.

(12) Follow Crime Prevention Through Environmental Design (CPTED) standards for landscaping/plant maintenance. These standards will be provided by the Des Moines Police Department.

(13) Install lighting in all common areas with minimum maintained lighting of 1.5 foot-candles at ground level.

(14) Install and operate video monitoring equipment in all parking lots, monitored and recorded at the front desk twenty-four (24) hours per day, seven (7) days per week.

(15) Submit to scheduled semi-annual audits by the City of Des Moines Police Department to verify compliance with the above-referenced requirements.

Sec. 8. Enforcement. If the Chief of Police finds that any hotel or motel has violated or failed to comply with any provisions of this chapter, the Chief shall make a written record of such finding and shall specify therein the particulars; and will inform the Des Moines City Manager. Upon recommendation of the Chief of Police, the City Manager may revoke, or deny renewal of, the City of Des Moines business license endorsement for that hotel or motel for a period not less than ninety (90) days or not more than one (1) year. This determination shall be made in consultation with the Police

Chief and shall be based on the severity of the violation(s). Revocation, or denial of renewal, of the hotel or motel business license endorsement under this chapter shall require revocation of the hotel or motel City of Des Moines general business license under DMMC 5.04.060, or denial of renewal of the hotel or motel City of Des Moines general business license under DMMC 5.04.070. The City Manager will provide the hotel or motel with notice of the decision to revoke, or deny renewal of, the City of Des Moines business license as required under DMMC 5.04.060 and DMMC 5.04.070.

Sec. 9. Appeals. Upon notice of revocation or denial of renewal of a business license based upon the provisions of this chapter, the hotel or motel operator shall be entitled to appeal to the hearing examiner under DMMC 5.04.060 and DMMC 5.04.070, and the provisions of the hearing examiner code, DMMC Chapter 18.94. The applicant or license holder must appeal as required under DMMC 18.94.113, filing a notice of appeal within ten days of the decision that is being challenged.

Sec. 10. Remedies cumulative. The remedies provided for herein for failure to comply with this chapter shall be cumulative and in addition to any other remedy at law or equity.

Sec. 11. Codification. This ordinance shall be codified as a new chapter in Title 5 DMMC.

Sec. 12. 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. 13. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

Ordinance No. ____
Page 9 of ____

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

DRAFTORD:01-192