



Public Safety and Transportation Committee

March 7, 2013 Meeting Agenda

North Conference Room

21630 11th Avenue South – Des Moines 98198

5:30P – 6:50P

1. Approve minutes from 2/07/2013 meeting
2. North Hill Traffic Circles
3. LED Streetlight Conversion
4. Proposition 1: Utility Occupation Tax to Fund Street Pavement Overlays
Discussion of Informational Brochure
5. SWM Rate Structure Study – Private & Public Streets

Des Moines City Council PS&T Committee Minutes – 02/07/2013

Meeting called to order: 5:31 PM on February 7, 2013, in North Conference Room @ 21630 11th Avenue S, Des Moines WA 98198.

Council Members

Matt Pina—Chairman & Mayor Pro Tem
Jeanette Burrage—Vice Chair
Dave Kaplan—Mayor

Other City Staff

Tony Piasecki – City Manager
Dan Brewer – Acting Public Works Director
Brandon Carver – Acting Transportation Manager
Denise Lathrop – Acting Community Dev Director
Grant Fredricks – Special Projects Consultant
Peggy Volin – Admin Asst

Guests from City of SeaTac:

Mayor Tony Anderson
Council Member Barry Ladenburg
Todd Cutts, City Manager
Tom Gut, Public Works Director

AGENDA:

1. Sound Transit Discussion w/ SeaTac Council Members
2. Approve 01/01/13 Amended Minutes
3. Project Updates

MEETING:

1. Sound Transit Discussion w/ SeaTac Council Members: Special Projects Consultant Grant Fredricks, led the discussion with the Committee members and the City of SeaTac's Mayor Tony Anderson, Council member Barry Ladenburg, City Manager Todd Cutts and Public Works Director Tom Gut on the Draft Link Light Rail Extension Policy Paper which outlined seven Shared Goals for the Light Rail Extension. Mr. Fredricks then went over all the goals and bulleted items. Committee members and the City of SeaTac agreed to the goals with changes being made to the first bulleted item on No. 1 to read "Minimize" condemnation of existing business and the last bulleted item on No. 2 to read "Accommodating for a potential" signalized intersection on SR99 at about 212th. Council member Ladenburg also suggested an additional bullet point to be added to under item No. 7 which would read "Providing for enhanced east-west feeder, or circulating bus services and improved north-south services other than on SR99 through cities." (After the meeting staff from the two cities developed modified language which more clearly explained Goal 7 principles.)

The revised goals to be taken to each City Council by their respective Council members for "information only" as a start on talking points of this lengthy process. There is nothing to be adopted by either Council at this time.

2. Minutes from January 03, 2013, were approved as amended to read as follows under item No. 4...."the majority of the Committee members concurred with staff moving forward with grant application."
3. Project Updates: Dan briefed the Committee on the mobilization by the contractor for the 216th Street project and said currently, all work to date has been utility work. When this segment of the project is complete, 216th Street will be five lanes with a center turn lane from 24th Street down to 19th Street.

Mr. Brewer followed up with a discussion on Project Development with a handout of current capital improvement projects in the Transportation CIP fund with their anticipated timelines for completion. The focus of the discussion was on which capital improvement projects staff should begin to work on developing next based on the likelihood of receiving grant funding. Projects that were discussed included:

- 16th/18th Avenue S (S 216th Street to S 220th Street)
- Des Moines Memorial Drive & S 200th Street (joint project with City of SeaTac)
- Marine View Drive & S 240th Street
- S 216th Street Segment 3 (11th Avenue S to 18th Avenue S)
- Kent Des Moines Road (24th Avenue S to Pacific Highway S)
- S 240th Street (Pacific Highway S to 20th Avenue S)

Adjourned 6:52 PM

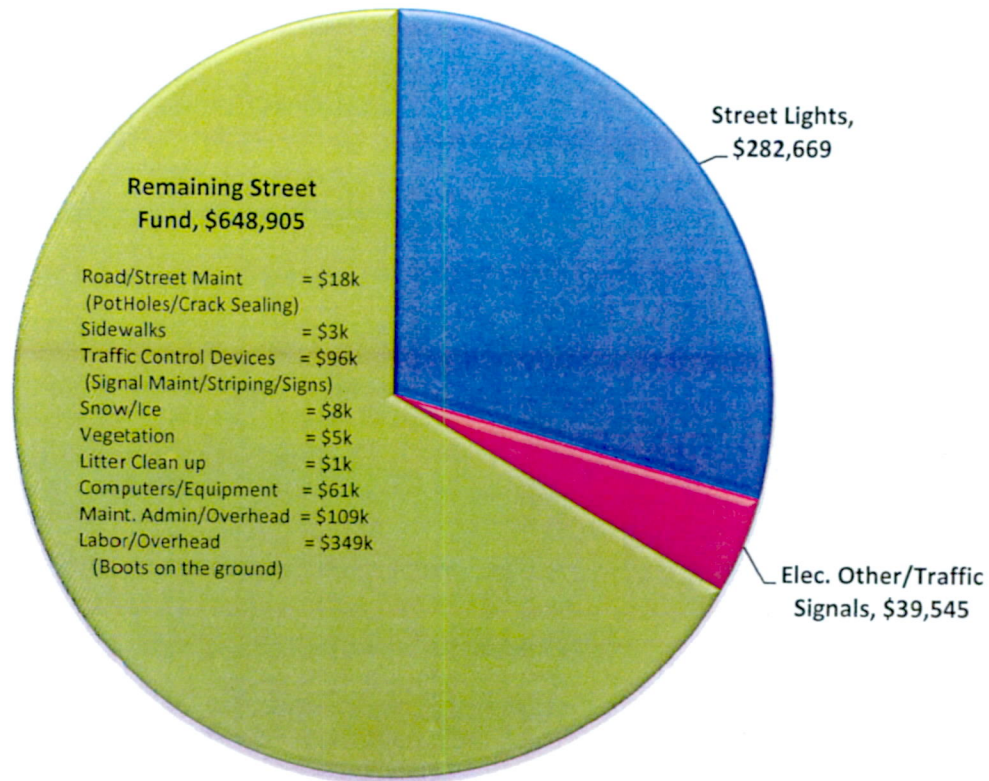
Minutes submitted by:

Peggy Volin

Administrative Assistant II

LED Streetlight Conversion Proposal

2012 Street Fund (Fund 101) Expenditures = \$971,119 as of 3/4/13



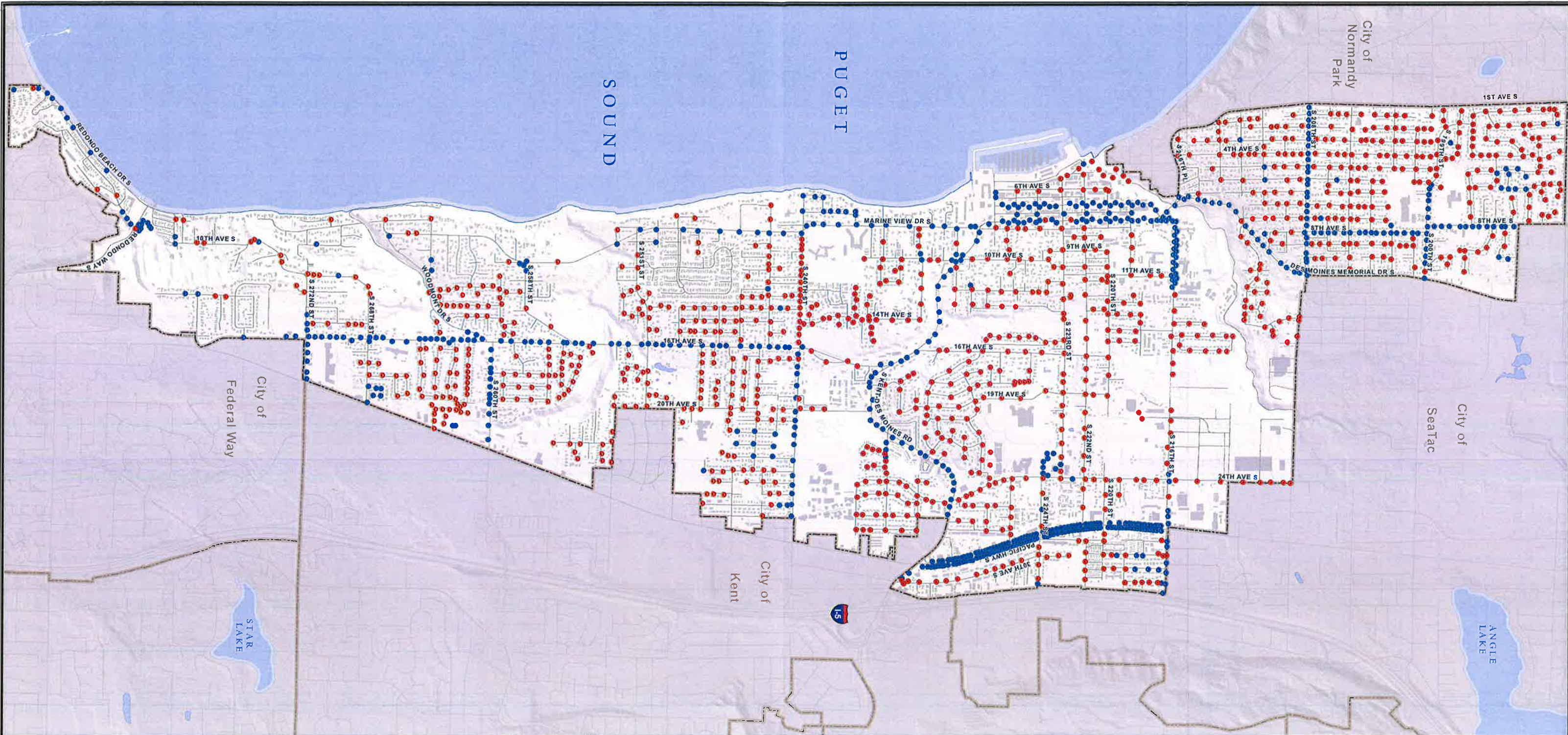
2012 PSE Electric Bill = \$322,215 (33% of Total Street Fund)

*Bill includes Electricity + Maintenance charges

**Additional PSE Electric bills to PD, Parks, and Marina in their respective funds

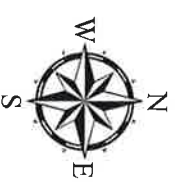
Quick Facts :

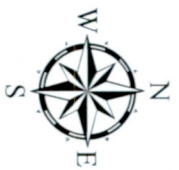
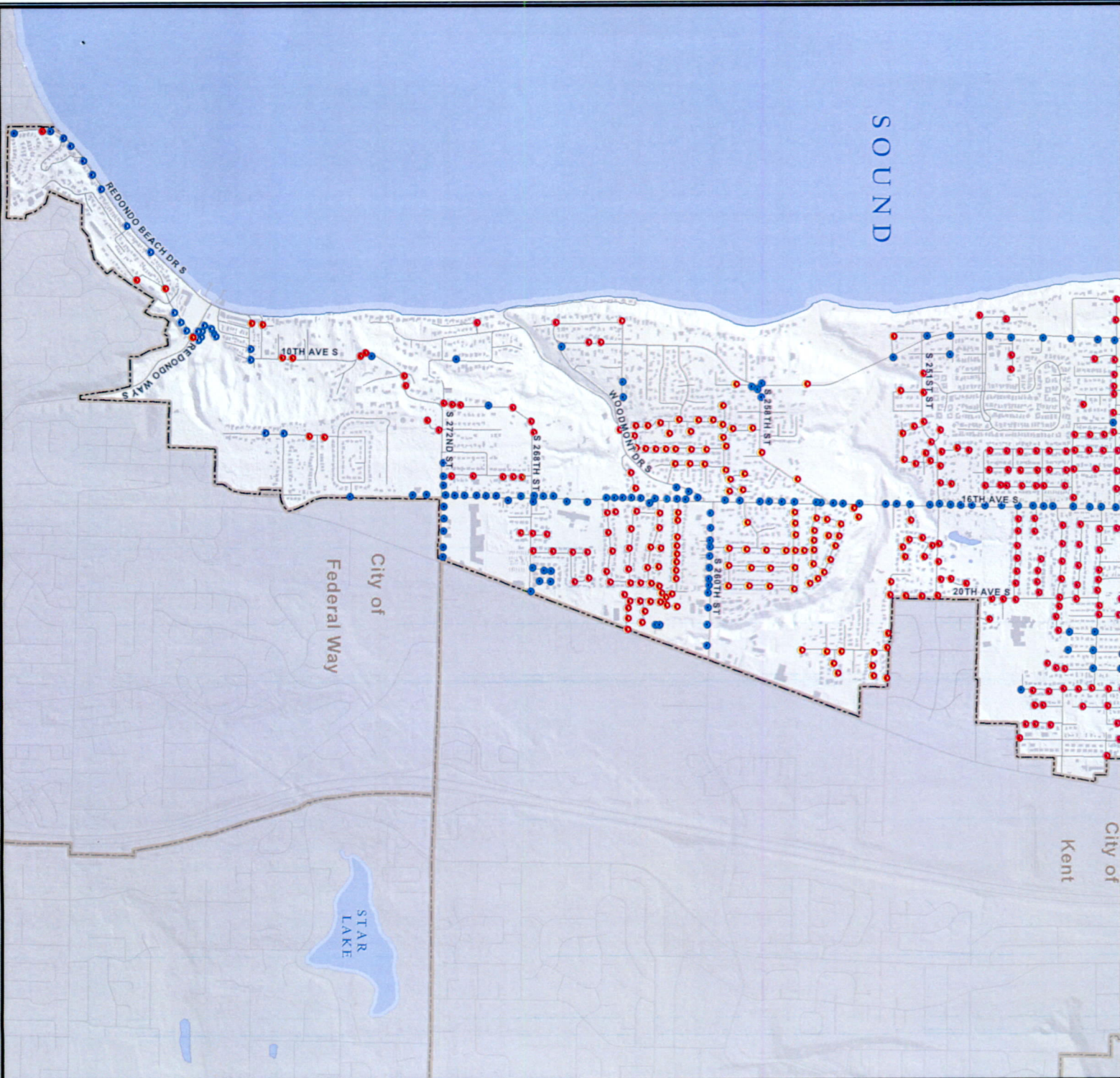
- 1655 Street Lights total (value of Street Light Inventory)
- PSE bill will continue to increase over time (inflation/cost of energy)
- # of Street Lights will continue to increase over time (new projects/citizen requests)



Streetlight Features

- 100 Watt Streetlights: **1,036**
Streetlight Total: **1,655**





Planning, Building & Public Works

21650 11th Ave S
Des Moines, WA 98198-6398
PHONE: (206) 870-7576 • FAX: (206) 870-6544
WEB: <http://www.desmoineswa.gov>

File: LightAudit_BaseMap_Aerial.pdf
Map Generated: Feb 21, 2013
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- 100 Watt Cobra Head
- Other

100 Watt Streetlights:	1,036
Streetlight Total:	1,655

What is staff currently doing/implementing to control electricity costs?

- 1) Limit new residential install requests/evaluate (each 100W light costs \$144/year)
- 2) New CIP corridor projects on arterials being installed with LED lights and will be owned and maintained by City instead of PSE (216th Segment 2 is first corridor).
 - Maintenance and Energy costs = ~\$5,000/year City owned/maintained
 - Maintenance and Energy costs = ~ \$25,000/year PSE owned/maintained

As a current example of corridor lighting costs:

-Pacific Highway Project lights - 2012 PSE expenditures **\$14,637 electricity**
+ **\$21,863 maintenance**
Total \$36,500/year

What else could be done to reduce future costs or save energy?

- 3) Consider converting some of the existing PSE High Pressure Sodium (HPS) lights to **LED**

PSE has announced conversion options for Cities. Price is based on the cost of the LED fixture minus the cost of a traditional HPS light. A scenario for converting 100W HPS lights is shown below. 100W HPS is a common light found on most of our neighborhood streets. Currently, there are 1,036 (out of 1,655 total street lights in the City) 100W HPS lights.

LED conversion proposal:

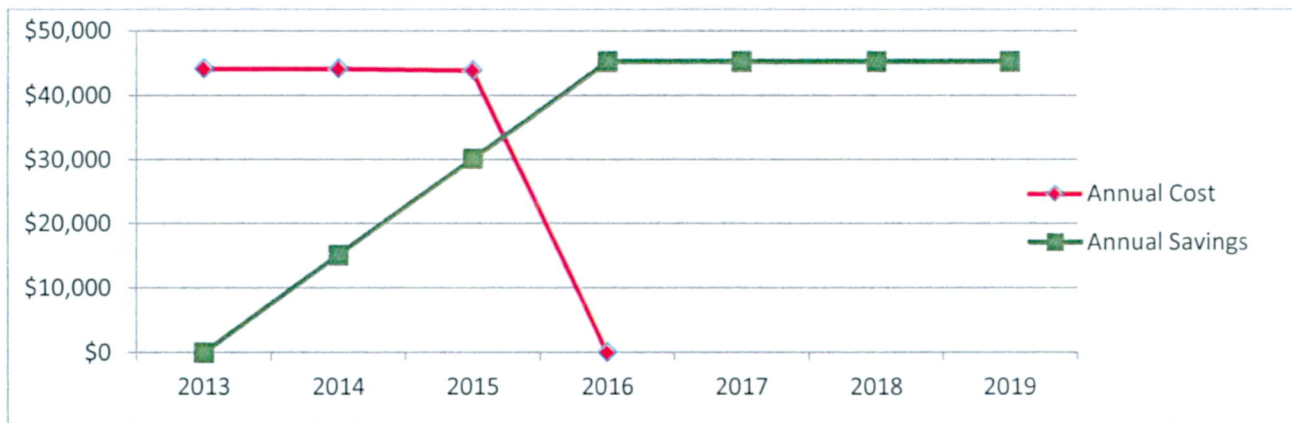
- Convert 1,036 100W HPS lights to 54W LED (approximate light equivalent)
- Initial cost to PSE is \$191.33 per light = **\$198,218 initial cost**
- Current annual energy/maintenance costs on 1,036 100W HPS lights = **\$149,433**
- Proposed annual energy/maintenance costs on 1,036 54W LED lights = **\$104,180**
- **Savings of \$45,253/year (30%)**

Simple payback = \$198,218/\$45,253 = 4.4 years

****Currently PSE is offering a grant (rebate) for energy-efficient retrofits. They will pay \$63.70 per 54W LED light conversion, this would provide a rebate/grant of = \$66,000....which shortens the simple payback to = \$132,218/\$45,253 = 2.9 years**

Options for funding an initial \$132,218 investment:

- Public Works Trust Fund Loan:
 - Rate Term
 - .5% 5 Years or Less
 - 1% 5 – 10 Years
 - 1.5% 11-20 years
- Wait for a future Energy grant? (City of Renton WA State Department of Commerce)
- Change out in 1 year? (Float negative cash flow within Street Fund)
- Change out in phases (3 year plan?) (Float negative cash flow within Street Fund)



- Year 1) 2013 – Change out 346 lights, initial cost = (\$66,200)
 Less PSE grant - \$22,040
 Conversion cost = (\$44,160)
- Year 2) 2014 – Change out 346 lights, phase 2 cost = (\$66,200)
 Less PSE grant - \$22,040
 Conversion cost = (\$44,160)
 Annual Savings = \$15,084
- Year 3) 2015 – Change out 344 lights, phase 3 cost = (\$65,818)
 Less PSE grant - \$21,913
 Conversion cost = (\$43,905)
 Annual Savings = \$30,168
- Year 4) 2016 – 100W conversions complete
 Annual Savings = \$45,253

City of Des Moines Street Pavement Repairs Funding Measure



FREQUENTLY ASKED QUESTIONS.....

- Q: What is Utility Occupation Tax and what utilities are subject to this tax?**
This is a tax levied by the City of Des Moines on all private telephone, electric and natural gas businesses, garbage collection services, cable television services and the City's stormwater utility. This tax is not levied on public water or sewer utilities.
- Q: How is this tax collected?**
The private telephone, electric and natural gas, cable TV services and other utilities include and itemize this tax in their monthly billings to customers and submit payments to the City of Des Moines. The stormwater utility tax is itemized in the County's semi-annual bill and collected in late April and November.
- Q: What is the current private utility tax rate and what is this revenue used for?**
The current private utility tax rate is 6%, the maximum amount allowed by statute without a vote of the people to increase it. The City of Des Moines uses this revenue to pay for general government costs such as: Police, Court Services, Public Works and Parks, Recreation and Senior Services.
- Q: What is the proposed increase and how much additional revenue will this generate?**
If approved, the tax would increase from six percent (6%) to eight (8%) percent resulting in additional revenue of approximately \$1,090,000 annually. This amount would provide about three-fourths of the annual funding needed to preserve City roadways.
- Q: How would the additional revenue be used?**
The additional revenue would be dedicated specifically to pay for City street paving improvements – nothing else.

Q: Who will oversee the expenditures of these funds?

These paving and overlay projects will be included in the City of Des Moines Six-Year Capital Improvement Plan (CIP) which is reviewed and approved annually by the Des Moines City Council. The City will prepare and publish an annual report on the expenditures for the street paving improvements.

Q: How would this tax rate increase affect my utility bill?

The amount of tax you will pay is dependent on the amount of utility services used. Two examples below illustrate how a 2% rate increase could affect a combined utility bill:

Family A: Today, Family A's monthly utility bills total \$250.00 plus \$15.00 in utility tax assessed. If this measure passes, Family A's assessment would increase by \$5.00 to a new total of \$20.00 utility tax per month.

Family B: Today, Family B's monthly utility bills total \$500.00 plus \$30.00 in utility tax assessed. If this measure passes, Family B's assessment would increase by \$10.00 to a new total of \$40.00 utility tax per month.

Q: Will this tax increase expire?

If approved, the additional two percent tax would end in 20 years. At the end of the 20 years, the Utility Occupation Tax would drop back to 6%.

Q: What will happen if the measure is not approved?

Should the measure be voted down, the City will not have the financial capacity to maintain and rehabilitate pavement, and fewer City streets will be repaved. In recent years, the City has depended on Real Estate Excise Tax (associated with property sales) to fund pavement overlays and rehabilitation projects. Due to the decline of the real estate market and impacts to the overall economic health of our region, state and nation, this revenue source is no longer available at levels sufficient to address the City's pavement repair and maintenance needs.

Q: How are the City's gas tax and car tab fees being used now?

The City spends a little over \$1 million per year doing daily street maintenance. This is used to maintain traffic signals, snow and ice control, maintain roadside vegetation, fix potholes, seal pavement cracks, paint cross walks and lines, maintain street signs, provide street lighting, inspect bridges, and correct safety concerns. About 60% of this money comes from fuel tax and 40% from car tab fees collected by the Des Moines Transportation Benefit District. No property or utility tax is used for daily street maintenance.

Q: Why is the City building new roads rather than repaving the ones we have?

In recent years, the City has widened and reconstructed a number of roadways. Some examples are Pacific Highway South, 16th Avenue South, and South 216th Street. All of these larger widening and reconstruction projects are primarily financed with state or federal grant funds, with a relatively small amount of City funds. The state and federal grants are provided based on a regional prioritized and competitive process, taking into consideration things like safety, mobility, and economic development benefits. State and federal grant funds awarded to the City are project specific and cannot be used to fund citywide repaving projects.

Frequently asked questions related to Proposition 1

Q: What is Utility Occupation Tax and what utilities are subject to it?

This is a tax levied by the City of Des Moines on all private telephone, electric and natural gas businesses, garbage collection services, cable television services and the City's storm water utility. This tax is not levied on public water or sewer utilities.

Q: How is this tax collected?

The private telephone, electric and natural gas, cable TV services and other utilities include and itemize this tax in their monthly billings to customers and submit payments to the City of Des Moines. The storm water utility tax is itemized in the County's semi-annual bill and collected in April and November.

Q: What is the current private utility tax rate and what is the revenue used for?

The current private utility tax rate is 6%, the maximum amount allowed by statute without a public vote to increase it. The City of Des Moines uses this revenue to pay for general government costs such as: Police, Court Services, Public Works and Parks, Recreation and Senior Services.

Q: What is the proposed increase and how would the additional revenue be used?

If approved, the tax would increase from 6% to 9% resulting in additional revenue of approximately \$1,600,000 annually.

Funds from the increase would provide: 1) 1% to pay for a 20-year capital bond to construct and restore Des Moines Beach Park buildings and facilities. Once the bonds are repaid, this tax would end; 2) 0.5% to pay for ongoing Beach Park maintenance, operations and repairs; and 3) 1.5% to pay for City street pavement overlays. This amount would provide about half of the annual funding needed to preserve City roadways.

Q: Who will oversee the expenditures of these funds?

These projects would be included in the City of Des Moines Six-Year Capital Improvement Plan (CIP) and operating budget which are approved annually by the Des Moines City Council. Revenues and expenditures will be separately tracked in the City's financial funds.

Q: How would this tax rate increase affect my utility bill?

The amount of tax you will pay is dependent on the amount of utility services used. Two examples below illustrate how a 3% rate increase could affect a combined utility bill:

Family A: Today, Family A's monthly utility bills total \$250 plus \$15 in

utility tax assessed. If this measure passes, Family A's assessment would increase by \$7.50 to a new total of \$22.50 utility tax per month.

Family B: Today, Family B's monthly utility bills total \$500 plus \$30 in utility tax assessed. If this measure passes, Family B's assessment would increase by \$15 to a new total of \$45 utility tax per month.

Q: Will this tax increase expire?

If approved, of the additional 3% tax, the 1% tax proposed to restore and preserve the Beach Park Historic District buildings and facilities (capital projects) would end in 20 years when the bonds are paid off. The 0.5% tax proposed for Beach Park buildings and facilities maintenance, operations and repairs and the 1.5% tax proposed for City street pavement overlays would not expire without City Council action.

Q: What will happen if the measure is voted down?

Should the measure be voted down, the City will not have the financial capacity to protect and restore Beach Park facilities and fewer City streets will be repaved. In recent years, the City has depended on a combination of federal, state and local funds, and Real Estate Excise Tax (associated with home sales) to fund its capital improvements. Due to the decline of the real estate market and impacts to the overall economic health of our region, state and nation, these revenue sources are no longer available at levels sufficient to address these City needs.

Q: How are the City's gas tax and car tab fees being used now?

The City spends a little more than \$1 million per year doing ordinary street maintenance. This is used to maintain traffic signals, snow and ice control, maintain roadside vegetation, fix potholes, seal pavement cracks, paint cross walks and lines, maintain street signs, provide street lighting, inspect bridges, and correct safety concerns. About 60% of this money currently comes from fuel tax and 40% from car tab fees collected by the Des Moines Transportation Benefit District. No utility tax is used for ordinary street maintenance.

Q: Why is the City building new bigger roads rather than repaving the ones we have?

All newer bigger roads are mostly financed with state or federal funds with a relatively small City match, or very low interest loans from the state. The state and federal government provide their funds because these projects rank very high because of safety, regional mobility or economic development benefits, and these outside funds would not be available for repaving.



Proposition 1 Ballot Language

The Des Moines City Council adopted Resolution No. 1169 concerning a proposition to increase the City Utility Occupation Tax to restore Beach Park Historic District buildings and facilities; fund maintenance and operations; and for City street paving improvements. This proposition would restore Des Moines Beach Park Historic Buildings and facilities; fund maintenance and operations; and improve City streets to prevent their further deterioration. This proposition increases the current 6% utility occupation tax to 9% authorizing: 1) 1% for Beach Park capital projects for 20 years or until capital bonds are repaid and thereafter that 1% tax ends; 2) 0.5% for Beach Park maintenance and operations; and 3) 1.5% for City street paving improvements.

For General Information: Please contact City of Des Moines Administration at 206-870-6527 or visit: www.desmoineswa.gov/proposition1



PROPOSITION 1

Des Moines Beach Park Historic District and City Street Pavement Repairs Funding Measure on the Nov. 8 Ballot

At the Nov. 8, 2011 General Election, the City of Des Moines will ask voters to decide whether to increase the Utility Occupation Tax from 6% to 9%. RCW 35.21.870 authorizes cities to impose a tax on electric, gas, solid waste, cable TV, telephone services and city utilities business at a rate up to 6% by legislative approval, and at an increased rate that exceeds 6% if approved by a majority of the voters of the city at an election. The proceeds from Proposition 1 would replace funds lost due to the decline in the collection of Real Estate Excise Tax (REET) and the associated reduction of property values that have drastically reduced this source of revenue, which for many years adequately funded the City's municipal facilities and streets capital construction projects. If approved, this tax increase would provide funding to protect and restore Des Moines Beach Park and City street pavement. The City estimates that the additional 3% utility tax would result in increased revenue of \$1,600,000 annually and would cost an average family of four approximately \$15 per month.



City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198-6398

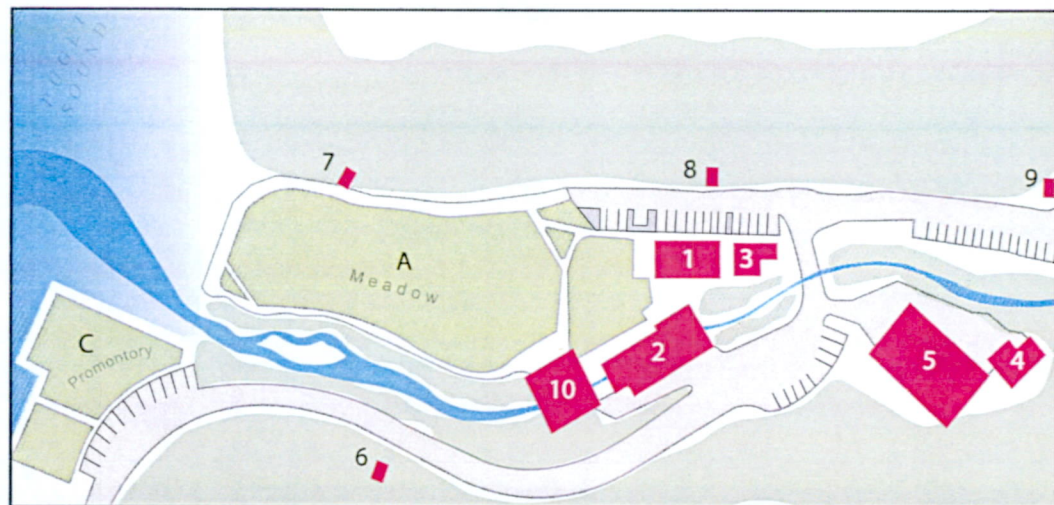
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Proposition 1

Background: Beach Park

In 1988, the citizens of Des Moines passed a tax levy matched with State and King County funding to acquire Des Moines Beach Park. The Beach Park was listed on the State Historic Register in 1988 and became a National Landmark in 2006. Recent projects have been completed that reduce site flooding, improve environmental conditions, protect the Dining Hall by lifting it onto a new foundation above the flood plain and renovate the 6,000 sq. ft. Auditorium. Also, the Des Moines Creek Trail is now open from Beach Park to South 200th Street in SeaTac. These projects were completed through the use of multi-agency partnerships and grant funds. The remaining park buildings and facilities cannot be used by the public because of deterioration, earthquake and flood damage. The need to protect and restore the Beach Park is identified in the Parks, Recreation and Senior Services Master Plan¹ developed by a 21-member Citizens Committee and the 2005 Beach Park Master Plan.² Proposition 1 would protect and preserve historic buildings (Dining Hall, Picnic Shelter, Restroom Building, Sun Home Lodge, two Cabins and two Cottages) which, if lost, could not be replaced due to federal environmental regulations. Other park facilities such as the Founders Lodge, children's play area, wood bridge, promontory and meadow irrigation, roadway and parking areas, and utilities would be repaired or replaced before they deteriorate to a degree that they cannot be affordably restored. Ongoing maintenance and operations and repair and replacement would be funded to ensure continuous public use and access.



Des Moines Beach Park Historic District Map

Proposition 1 Des Moines Beach Park Historic District Buildings and Facilities Projects	Map Location	Historical Restoration	General Restoration	Re
Picnic Shelter (Built 1920's)	1	★		
Dining Hall (Built 1934)	2	★		
Restroom/Wood Shop (Built 1945)	3	★		
Sun Home Lodge (Built 1934)	4	★		
Auditorium (Built 1957)	5			
Carlson House (Built 1935)	6	★		
Roadside Cabin (Built 1931)	7	★		
Sports Cabin (Built 1931)	8	★		
Caretakers Residence (Built 1980's)	9		★	
Founders Lodge (Built 1969)	10		★	
Meadow Irrigation	A			
Children's Play Area	A or C			
Wood Bridge to Park Upland Area	B			
Promontory Irrigation	C			
Roadway & Parking Overlays	Park		★	
Utility Upgrades	Park			



Restoring the Beach Park Historic District for future generations of Des Moines residents

Beach Park Historic District buildings and park facilities have deteriorated over the past two decades due to flooding, earthquake damage, deferred maintenance, and lack of funding to the point that they are no longer safe for public use. The City has received matching funds from federal, state and local sources to lift the historic Dining Hall above Des Moines Creek to protect it from further flooding and to renovate the historic Auditorium. These grant sources are no longer available. The goal is to complete the restoration of all of the Historic District buildings and facilities to current standards, and to reopen the buildings for community recreational uses. Of the 3% tax, 1% would provide an estimated \$535,000

annually to restore and reopen the buildings and to replace park facilities shown on the map above. This new revenue source will allow the buildings and facilities to be restored now and to pay off the bonds over a 20-year period at which time the City would receive an additional 0.5%, estimated at \$267,500 annually, would provide a new revenue source to keep the Historic District buildings and park facilities in good condition for the community's future use.

1) 2010 Parks, Recreation and Senior Services Plan is available at: www.desmoineswa.gov
 2) 2005 Beach Park Master Plan is available at: www.desmoineswa.gov

Proposition 1 Background: City Streets

The City is responsible for a street system consisting of approximately 215 lane miles of pavement. The City Council has identified the management of the City's paved streets as the No. 1 priority in the Transportation Improvement Plan³. While the City's street system is the most expensive City asset, due to budget restraints the City's street pavement overlay program is many years behind schedule and requires at least \$1.4 million per year to keep street pavement conditions in acceptable condition and minimize overall street life cycle costs. The City could not afford to make any pavement reinvestment in 2 of the last 4 years, and in the other 2 years the reinvestment was only 20-30% of the minimum sustainable levels. No reinvestments are scheduled in the 2011-2016 adopted Capital Budget⁴. The proposed 1.5% Utility Occupation Tax increase would provide about half of the annual funding needed to support the City's pavement overlay program. Individual projects would be identified based on pavement condition and the optimum time to minimize overall street system preservation, reactive maintenance and rehabilitation costs. The City would strive to 1) maintain geographic balance in the program so that all parts of the City would benefit; 2) group projects so that contracting efficiencies and economies of scale would be achieved; and 3) minimize disruptions to the community when work occurs.

3) Transportation Improvement Plan is available on line at: www.desmoineswa.gov

4) 2011-2016 Transportation Capital Improvement Plan is available on line at: www.desmoineswa.gov

Keeping street pavement in good condition reduces costs

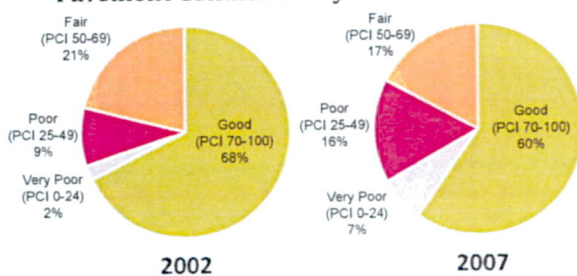
All City streets are regularly rated to determine the pavement condition using national standards. The Pavement Condition Index (PCI) provides a numerical ranking from 0 (failed pavement) to 100 (excellent pavement). This analysis helps to determine maintenance and rehabilitation requirements, schedule work, conduct long-term planning and, most importantly, establish priorities that maximize the City's limited financial resources.

If pavement is not adequately maintained, the PCI will drop 40% from "excellent" to only "fair" within the first 10 years. Providing maintenance for pavement at this point is critical, otherwise that PCI will drop another 40% to "near failed" condition over the next 5 years. The pavement deterioration and corresponding increase in rehabilitation costs will then increase by a factor of 10. Providing a combination of pavement preservation surface treatments (such as repaving, chip sealing, and crack sealing) at just the right time when a pavement is in "good to fair" condition can extend the useful life of pavement almost indefinitely. While crack sealing is an annual operating budget-funded activity, chip sealing and repaving have historically been funded in the capital budget using real estate excise tax.

Previous Investments in Pavement Rehabilitation

Year	Cost	Miles	Comment
2011	N/A	0	Unfunded
2010	N/A	0	Unfunded
2009	\$45,000	0.07	Asphalt Overlay
2008	\$150,000	0.25	Asphalt Overlay
2007	\$408,076	1.05	Asphalt Overlay
2006	\$654,640	1.77	Asphalt Overlay
2005	\$630,405	1.67	Asphalt Overlay
2004	N/A	0	Unfunded
2003	\$279,747	5.52*	Chip Seal*
2002	\$221,665	0.33	Asphalt Overlay

Pavement Condition Citywide Index



The figure at left compares the PCI for 2002 and 2007. In 2002, 68% of streets were in "good" condition and only 2% of street segments were considered "failed". In 2007, the ranking of street segments in "good" condition dropped to 60% and the number with a "failed" condition increased to 7%. This indicates that without increased funding for the Pavement Management Program, this trend will continue causing rehabilitation to be significantly more expensive. This is especially true because the Pavement Management Program is unfunded for at least the next 6 years.

Anticipated Projects

If approved by voters, the increase in Utility Occupation Tax would provide approximately \$800,000 per year for City street pavement improvements. Some potential project locations that could be considered over the next 20 years include the projects listed in the chart at right.

*A note about large street projects

Recently the City has been able to construct some large projects: Pacific Highway South; South 216th from Marine View Drive to 11th Avenue South; and 16th Avenue South from South 260th Street to South 272nd Street. Large projects such as these are only possible because of State and Federal grants and Transportation Impact Fees paid by developers. These funds cannot be spent for pavement maintenance or repaving.

Potential City Street Pavement Improvement Locations

Street Segment	Condition	PCI
16 Ave. S. (S. 240 St. to S. 250 St.)	Good	88
24 Ave. S. (S. 216 St. to S. 226 St.)	Fair	76
S. 240 St. (Marine View Dr. to 16 Ave. S.)	Fair	63
S. 240 St. (16 Ave. S. to 27 Ave. S.)	Poor	44
8 Ave. S. (Kent Des Moines Rd. to S. 223 St.)	Very Poor	34
S. 223 St. (Marine View Dr. to 13 Ave. S. & 16 Ave. S. to 24 Ave. S.)	Failed	12
Downtown Alleys	Varies	
Locations coordinated with utility district improvements	Varies	
4 Ave. S. & 8 Ave. S. on North Hill – Various Locations	Varies	25-70
Redondo Beach Dr. (Redondo Way to 10 Ave. S.)	Varies	20-89



Memorandum

To: Loren Reinhold
From: John Ghilarducci
RE: Issue Papers / Private Streets

Date: March 4, 2013

Thank you for forwarding Councilmember Burrage's comments on our issue papers. The purpose of this memorandum is to address as well as we can the concerns she expressed, in particular about private streets.

First, some context. It was noted that the issue papers provide no calculations. Our work plan has five major tasks. The "Policy Framework" task, which is essentially the issue papers and the discussion surrounding them, is task 2. It is followed by the "Rate Analysis" task, which utilizes the policy direction provided in task 2 to guide the technical analysis that we do. We have already developed a spreadsheet model to assist with this task, but we have not generated any results yet. We don't want to waste time and City money generating analysis on options that may not be of interest to the City.

However, as we incorporate the input we receive in task 2, we will be providing numbers that will illustrate the impacts of the preferred options. In our experience, it is most productive to try to have the policy discussions in advance of the numbers, because once numbers enter the discussion, they become the focus. That said, there is always the opportunity to revisit any policy recommendations based on the analytical results. Any proposed rate structure changes will be designed to be revenue neutral to the utility.

The purpose of the issue papers is to provide background (already know to some) and stimulate discussion. It is frankly the discussion that is the most valuable part of the task. That's what we are doing now. The papers are not intended to be the final word on these issues. We agree that is the purview of the Council.

Finally, it was noted that we included a preliminary work plan in issue paper #1. That work plan is for recalculating the City's equivalent billing unit value. It was provided, as promised in our work plan, for the benefit and convenience of the City. It is something staff can do more cost-effectively than the consultant.

The Private Streets Issue

The topic of charging stormwater rates to private streets is somewhat complex if for no other reason than there are a number of different types of private streets. For example, a private street can be a shared, extended driveway; a street among a network of such streets within a residential development; or right-of-way within a commercial (e.g., retail) development.

While it is our understanding that the City's Right-of-Way Construction Standards and Requirements apply to private streets as well as public streets, the purpose of stormwater facilities associated with private streets generally differs from those associated with public streets. Stormwater facilities associated with private streets are designed to serve the development with the private streets. In that sense, it is like on-site mitigation sized to meet the needs of the development. The private street is

Firm Headquarters

Redmond Town Center
7525 166th Ave. NE., Suite D-215
Redmond, Washington 98052

Locations

Redmond, WA | 425.867.1802
Portland, OR | 503.841.6543
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generally thought to be like any other impervious surface area for this reason, albeit mitigated by associated stormwater facilities.

In contrast, public streets and the stormwater facilities associated with public streets are sized to accommodate *system* runoff – runoff from all developed property in the service area. Because of their role in managing stormwater runoff, via curbs and gutters as well as through associated pipes and ditches, municipal streets are considered part of the stormwater system. In fact, the Washington Phase II Municipal Stormwater Permit, applicable to the City of Des Moines, defines a municipal separate storm sewer system (MS4) to include *publicly-owned or operated* streets and roads with drainage systems. The issue of “ownership” is important because the public body is responsible for the protection of receiving water. More specifically, under the new National Pollutant Discharge Elimination System (NPDES) permit, an MS4 is defined as follows:

“Municipal Separate Storm Sewer System (MS4) means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (i) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State such as sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.*
- (ii) Designed or used for collecting or conveying stormwater.*
- (iii) Which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.”*

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

Exempting City streets as part of the stormwater system is consistent with the practice of not charging other stormwater facilities. We do recommend in issue paper #2 that the City consider providing rate credits for private streets, based on the documented mitigation they provide in the way of associated stormwater facilities. This approach would be consistent with the credit approach recommended for other developed property.

Area Jurisdictions

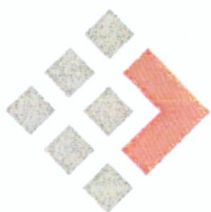
In 2011, we surveyed a number of local jurisdictions in the region on the issue of stormwater charges to private streets. In addition to the City of Des Moines, the cities of Kent, Renton, Auburn, Bellevue, Tukwila, Federal Way, Burien, Tacoma, Seattle, and SeaTac were included. At the time, we found that nine of the eleven cities surveyed charged private streets as they did other developed property. Two of the surveyed cities approached private streets differently: Des Moines, which offers a discounted rate, and Seattle, which offers a rate exemption for “all other streets, so long as such streets provide drainage services in the same manner as City streets and the owner(s) shall agree to maintain, construct and improve all drainage facilities associated with such streets as required by the Utility in conformance with all Utility standards for maintenance, construction and improvement hereafter established by the Utility and so far as such maintenance, construction and improvements shall be achieved at no cost to the Utility

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or to the City.” (Seattle Municipal Code Section 21.33.030). The information from this 2011 survey is summarized in the following table.

Stormwater Charges to Private Streets

City	Full Charge	Discounted Charge	Full Exemption
Auburn	✓		
Bellevue	✓		
Burien	✓		
Des Moines		✓	
Federal Way	✓		
Kent	✓		
Renton	✓		
SeaTac	✓		
Seattle			✓
Tacoma	✓		
Tukwila	✓		



Issue Paper #2: Stormwater Fees for Private Streets February 1, 2013

Issue:

The City's current practice is to charge private streets for their impervious surface area at 30 percent of the base rate, to recognize their offsetting role in stormwater conveyance. The City currently exempts publicly owned streets from the stormwater fee. The main issue in question - Should the City charge private streets a stormwater fee?

Analysis:

Applicable statute (RCW 35.67.020 and RCW 35.92.020) grants discretion to city legislative bodies in the setting of rates and allowing for the consideration of such factors as differences in the cost and/or character of service provided and capital contributions made to the system.

When considering how to charge different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must substantially relate to that customer's proportionate share of the utility's costs. In terms of equity and legal defensibility, it is important to recognize the significance of that type of relationship when defining exemption because such policies could potentially move a utility away from the rational linkage between service delivered and the amount of the fee.

When a cost of service approach is used as the basis for fee evaluation, exemptions and credits should only be granted when the characteristics of a parcel or improvements to that property cause runoff to differ when compared to similar parcels.

The City's Right-of-Way Construction Standards and Requirements apply to both private and public streets. In comparing the characteristics of the private and public streets it does not appear that the characteristics for stormwater contribution would differ in a significant way. This would indicate they should both be treated in a similar manner.

However, the similar treatment of public streets and private streets diverges when considering the following regarding public streets: first, costs and revenues are coming from comparable "public" sources and, second, public streets can be considered part of the stormwater conveyance system. The conveyance system is a network of pipes primarily designed to intercept drainage from paved streets and transport it underground (generally under a roadway) to an open drainage way. Cities often choose to exempt their streets in recognition of the key role they play in this system.

It is commonly thought that charging public streets simply transfers money from one City fund to another. Administratively, this may be a valid perception. However, by not charging public property, the City may

not accurately and equitably allocate what can be viewed as an overhead cost borne to support the departments that use stormwater services because of their land holdings. Effectively, utility ratepayers bear the costs of stormwater management provided to other user-supported services or the general public. This is not an issue for private streets.

Private streets do not provide such a system-wide benefit. The streets are owned by private owners, homeowners associations, or management groups that are responsible only for stormwater related to the specific development.

The stormwater fee is collected for the purpose of maintaining the City's public stormwater system. The City's stormwater conveyance system includes much more than storm drains. Ditches, curbs, gutters, culverts and open stream channels all make up the citywide drainage system that conveys stormwater runoff away from structures and sites in a manner that minimizes the potential for flooding and erosion to ALL properties. Customers always benefit from adequate, properly functioning drainage and flood control systems that decrease the likelihood of flooding, erosion, and unlimited pollutants from surface and stormwater runoff. Customers also benefit from the regulation and monitoring of the properties above and around the property. Although, the property may have its own stormwater system that complies with best management practices, these devices are not absolute and pollutants generally still exit a property depending on a number of factors such as the intensity and duration of rainfall. The stormwater runoff is still conveyed to the public drainage system.

It is more common than not that each unit of a development with common property (private streets, common driveways and parking areas) such as townhouse developments, cluster unit developments or condominiums is responsible for the pro rata share of the total impervious surfaces of the common areas of the development.

Alternatives:

Arguably, there might be some alternative ways to address the issue of stormwater fees for private streets, among them, (1) condominiums could be charged on a per dwelling unit basis and (2) both private streets and sidewalks could be exempted.

First, charging condominiums as residential property would require a change to all multi-family properties. The stormwater rates currently charged to multi-family properties in the City are based mainly on impervious surface area, a common industry practice. Most instances where the rate per multi-family dwelling unit is higher than the single-family residential rate are when properties have a large amount of private streets and roadways.

Charging each multi-family unit the same rate as a single-family residential customer would penalize those many multi-family units who have less impervious surface area per unit. This approach would also move away from the relationship of impervious area as an equitable basis for stormwater contribution and instead be a per unit charge for multi-family that is less related to runoff contribution.

Exempting private streets and sidewalks, is perhaps a more problematic approach. The City would require public ownership or access to the private streets and sidewalks; otherwise the exemption could be considered a gifting of public funds – prohibited by law. Any change would have to be offered to all other private streets and sidewalks for consistency. This would result in a loss of revenue for the City that would need to be met through an increase in the rate to other customers.

On the contrary, the City has full access to public streets. Transportation improvement projects on these streets also address storm related elements and issues. The City maintains public streets to their required standards including the street sweeping program, which is not a requirement for private streets. This maintenance can also be considered stormwater conveyance system maintenance that is paid for by City streets.

Recommendation: Public streets should continue to be exempted from the stormwater rates as they are considered a key part of the stormwater conveyance system. Private streets should continue to be charged as non-residential property and charged a discounted stormwater fee to recognize the contribution of runoff generated by City streets, but at the same time acknowledge the benefit of City streets to the stormwater system, which is the standard approach in the industry.

The issue of charges to private streets may be addressed more equitably by quantifying the offsetting contribution and benefit to determine a more exact portion of the rate to be charged to private streets.



Issue Paper #3: Stormwater Rate Credits February 1, 2013

Issue:

City of Des Moines Municipal Code Section 11.12.080 provides for rate adjustments when the amount charged “was not calculated in accordance with the terms of this chapter.” When is it reasonable (or required) to provide additional rate credits / adjustments for stormwater customers who mitigate their stormwater impacts and what is a rational basis for such credits?

RCW 90.03.510 authorizes such credits, stating that:

“Whenever a county, city, town, water-sewer district, or flood control zone district imposes rates or charges to fund storm water control facilities or improvements and the operation and maintenance of such facilities or improvements under RCW 35.67.020, 35.92.020, 36.89.080, 36.94.140, 57.08.005, or 57.08.081, it may provide a credit for the value of storm water control facilities or improvements that a person or entity has installed or located that mitigate or lessen the impact of storm water which otherwise would occur.”

Alternatives:

A review of potential credit bases / approaches reveals a number of alternatives.

- ♦ **On-site retention / detention.** Many residential subdivisions and commercial developments provide on-site retention / detention facilities as a condition of development, often maintaining such facilities as well. There are several ways to structure a potential rate credit for on-site retention / detention, the following among them:
 - ♦ **Performance against current standards.** Rate credits may be structured to reward customers who provide mitigation to current development standards, while offering lesser or no credits for mitigation that does not meet current development standards.
 - ♦ **Current vs. older standards for quantity and quality management.** Quantity and quality standards have increased greatly over the years. The City could offer credits by time of development, in order to reflect the benefit received from customers who help meet this historical change in stormwater management standards.
- ♦ **Customers covered by NPDES stormwater permits.** In order to protect the quality of receiving waters, the federal Clean Water Act requires a National Pollutant Discharge Elimination System (NPDES) permit for stormwater generated by specific industrial activities. The NPDES permit typically requires performance standards, monitoring,

and additional treatment of runoff generated by permitted industrial activities.

Under the NPDES permitting program, the specific stormwater detention and treatment measures that are required vary from permittee to permittee. Furthermore, industrial sites, which typically are subject to NPDES permitting requirements, are exempt from the program if 100% of their stormwater runoff is detained and treated.

As a result, the fact that a development is subject to NPDES permitting requirements may not tell the whole story regarding the stormwater mitigation measures it must incorporate. In the consideration of granting credits for individual permittees, it is important to remember that the City could instead provide credits for customers providing qualifying on-site mitigation including detention, treatment, and infiltration.

- ♦ **Infiltration.** Impervious surfaces, among other development features, prevent water from infiltrating the soil and replenishing the groundwater supply (if any). Customers that infiltrate their runoff may benefit both the City's drinking water system, by recharging the aquifer, and the City's stormwater system and receiving waters, by reducing the required size of system facilities. However, allowing infiltration also requires that the City work with owners to reduce contamination risks from such systems. Another factor to consider is the fact that not all stormwater is actually infiltrated; instead, infiltration systems are still connected to the public system via overflow piping.
- ♦ **Low-impact development, green building, and rainwater harvesting.** Low-impact development (LID) techniques, such as rainwater harvesting, permeable pavement, open space retention, bio-retention swales and rain gardens could also be worthy of credits. Other aspects of LID – such as green “vegetated” roofs – may affect the “effective” impervious area of a development or home if properly maintained.

Green building techniques include site planning to take greater advantage of natural site features, achieving LEED or Built Green certification, planting drought-resistant native landscaping, amending soils with compost, reducing impervious surface area, minimizing site disturbance during development, and previously noted low-impact development features. Implementing these techniques will result in increased natural resource conservation, lower home operating costs, and better stewardship of the City's drinking water aquifer. Other than its LID aspects, green building techniques are not strongly linked to a reduction in stormwater utility costs. The one aspect that is directly related to smaller service requirements is the minimization of impervious surface area.

A credit for low-impact development would recognize the fact that effective impervious area can be much smaller than the impervious surface area that is measured from aerial photographs (due to roof rainwater collection systems, permeable paving, vegetated roofs, etc.). An LID credit may be further supported by the fact that even when the effective impervious area of such a development is the same as other, conventional residential developments, other LID practices such as vegetation replacement typically result in reduced runoff from the property.

- ♦ **Dedicated open space.** Developments incorporate design techniques that concentrate residences or other buildings in a compact area of the development site (lot clustering) and provide open space and natural areas elsewhere, protected by an easement. Such techniques can reduce runoff, mitigate stormwater quality, and help maintain the amount of water recharging the City's aquifer.

Open space developments have many benefits in comparison to the conventional subdivisions that they replace: they can reduce impervious surface area (ISA), stormwater pollutants, construction costs, grading, and the loss of natural areas. In addition to the minimization of ISA, the preserved natural areas and tree canopy can significantly mitigate the stormwater runoff created by the buildings on site. Therefore, although affected by the slope characteristics of the property, the preserved portion of the site acts to reduce the effective impervious area of the development and provides a meaningful benefit to the public system when runoff is adequately dispersed.

Analysis:

When considering how to charge, or credit, different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must somewhat relate to that customer's proportionate share of the utility's costs. In terms of equity and legal defensibility, it is important to recognize the significance of that type of relationship when defining exemption or credit policies because such policies could potentially move a utility away from the rational linkage between service delivered and the amount of the fee.

A stormwater utility's service to its customers and the community it serves can be analyzed in two functional categories: controlling and reducing stormwater runoff (i.e. water quantity), and controlling and managing pollutants (i.e. water quality). The broader questions to address in establishing credits are (1) whether a rate payer help the utility reduce its costs (or not to incur additional costs) by providing certain mitigation measures in these two functional areas or not, and (2) if yes, how much of a cost savings is provided.

Comparatively, properties with on-site mitigation have a reduced effect on the public system than similar property lacking this mitigation. Therefore, it might be argued that to the extent that such facilities reduce costs to the City utility, they may warrant a rate credit.

However, it is also debatable that meeting the City's development standards reduces costs for the utility. Instead, it may simply keep the utility whole. As a result, granting a rate credit for such activities could actually reduce the amount of resources available for basic services to the remainder of the customer base. In fact, it may be argued that the cost of meeting City standards and constructing on-site mitigation should be considered a "cost of doing business," since on-site mitigation only partially neutralizes the impact of developing the property in the first place.

On the other hand, exceeding standards – that is, providing capacity in addition to that needed by developing (or developed) property – in theory does reduce cost to the utility by, in effect, reducing the net utility service area. How much of a credit to grant can then be sized according to the extent to which on-site controls exceed the standards.

Therefore, the two criteria to check for may be (1) effectiveness in reducing stormwater runoff and (2) whether these on-site systems are designed to handle greater amount stormwater than would be required as a condition of development approval. The additional capacity provided by the new development then may become the basis for the service charge credit amount.

It is true that property lines do not follow stormwater basin boundaries. Net impacts and/or benefits of a parcel align better with basin boundaries than property lines. However, estimating net impacts/benefits of each parcel, and developing a rate structure and credit policy around these estimates would be extremely difficult and very costly to administer. Additionally, it would be open to challenge since these estimates would be considered somewhat subjective, and difficult to explain to ratepayers.

Recommendation: Many of the stormwater program's costs are essentially "fixed" and do not decrease no matter what services customers provide on-site. As a first step, we recommend that the City determine the portion of program costs which can be reduced by the on-site activities of the customer base. We further recommend that the City classify the portion of those variable or use related costs as either attributable to managing water quantity or to managing water quality.

Once an allocation of program revenue requirements among fixed or base program costs, water quantity costs, and water quality costs has been made, their component shares of the stormwater utility charge can be determined. All customers would pay the base rate component. However, credits would be made available for the water quantity and quality components depending on on-site activities. (Customers with on-site features that result in reduced runoff – such as those that infiltrate or practice low-impact development – would be eligible for a rate credit that would vary in size based on the level of mitigation, not to exceed the sum of the quantity and quality components of the charge.)

The following recommendations assume that properties subject to stormwater rate credits would be meeting or exceeding the City's development requirements, and hence allowing the City to delay capital projects. As a result, the utility would be able to reduce its capital as well as operating costs by implementing the recommended credit policies.

Quantity Credits

Customers with on-site quantity controls, such as detention or infiltration facilities, provide a direct benefit to the utility by reducing peak flow and thereby reducing the necessary size of system pipes downstream.

In the case of customers that infiltrate their runoff, not only is peak flow reduced, but their total runoff is reduced or eliminated (to the extent there is capacity). Given this, we recommend that a full credit for the quantity-related portion of the utility bill be granted to customers that have capacity to infiltrate the current design storm size. Customers with less infiltration capacity than for the design storm size should receive a minimal quantity credit.

Detention facilities, on the other hand, do not prevent runoff from entering the public system. Instead, peak stormwater flows are simply reduced and extended over a longer duration. For that reason, customers that are able to detain to current standards should receive a quantity-related credit that is less than a full credit for this portion of the bill. Customers with less detention capacity than for the design storm size should receive a minimal credit for the quantity component of the bill.

Additionally, there are several development methods which incorporate features that mitigate stormwater runoff. Such features that reduce peak flows or prevent stormwater runoff from entering the public system include aspects of low impact developments, green building methods, and rainwater harvesting. On their own, such development features provide a quantity mitigation benefit that is typically less than dedicated detention facilities sized for the design storm. Accordingly, quantity-related mitigation should be eligible for a minimal credit against the quantity rate component. However, when paired with detention facilities sized for the design storm, customers should receive a full credit against the quantity rate component.

Note: For crediting purposes, we recommend that the eligibility of rainwater harvesting systems for credit be conditioned upon inspections to ensure regular use of the harvested water (due to the fact that, once collection cisterns are full, they no longer reduce runoff). Also, the system benefit provided by customers with quantity-mitigating development features is dependent upon proper maintenance of the on-site features, so we further recommend that they be subject to regular inspection in order to renew the credit every two years.

Customers that discharge their runoff directly into flow-exempt receiving waters where detention is not required (in Des Moines, these include Puget

Sound and Green/Duwamish River below RM 6 and above SR 18) perform another type of quantity mitigation. There are two types of such customers: those that utilize private systems to convey their runoff to receiving waters, and those that utilize the City's stormwater system, in whole or in part, to convey runoff to receiving waters. As customers of the first type are equivalent to customers with on-site detention facilities sized for the design storm, we recommend that they be granted the maximum detention credit for the quantity component of the utility fee. For customers of the second type, we recommend that a minimal credit for the quantity component be granted, to account for the use of and cost of maintaining the City infrastructure relied upon by the customer.

No credit or adjustment should be granted to customers without meaningful quantity mitigation capability.

Quality Credits

There are a number of factors, in addition to the installation of on-site quality controls, which relate to a customer's ability to manage the quality of their stormwater runoff. The most important of these are controls for on-site sources of pollution. Examples of source controls would be roofs and coverings for pollution-generating surfaces, equipment, and materials.

To meet the City's stormwater quality mitigation requirements, a customer must have on-site quality controls as well as source controls. Accordingly, a full credit for the quality-related portion of the utility bill should only be granted to customers that provide on-site quality mitigation and source controls that meet current standards.

Even in those cases where full mitigation capability is not present, on-site quality control facilities and source control measures can still provide a benefit to the City's stormwater system. Accordingly, we recommend that a minimal credit to the quality portion of the stormwater utility bill be provided to customers that, while not meeting current requirements, do maintain a basic treatment capacity on-site and/or implement some source control measures.

No credit should be granted to customers that have no on-site quality controls or provide only nominal quality mitigation (such as a downturned elbow to control floatables).

Other Credits

Customers with individual NPDES stormwater permits should be eligible for the same rate credits as any other non-residential customer. No dedicated credit for simply possessing a permit should be established.

Please note that the percentage or number of impervious units that will obtain quantity, quality, and/or runoff reduction credits will be forecasted and incorporated into the current rate analysis to ensure adequate revenue generation under the proposed program.

History of SWM Rates and Studies (monthly rate per residential equivalent billing unit)

1991	\$4.75	Utility and rate established by Ordinance 860 , enacted October 11, 1990. Initial rate based on a needs assessment prior to the development of the 1991 SWM Comprehensive Plan. A copy of the assessment has not been located, however, a 1989 utility feasibility study made by Parametrix is attached.
1993	\$4.90	Ordinance 990 , adopted November 19, 1992, for a cost of living (inflation) adjustment. Rate was increased 3.5% for year 1993.
1994	\$5.00	Ordinance 1065 , adopted November 18, 1993, for a cost of living (inflation) adjustment. Rate was increased 2.7% for year 1994.
1997	\$5.25	Ordinance 1173 , adopted November 21, 1996, for a cost of living (inflation) adjustment of 5%. Ordinance passed based on staff presentation that rates were not keeping up with actual inflation. A white paper (attached), dated November 1, 1996, provides information used in the presentation.
1999	\$6.00	Ordinance 1220-A , adopted October 29, 1998, for cost of living (inflation) adjustment to \$6.00 in 1999 and then automatically adjust the rates for each year thereafter using a formula based on the Construction Cost Index and Consumer Price Index. This was based on a financial forecast made by Financial Consulting Solution Group (FCSG) conducted as part of a Comprehensive Plan Update (that was not completed). A copy of the powerpoint and a memorandum from the lead consultant (RW Beck) is attached showing the key findings.
2000	\$6.42	CCI/CPI = 7%
2001	\$6.42	No increase for 2001.
2002	\$6.57	CCI/CPI = 2.42%
2003	\$6.72	CCI/CPI = 2.40%
2004	\$6.82	CCI/CPI = 1.28%
2005	\$6.96	CCI/CPI = 2.12%
2006	\$7.79	Ordinance 1368 , adopted November 13, 2005, increasing rates following a rate study made by Financial Consulting Solution Group . A presentation was made to Council on July 1, 2004 following a utility Efficiency Study that reviewed work load and efficiencies prior to implementing the rate study. The rate study was presented to Council on October 13, 2005 following showing the need to increase the rates to \$9.32 to meet the operational and capital needs of the program and meet a "moderate level of service".

Rather than a one-time increase, Council decided to phase the increase over a period of three years (2006-2008). A copy of the presentation and rate evaluation tables are attached. No formal rate study report was provided, just the tables supporting the findings. A copy of the Efficiency Study is also attached.

- | | | |
|------|---------|---|
| 2007 | \$8.81 | Second step of three per Ordinance 1368. |
| 2008 | \$9.83 | Third step of three per Ordinance 1368. |
| 2009 | \$12.24 | Ordinance 1437 was adopted on September 25, 2008 adjusting the rates to account for additional costs to the City for implementing the new NPDES permit. Staff made a presentation on September 25, 2008 (attached) which includes the materials that the new rate was based upon. Ordinance 1441 was adopted November 13, 2008 imposing a 6% utility tax. |
| 2010 | \$12.25 | CCI/CPI = 0.05% |
| 2011 | \$12.25 | CCI/CPI = 0.00% Actual inflation is negative (-)0.59%. Ordinance 1496 is adopted November 18, 2010 making the minimum inflation adjustment for a given year 0.00%. |
| 2012 | \$12.56 | CCI/CPI = 2.53% |

West's RCWA **35.67.020**

West's Revised Code of Washington Annotated [Currentness](#)

Title 35. Cities and Towns ([Refs & Annos](#))

[Chapter 35.67](#). Sewerage Systems--Refuse Collection and Disposal ([Refs & Annos](#))

➔ **35.67.020. Authority to construct system and fix rates and charges--Classification of services and facilities--Assistance for low-income persons**

(1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

- (a) The difference in cost of service and facilities to the various customers;
- (b) The location of the various customers within and without the city or town;
- (c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;
- (d) The different character of the service and facilities furnished various customers;
- (e) The quantity and quality of the sewage delivered and the time of its delivery;
- (f) The achievement of water conservation goals and the discouragement of wasteful water use practices;
- (g) Capital contributions made to the system, including but not limited to, assessments;
- (h) The nonprofit public benefit status, as defined in [RCW 24.03.490](#), of the land user; and
- (i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

[61 ALR 3rd 1236](#), Validity and Construction of Regulation by Municipal Corporation Fixing Sewer-Use Rates.

Treatises and Practice Aids

[17 Wash. Prac. Series § 9.4](#), Local Governmental Entities.

NOTES OF DECISIONS

Construction and application [1](#)
Eminent domain [2](#)
Service charges [3](#)

[1](#). Construction and application

Statute requiring that city's sewer and drainage system charges be proportionate to cost of system attributable to property being charged did not apply to charges authorized by prior statute authorizing city to construct "systems of sewerage" and to "fix, alter, regulate, and control the rates and charges for their use." [Tapps Brewing, Inc. v. City of Sumner \(2001\) 106 Wash.App. 79, 22 P.3d 280. Municipal Corporations ¶712\(7\); Water Law ¶2806](#)

Municipal sewer districts have statutory authority to use public funds to repair or replace side sewers located on private property if doing so will increase sewer capacity by reducing infiltration and inflow. Use of public funds to do so does not constitute an unconstitutional gift or loan of public funds if the district acts without donative intent and can demonstrate that the action will result in significant benefit to the public. Op.Atty.Gen. 2009, NO. 5., [2009 WL 2835787](#).

[2](#). Eminent domain

Words "with full jurisdiction and authority to manage, regulate, and control them," within meaning of this section concerning eminent domain powers as they relate to sewage treatment

facilities, grant cities and towns unrestricted power in selecting the sites for such facilities. [South Hill Sewer Dist. v. Pierce County \(1979\) 22 Wash.App. 738, 591 P.2d 877. Municipal Corporations ¶708](#)

Sanitary sewers and sewage treatment facilities are by their very nature both public necessities and conveniences; and building, maintaining, and operating them are governmental functions for which municipality may exercise powers of eminent domain. [Town of Steilacoom v. Thompson \(1966\) 69 Wash.2d 705, 419 P.2d 989. Eminent Domain ¶32](#)

3. Service charges

City's storm and surface water utility charge was directly related to services city provided to property owners by controlling storm and surface water runoff, so as to support finding that the charge was a fee, not a tax, for purposes of school district's claim that the charge was an unlawful tax, under the uniformity requirement of the Washington Constitution, although there was an overall public benefit; fees assessed were based on amount and rate of runoff a parcel of property generated, and thus was reasonably based on usage. [Tukwila School Dist. No. 406 v. City of Tukwila \(2007\) 140 Wash.App. 735, 167 P.3d 1167, as amended. Taxation ¶2002; Water Law ¶2142](#)

Any error in trial court's failure to strike expert's declaration and report as cumulative or untimely was harmless, in school district's action seeking declaration that storm and surface water utility charge was an unlawful tax, under the uniformity requirement of the Washington Constitution, where court expressly stated that the expert's documents and opinion played no part its decision to grant city's motion for summary judgment. [Tukwila School Dist. No. 406 v. City of Tukwila \(2007\) 140 Wash.App. 735, 167 P.3d 1167, as amended. Declaratory Judgment ¶393](#)

Statute authorizing city to construct "systems of sewerage" and to "fix, alter, regulate, and control the rates and charges for their use," authorized city to pay for improvements to its storm drainage system by imposing general facilities charges (GFC) on property owners when it issued development permits, which charges were based on amount of impervious surface on property. [Tapps Brewing, Inc. v. City of Sumner \(2001\) 106 Wash.App. 79, 22 P.3d 280. Zoning And Planning ¶1382\(4\)](#)

General facilities charges (GFC) that city imposed on property owners when it issued development permits, in order to pay for improvements to city's storm drainage system, were not "special assessments," and thus, were not required to produce special benefit for property charged. [Tapps Brewing, Inc. v. City of Sumner \(2001\) 106 Wash.App. 79, 22 P.3d 280. Water Law ¶2806; Zoning And Planning ¶1382\(4\)](#)

Charges imposed by a city in connection with its sewerage system are not "special assessments," and thus, need not produce a special benefit for the property charged. [Tapps Brewing, Inc. v. City of Sumner \(2001\) 106 Wash.App. 79, 22 P.3d 280. Municipal Corporations ¶437](#)

Under this statute, city acts pursuant to police power granted to it to provide sewer service to protect health of its inhabitants and to defray expense by making service charges; and theory of assessments according to special benefits conferred is not involved. [Morse v. Wise \(1951\) 37 Wash.2d 806, 226 P.2d 214. Municipal Corporations ¶712\(7\)](#)

City is not prevented from making service charge to users merely because original cost of sewers serving them was paid by local assessments according to special benefits. [Morse v. Wise \(1951\) 37 Wash.2d 806, 226 P.2d 214.](#)

Post v. City of Tacoma

139 Wash.App. 1074, Not Reported in P.3d, 2007 WL 2111060
Wash.App. Div. 2, 2007.

July 24, 2007 (Approx. 3 pages) Court of Appeals of Washington,
Division 2.

Paul W. POST; Rex Williams and Frances Williams, husband and wife; and Gerald Paulson and
Carol Paulson, husband and wife, Appellants,

v.

CITY OF TACOMA, Respondent.

No. 34798-9-II.
July 24, 2007.

Appeal from Pierce County Superior Court; Honorable Frank E. Cuthbertson, J.
Everett Allen Holum, Everett Holum PS, Tacoma, WA, for Appellants.

Debra Ellen Casparian, Tacoma City Attorney's Office, Tacoma, WA, for Respondent.

UNPUBLISHED OPINION

PENYOYAR, J.

***1** Washington law subjects both public and private property to the same rates and charges for storm water control, but it also allows for consideration of "in-kind services" from public entities. Tacoma's Municipal Code (TMC) states that the City's streets and rights-of-way provide a benefit to storm and surface water drainage equal to the reasonable charge that would otherwise be imposed on the City. Paul W. Post filed a class action suit, arguing that this TMC section results in injury to private property owners. The trial court granted summary judgment to the City, finding that (1) the water disposal fees charged by the City are regulatory fees, not taxes; (2) the rate structure was not unreasonable, arbitrary, or capricious; and (3) the TMC section exempting City streets from water disposal fees is not an unconstitutional tax, as the streets are an in-kind service to the utility. Post appeals, primarily arguing that (1) the City does not have authority to define what constitutes an in-kind service; and (2) the exemption of City streets results in increased charges to rate payers, and those increased charges are an unconstitutional tax. His arguments do not have merit, and we affirm.

FACTS

Cities have the statutory authority to establish, maintain, conduct, and operate storm and surface water drainage systems. See RCW 35.67.020(1); 35.21.210; 35.92.020(1).^{FN1} Under the TMC, the City's Department of Public Works is responsible for operating and maintaining all aspects of its storm and surface water drainage management system. TMC 1.06.710(H). The Director of Public Utilities assesses storm water fees "based on the area of each premises of land and the land use designation of that premises." TCM 12.08.500.

FN1. For example, RCW 35.67.020(1) states as follows: Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

Additionally, RCW 35.21.210 authorizes cities to provide for their own sewerage, drainage, and water supply, and to establish, maintain and manage a sewer and water supply system. Finally, RCW 35.92.010 authorizes cities to acquire and operate waterworks for the purpose of providing its inhabitants with "an ample supply of water for all purposes, public and private."

The second part of the document provides a detailed overview of the various methods used to collect and analyze data. It describes the different types of data sources, such as surveys, interviews, and focus groups, and explains how this information is used to identify trends and patterns. The document also discusses the importance of ensuring that the data is reliable and valid, and provides guidelines for how to conduct these activities effectively.

The fifth part of the document provides a summary of the key findings and conclusions of the study. It emphasizes that the findings are based on a thorough and rigorous analysis of the data, and that they provide valuable insights into the issues being studied. The document also outlines the implications of the findings for future research and for the development of policies and programs.

The seventh part of the document provides a final summary of the key findings and conclusions of the study. It emphasizes that the findings are based on a thorough and rigorous analysis of the data, and that they provide valuable insights into the issues being studied. The document also outlines the implications of the findings for future research and for the development of policies and programs.

City property is subject to rates and charges for storm water control facilities "to the same extent private persons and private property are subject to such rates and charges." [RCW 35.67.025](#); see [RCW 35.92.021](#). However, in setting these charges, "consideration may be made of in-kind services, such as stream improvements or donation of property." [RCW 35.67.025](#); [RCW 35.92.021](#).

The City determined that its streets, curbs, and gutters provide a benefit to the storm water utility because they gather and transport storm water. The City therefore enacted TCM 12.08.530, which prevents levying storm water fees against City streets. TCM 12.08.530 states as follows:

Storm and surface water sewerage charges shall not be levied directly to:

(A) Any City street, road, alley or right-of-way ...; it being expressly found that all such City streets, roads, alleys and rights-of-way provide storm and surface water sewerage to the City by collecting and transporting storm and surface water from multiple individual properties to Storm Sewers of a value equal to the reasonable charge therefor that would otherwise be charged by the City[.]

The City deposits all revenue received from the assessment of storm water fees into the City's Sewer Utility Fund, and it charges all expenses for the operation, maintenance, and repair of the sewer system to that fund. TCM 12.08.630.

***2** In June 2004, Post (and other appellants here) filed a class action complaint against the City, asserting that the exemption provided for in TCM 12.08.530 exceeds the City's statutory authority and impermissibly creates a burden for private property owners. The class sought declaratory and injunctive relief, as well as damages to reimburse the class members for their payment of illegal fees.

The trial court certified the case as a class action in February 2005. The City moved for summary judgment, and Post filed a responsive motion claiming the ordinance at issue was invalid and unconstitutional.

Following oral arguments, the trial court granted the City's motion for summary judgment and denied Post's cross-motion for declaratory relief. It found that (1) the storm water and waste water disposal charges imposed by the City are regulatory fees, not taxes, and therefore are a proper exercise of the City's police power; (2) Post had not shown that the rate structure was unreasonable, arbitrary, or capricious; and (3) the ordinance excluding direct charges to the City for services that provide an in-kind benefit to the utility is not an unconstitutional tax. This appeal followed.

ANALYSIS

I. Standard of Review

A trial court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." [CR 56\(c\)](#). On appeal from a summary judgment order, we engage in the same inquiry as the trial court. [Key Tronic Corp., Inc. v. Aetna \(CIGNA\) Fire Underwriters Ins. Co., 124 Wn.2d 618, 623-24, 881 P.2d 201 \(1994\)](#) (citing [Our Lady of Lourdes Hosp. v. Franklin County, 120 Wn.2d 439, 451, 842 P.2d 956 \(1993\)](#)). The issues in this case pertain to the statutory authority of municipalities and therefore are issues of law to be determined de novo. See [Okeson v. City of Seattle, 150 Wn.2d 540, 548-49, 78 P.3d 1279 \(2003\)](#).

II. "In-Kind" Service

Post argues that Washington statutes do not authorize the City to declare maintenance of streets as an in-kind service. The City responds that TCM 12.08.530 is a valid exercise of its

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

2. The second part of the document is a letter from the Secretary of the Treasury to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Treasury. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

3. The third part of the document is a letter from the Secretary of the Navy to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Navy. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

4. The fourth part of the document is a letter from the Secretary of the War to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the War. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

5. The fifth part of the document is a letter from the Secretary of the Interior to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Interior. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

6. The sixth part of the document is a letter from the Secretary of the Agriculture to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Agriculture. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

7. The seventh part of the document is a letter from the Secretary of the Commerce to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Commerce. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

8. The eighth part of the document is a letter from the Secretary of the Education to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Education. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

9. The ninth part of the document is a letter from the Secretary of the Public Works to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Public Works. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

10. The tenth part of the document is a letter from the Secretary of the Public Lands to the President, dated January 3, 1862. It is a very important document, as it contains the Secretary's report to the President on the state of the Public Lands. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

authority, arguing that it is constitutional, reasonable, and fully complies with state law. The City's arguments are persuasive.

In passing the ordinance, the City determined that the benefit provided to the utility by the streets-collecting and transporting storm and surface water-was of equal value to a reasonable storm and surface water charge that would otherwise be imposed on the City. TCM 12.08.530. Where a court is asked to review a legislative decision, the applicable standard of review is the "arbitrary and capricious" test. Teter v. Clark County, 104 Wn.2d 227, 234, 704 P.2d 1171 (1985); see also Raynes v. Leavenworth, 118 Wn.2d 237, 250, 821 P.2d 1204 (1992). An act is arbitrary or capricious if it is a willful and unreasonable action, without consideration and regard for facts or circumstances. See Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 769, 49 P.3d 867 (2002) (quoting Teter, 104 Wn.2d at 237).

*3 Post argues that the findings the City made in the ordinance are not conclusively presumed correct.^{FN2} Even if this is true, the record does not support a contention that adopting the ordinance was willful or unreasonable. The ordinance itself articulates a reasonable basis for excluding City streets from storm and surface water charges-the benefit provided by the streets in funneling such water. The City's actions in adopting the ordinance were neither arbitrary nor capricious, and the ordinance should therefore be upheld.

FN2. Post also asserts that the City's argument-that there is a conclusive presumption that the facts determined by the City prior to passing the ordinance are true-was erroneous. However, there is no indication in the trial court's decision that it relied on such a presumption, and Post offers no cites to the record to support this assertion. Therefore, we need not consider this claim-generally, without argument and citation to authority, we will not review an assignment of error. RAP 10.3(a)(5); State v. Olson, 126 Wn.2d 315, 321, 893 P.2d 629 (1995).

Additionally, while Post is correct that interpretation of statutes is traditionally a function of the judiciary, the statute's plain language supports the City's assertion that the service provided by the streets is an "in-kind service." Resp't Br. at 12-13.

When interpreting statutes, we look first to the plain meaning of words used in the statute. See Lacey Nursing Ctr., Inc. v. Dep't of Revenue, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). Here, "in kind" is defined as "in a similar way; with an equivalent of what offered or received." *Black's Law Dictionary* 802 (8th ed.2004). An in-kind service, therefore, is a service "similar or equivalent to" that provided by storm water control facilities. The streets' service-collecting and transporting surface and storm water-clearly appears to be "of the same species or category" as storm water control facilities.

Moreover, the streets' service appears to be at least as much in-kind with storm water control facilities as the examples given by the Legislature: stream improvements and donations of property. RCW 35.67.025; RCW 35.92.021. Indeed, the streets affect storm and surface water drainage very similarly to stream improvements in that they aid in draining water away from private property owners into the sewage system.

The declaration in the ordinance that City streets provide an in-kind service is neither arbitrary nor capricious nor in violation of the statute's plain language. Post has not established a genuine issue of material fact to the contrary. RCW 35.67.025 does not require an exact calculus in determining the value of in-kind services, only directing that they be given "consideration." Clearly the Legislature authorized the City to make a reasonable trade-off in providing in-kind services. Where, as here, the city has made a finding that the value of the services it provides is of an equivalent value to the charges it would otherwise be required to pay, the trade-off is reasonable on its face and well within the city's discretion as granted by the statute. Post has not established a genuine issue of material fact to the contrary.

III. Tax or Regulatory Fee?

Post argues that the charge imposed on ratepayers for drainage created by City streets is a tax, rather than a regulatory fee. In response, the State points out that there is no evidence in the record supporting the claim that private property owners' storm water fees are increased because the City does not pay storm water fees for City streets. The only evidence in the record indicating a higher fee to ratepayers is Post's own affidavit.

***4** In a summary judgment motion, the burden is on the moving party to demonstrate that there is no genuine issue of material fact and that, as a matter of law, summary judgment is proper. Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). If the moving party satisfies its burden, the nonmoving party must present evidence demonstrating that material facts are in dispute. Atherton, 115 Wn.2d at 516. The nonmoving party may not rely on speculation, on argumentative assertions that unresolved factual issues remain, or on having its affidavits considered at face value. Seattle Police Officers Guild v. City of Seattle, 151 Wn.2d 823, 848, 92 P.3d 243 (2004) (citing Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986)).

Post offers no evidence, other than his own affidavit, to support his contention that the City's ordinance results in higher charges to him and other ratepayers. Even if this contention is true, he offers no legal authority that such an increase is either a tax or a fee. Local, state, and federal tax codes are replete with credits, exemptions, and deductions that reduce the obligations of individual taxpayers. In many cases, these provisions will result in a greater burden on the remaining taxpayers. But Post offers no authority for his proposition that this increased burden is itself a new tax or fee, separate from the general obligation imposed by the code in question. Thus, even if the setoff for City street systems results in higher charges to Post, we have been offered no legal authority to subject this increase to analysis as either a tax or a fee.

We find that the trial court's grant of summary judgment was proper, and we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur: HOUGHTON, C.J., and ARMSTRONG, J.