

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, June 22, 2023 - 6:00 PM**

City Council meeting can be viewed live on the City's website, Comcast Channel 21/321 or on the City's [YouTube](#) channel.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

CITY MANAGER REPORT

- Item 1. SOUTH KING COUNTY COMMUNITY IMPACT FUND
- Item 2. 1st Quarter Financial Report
[2023 1st Quarter Financial Report](#)

CONSENT CALENDAR

- Item 1. APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers through June 09, 2023 and payroll transfers through June 05, 2023 in the attached list and further described as follows:

EFT Vendor Payments	#8415-8542	\$ 928,134.64
Wires	#2222-2252	\$1,206,699.41
Accounts Payable Checks	#164938-165017	\$ 267,097.70
Payroll Checks	#19681-19686	\$ 1,677.65
Direct Deposit	#5599-5776	\$ 501,339.65

Total Checks and Wires for A/P and Payroll: \$2,904,949.05

[Approval of Vouchers](#)

- Item 2. 2023 LODGING TAX ADVISORY COMMITTEE SPENDING RECOMMENDATIONS
Motion is to approve the recommendations as submitted by the Lodging Tax Advisory Committee for the expenditure of Lodging Tax funds.

[2023 Lodging Tax Advisory Committee Spending Recommendations](#)

- Item 3. 24TH AVE S IMPROVEMENTS PROJECT– RIGHT-OF-WAY ACQUISITION
Motion is to approve and accept a fee simple acquisition of 987 SF and a temporary construction easement of 905 SF on Tax Parcel# 162204-9144, owned by Corenia C. Wood, as well as provide compensation to the owners in the amount of \$40,484.00 for said Right-of-Way acquisition as well as damages in the amount of \$25,150.00 for a total of \$65,634.00 (rounded), and further authorize the City Manager to sign the fee simple acquisition, the temporary construction easement and Real Property Voucher Agreement substantially in the form as submitted.

[24th Avenue S Improvements Project](#)

- Item 4. FIELD HOUSE PLAYGROUND EQUIPMENT UPGRADE: CONSTRUCTION CONTRACT AND CONSULTANT AGREEMENT
Motion is to direct administration to bring forward a budget amendment to the 2023-2028 Capital Improvement Plan and the 2023 Capital Budget to include the amended Field House Playground Equipment Upgrade Project as shown in (Attachment 1) and as described herein, and include such amendment in the next available budget amendment ordinance.

[Field House Playground Equipment Upgrade Project](#)

OLD BUSINESS

- Item 1. CITY OF DES MOINES CITY COUNCIL PROTOCOL MANUAL ADOPTION - THIRD READING
[Council Protocol - 3rd Reading](#)

NEW BUSINESS

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION – 10 Minutes

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER’S REPORT

EXECUTIVE SESSION

- PERFORMANCE OF A PUBLIC EMPLOYEE – RCW 42.30.110(1)(g) – 40 minutes

NEXT MEETING DATE

July 13, 2023 City Council Regular Meeting

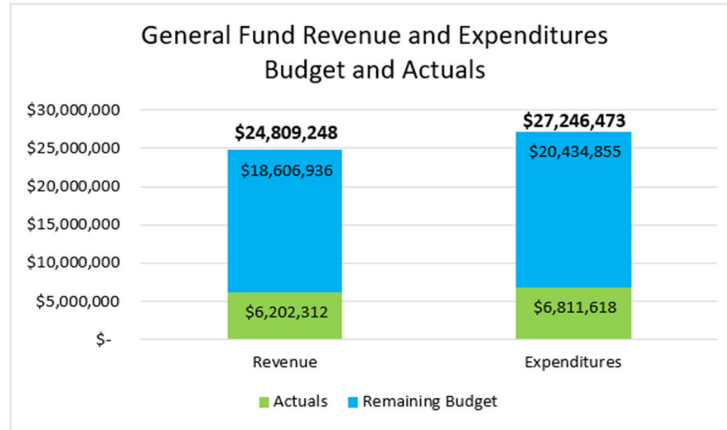
ADJOURNMENT

2023 1ST QUARTER FINANCIAL REPORT

This report provides an overview of the City's overall financial position for the first quarter of 2023, reflecting financial data available June 6, 2023.

GENERAL FUND

Through the first quarter of 2023, the General Fund received \$6,202,312 of revenue which represents 24.4% of budgeted revenue for the year. The general fund also incurred \$6,811,618 of expenditures representing 24.99% of the annual 2023 expenditure budget.



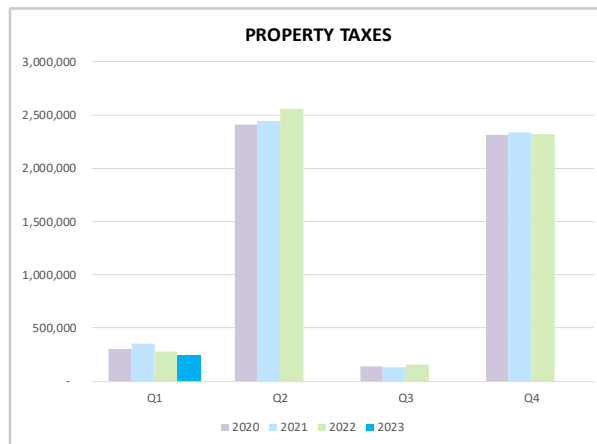
Revenue

Property Tax collected in the first quarter was \$247,228 which was a \$29,540 (10.7%) decrease from the same period in the prior year. Property tax levies by the City are based on the assessed value of the City which has steadily increased over the past few years. Property taxes are primarily collected in April and October.

PROPERTY TAXES				
	2020	2021	2022	2023
Jan	7,893	15,727	41,595	11,454
Feb	49,315	42,269	8,972	31,664
Mar	244,488	292,081	226,701	204,610
Apr	1,776,167	1,427,756	1,374,884	
May	388,009	956,647	1,133,679	
Jun	245,697	56,028	49,571	
Jul	53,783	19,615	6,852	
Aug	11,412	29,051	39,674	
Sep	76,970	84,841	112,850	
Oct	1,841,432	1,815,634	1,592,366	
Nov	443,996	502,576	702,505	
Dec	27,193	19,660	26,685	
Totals	5,166,355	5,261,886	5,316,334	247,728

	2020	2021	2022	2023
Q1	301,696	350,077	277,268	247,728
Q2	2,409,872	2,440,432	2,558,134	-
Q3	142,165	133,507	159,376	-
Q4	2,312,621	2,337,870	2,321,557	-
Totals	5,166,355	5,261,886	5,316,334	247,728

2023 Budget and YTD % collected:	5,522,043	4.5%
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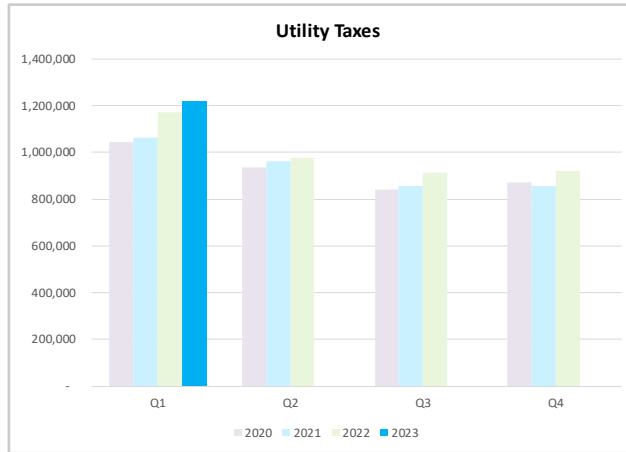
2023 YTD to 2022 YTD variance: (29,540) -10.7%

2023 1ST QUARTER FINANCIAL REPORT

Utility Taxes collected in the first quarter of 2023 were \$1,218,246 which is a \$47,832 (4.1%) increase from the same period in the prior year. The City collects utility tax on the usage of electricity, natural gas, solid waste disposal, cable TV, telephone, and surface water. The City continues to see an increase in utility tax collections over past years.

UTILITY TAXES				
	2020	2021	2022	2023
Jan	317,812	356,912	415,812	408,403
Feb	361,372	333,424	381,052	392,084
Mar	365,521	372,379	373,550	417,758
Apr	339,749	350,317	342,928	
May	318,816	321,555	372,039	
Jun	276,056	289,060	262,819	
Jul	287,198	284,693	334,278	
Aug	279,933	161,581	292,009	
Sep	274,822	409,898	288,223	
Oct	276,644	277,060	343,898	
Nov	228,718	288,366	330,062	
Dec	364,761	289,923	245,224	
Totals	3,691,401	3,735,164	3,981,894	1,218,246

	2020	2021	2022	2023
Q1	1,044,704	1,062,714	1,170,414	1,218,246
Q2	934,621	960,931	977,786	-
Q3	841,953	856,171	914,509	-
Q4	870,123	855,348	919,184	-
Totals	3,691,401	3,735,164	3,981,894	1,218,246



2023 Budget and YTD % collected: 4,550,105 26.8% **2023 YTD to 2022 YTD variance: 47,832 4.1%**

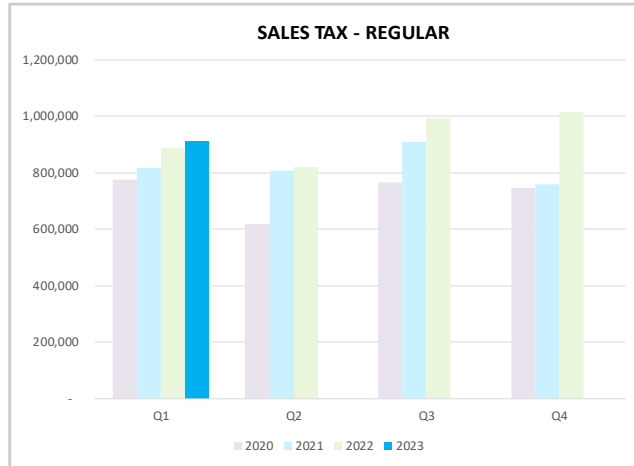
The table below demonstrates actual revenues compared to prior year collections by the different utility categories:

Utility Tax Type	2021 Q1 Total	2022 Q1 Total	Change from 2021	
			Amount	Percent
Electricity	\$ 412,796	\$ 439,690	\$ 26,894	6.5%
Natural Gas	181,165	\$ 213,920	32,755	18.1%
Solid Waste	152,250	\$ 135,375	(16,875)	-11.1%
Cable TV	216,893	\$ 210,094	(6,799)	-3.1%
Telephone	71,606	\$ 68,860	(2,745)	-3.8%
SWM 13%	135,704	\$ 150,306	14,602	10.8%
YE Total	\$ 1,170,414	\$ 1,218,246	\$ 47,832	4.09%

2023 1ST QUARTER FINANCIAL REPORT

Sales and Use Tax (Regular) collection increased \$25,519 (2.9%) over the same period in the prior year. During the first quarter, the City collected \$912,207 in sales tax which represented 24.1% of budgeted expectations.

SALES TAX - REGULAR				
	2020	2021	2022	2023
Jan	265,951	279,627	307,248	295,886
Feb	267,496	300,346	318,149	323,124
Mar	243,442	238,440	261,291	293,196
Apr	212,562	234,236	250,089	-
May	215,822	287,523	309,451	-
Jun	191,318	285,449	261,903	-
Jul	260,777	308,345	334,498	-
Aug	258,143	312,079	314,775	-
Sep	247,601	288,774	343,648	-
Oct	251,749	312,723	400,408	-
Nov	260,740	322,999	362,060	-
Dec	232,429	124,590	254,194	-
Totals	2,908,029	3,295,131	3,717,713	912,207
	2020	2021	2022	2023
Q1	776,888	818,413	886,688	912,207
Q2	619,702	807,207	821,443	-
Q3	766,521	909,198	992,921	-
Q4	744,918	760,312	1,016,662	-
Totals	2,908,029	3,295,131	3,717,713	912,207



2023 Budget and YTD % collected: 3,790,875 24.1%

2023 YTD to 2022 YTD variance: 25,519 2.9%

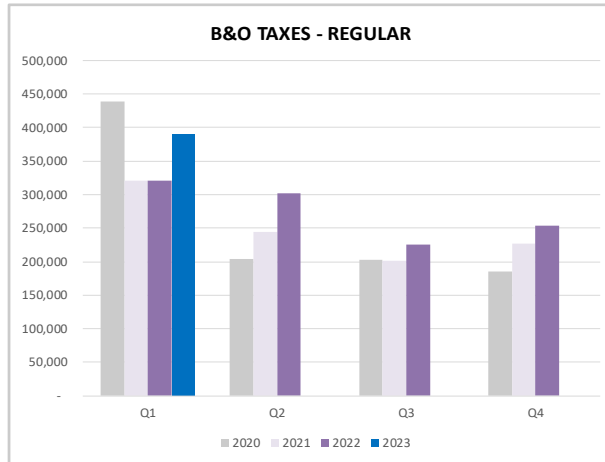
The following table breaks out the City's retail taxes by major business sector (the table includes only "regular" sales and use tax):

Component Group	Q1 Totals		Change from 2022	
	2022	2023	Amount	Percent
Construction	\$ 149,919	\$ 155,966	\$ 6,047	4.0%
Manufacturing	10,396	11,473	1,077	10.4%
Transportation & Warehousing	3,538	8,755	5,217	147.5%
Wholesale Trade	61,968	56,107	(5,861)	-9.5%
Automotive	33,580	44,237	10,657	31.7%
Retail Trade	312,780	328,495	15,715	5.0%
Services	270,327	276,358	6,031	2.2%
Miscellaneous	44,180	30,818	(13,362)	-30.2%
YE Total	\$ 886,688	\$ 912,207	\$ 25,519	2.88%

2023 1ST QUARTER FINANCIAL REPORT

The City received \$390,695 in **Business and Occupation Tax** through the first quarter of 2023. This amount was a \$70,469 (22.0%) increase over the prior year. Collections of Business and Occupation Tax are on an upward trend as the City refines its filing process and pursues delinquent payments.

B&O TAXES - REGULAR				
	2020	2021	2022	2023
Jan	181,573	66,546	109,430	220,009
Feb	287,559	245,260	191,636	152,492
Mar	(30,676)	8,303	19,159	18,194
Apr	58,498	132,192	198,624	
May	151,649	104,127	109,204	
Jun	(6,004)	8,121	(5,444)	
Jul	86,791	74,594	92,251	
Aug	109,513	125,512	83,386	
Sep	6,202	878	49,720	
Oct	67,009	67,391	163,660	
Nov	119,457	155,885	109,623	
Dec	(874)	4,159	(19,099)	
Totals	1,030,698	992,966	1,102,150	390,695



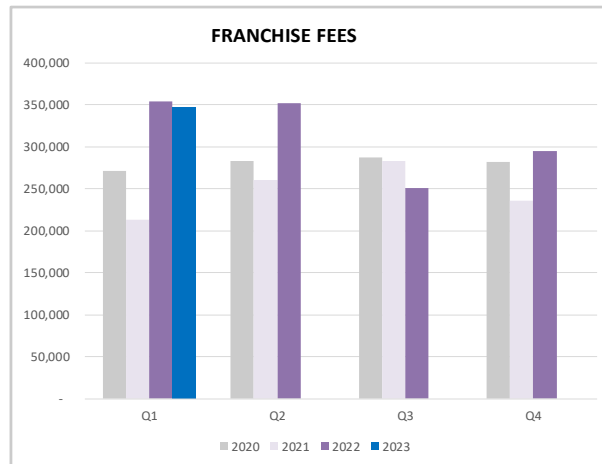
	2020	2021	2022	2023
Q1	438,456	320,109	320,226	390,695
Q2	204,144	244,440	302,384	-
Q3	202,506	200,983	225,357	-
Q4	185,592	227,435	254,183	-
Totals	1,030,698	992,966	1,102,150	390,695

2023 Budget and YTD % collected: 1,251,050 31.2%

2023 YTD to 2022 YTD variance: 70,469 22.0%

Franchise Fees help the City recoup the cost of allowing a utility to use its public space. Through the first quarter of 2023, the City collected \$347,625 in franchise fees which was \$6,128 (1.7%) less than the same period in the prior year.

FRANCHISE FEES				
	2020	2021	2022	2023
Jan	112,153	119,037	245,777	173,449
Feb	86,857	86,631	70,914	123,221
Mar	72,149	7,587	37,062	50,955
Apr	117,654	115,318	256,013	
May	92,344	55,721	96,150	
Jun	72,643	89,430	0	
Jul	117,875	168,994	159,775	
Aug	94,716	72,647	59,357	
Sep	74,400	41,418	32,238	
Oct	114,376	177,795	179,959	
Nov	37,178	57,945	75,358	
Dec	130,998	-	40,035	
Totals	1,123,342	992,524	1,252,638	347,625



	2020	2021	2022	2023
Q1	271,158	213,255	353,753	347,625
Q2	282,641	260,469	352,163	-
Q3	286,991	283,060	251,371	-
Q4	282,552	235,740	295,352	-
Totals	1,123,342	992,524	1,252,638	347,625

2023 Budget and YTD % collected: 1,130,000 30.8%

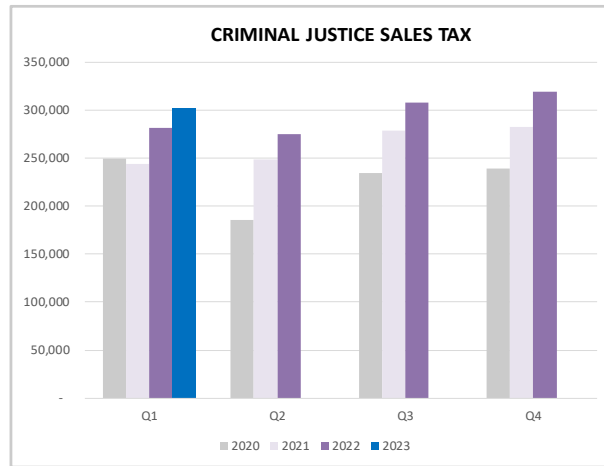
2023 YTD to 2022 YTD variance: (6,128) -1.7%

2023 1ST QUARTER FINANCIAL REPORT

Criminal Justice Sales Tax is a sales tax imposed by King County but shared with its cities and towns. State law allows counties to impose a .1% sales tax in which the receipts are dedicated for criminal justice purposes. Through the first quarter of 2023, the City collected \$302,253 in Criminal Justice Sales Tax which was \$20,884 (7.4%) more than the same period in the prior year.

CRIMINAL JUSTICE SALES TAX				
	2020	2021	2022	2023
Jan	78,038	75,664	91,875	98,970
Feb	95,920	94,898	104,753	112,129
Mar	75,957	73,495	84,742	91,155
Apr	62,259	71,268	82,227	
May	61,534	90,850	100,285	
Jun	61,848	86,287	92,622	
Jul	75,823	87,808	96,685	
Aug	79,504	95,648	107,009	
Sep	79,408	95,318	103,851	
Oct	78,382	93,711	106,482	
Nov	80,694	97,160	109,175	
Dec	80,289	91,753	103,618	
Totals	909,656	1,053,859	1,183,324	302,253

	2020	2021	2022	2023
Q1	249,914	244,056	281,370	302,253
Q2	185,642	248,405	275,134	-
Q3	234,735	278,774	307,544	-
Q4	239,365	282,624	319,275	-
Totals	909,656	1,053,859	1,183,324	302,253



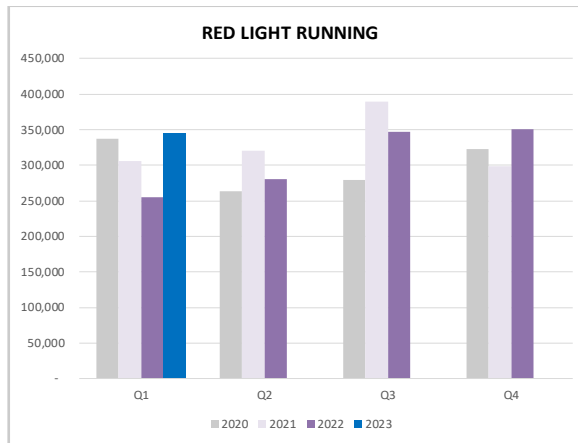
2023 Budget and YTD % collected: 1,187,500 25.5%

2023 YTD to 2022 YTD variance: 20,884 7.4%

Red Light Running Infractions is revenue received from fines generated by the red light camera ticketing system installed at select intersections in the City. Through the first quarter of 2023, the City collected \$344,990 in red light running fee revenue which was \$90,247 (35.4%) more than the same period in the prior year.

RED LIGHT RUNNING				
	2020	2021	2022	2023
Jan	117,300	111,284	85,665	150,079
Feb	105,681	85,275	77,910	99,253
Mar	114,283	109,113	91,168	95,658
Apr	99,100	101,518	81,893	
May	78,670	97,293	96,361	
Jun	85,511	121,298	102,210	
Jul	93,361	81,076	96,754	
Aug	92,523	154,085	142,340	
Sep	93,035	154,312	107,359	
Oct	123,470	121,645	101,010	
Nov	104,826	99,958	97,034	
Dec	94,946	76,358	152,214	
Totals	1,202,707	1,313,215	1,231,918	344,990

	2020	2021	2022	2023
Q1	337,263	305,673	254,743	344,990
Q2	263,282	320,109	280,464	-
Q3	278,919	389,473	346,453	-
Q4	323,243	297,961	350,259	-
Totals	1,202,707	1,313,215	1,231,918	344,990



2023 Budget and YTD % collected: 1,200,000 28.7%

2023 YTD to 2022 YTD variance: 90,247 35.4%

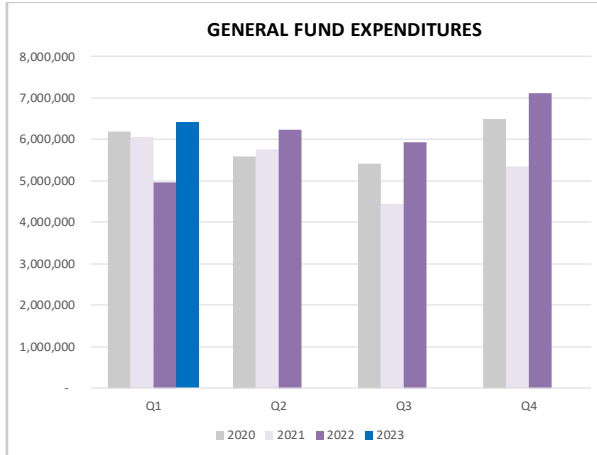
2023 1ST QUARTER FINANCIAL REPORT

Expenditures

General Fund expenditures were \$6,405,723 which was \$1,448,542 (29.2%) more the same period in the prior year.

GENERAL FUND EXPENDITURES				
	2020	2021	2022	2023
Jan	2,525,301	2,144,873	1,732,897	1,665,629
Feb	1,852,855	1,521,148	1,507,316	1,916,138
Mar	1,819,238	2,389,548	1,716,968	2,823,957
Apr	1,750,911	1,617,624	2,492,685	
May	1,862,348	1,921,701	1,852,949	
Jun	1,973,698	2,225,871	1,894,233	
Jul	1,968,490	559,043	1,710,505	
Aug	1,625,045	1,699,309	1,832,064	
Sep	1,820,620	2,186,707	2,394,505	
Oct	2,354,881	1,865,683	1,317,298	
Nov	2,025,944	1,560,582	2,118,374	
Dec	2,110,204	1,917,077	3,670,925	
Totals	23,689,536	21,609,165	24,240,719	6,405,723

	2020	2021	2022	2023
Q1	6,197,395	6,055,568	4,957,181	6,405,723
Q2	5,586,957	5,765,197	6,239,867	-
Q3	5,414,155	4,445,058	5,937,074	-
Q4	6,491,029	5,343,342	7,106,596	-
Totals	23,689,536	21,609,165	24,240,719	6,405,723



2023 Budget and YTD % collected: 27,246,473 23.5%

2023 YTD to 2022 YTD variance: 1,448,542 29.2%

Fund Balance

During the first quarter of 2023, the General Fund's Fund Balance decreased \$1,686,091 (21.0%) from the end of 2022. The City is required by code to maintain a fund balance that is equal to or greater than 16.67% of its annual operating expenditures. At the end of the first quarter, the General Fund's Fund Balance was 23.3% of annual operating expenditures. It should be noted the Fund Balance in the first and third quarters is negatively impacted as Property Tax (the City's largest revenue source) is collected during the second and fourth quarters.

2023 1ST QUARTER FINANCIAL REPORT

General Fund Details

General Fund Summary of Sources and Uses	2023			2023 YTD Budget vs Actual		2023
	Adopted Budget	YTD Budget	YTD Actual	Amount	Percentage	Remaining Budget
Operating Revenues						
Property Tax	\$ 5,522,043	\$ 1,380,511	\$ 247,728	\$ (1,132,783)	-82%	\$ 5,274,315
Utility Tax	4,550,105	1,137,526	1,218,246	80,719	7%	3,331,859
Sales Tax	3,965,875	991,469	999,839	8,371	1%	2,966,036
B+O Tax	1,338,550	334,638	413,438	78,801	24%	925,112
Franchise Fees	1,130,000	282,500	347,625	65,125	23%	782,375
Criminal Justice Tax	1,187,500	296,875	302,253	5,378	2%	885,247
Gambling Tax	50,000	12,500	1,159	(11,341)	-91%	48,841
Leasehold Tax	239,000	59,750	53,147	(6,603)	-11%	185,853
Taxes Subtotal	\$ 17,983,073	\$ 4,495,768	\$ 3,583,435	\$ (912,333)	-20%	\$ 14,399,638
Business Licenses and Permits	231,000	57,750	111,615	53,865	93%	119,385
Other Licenses and Permits	12,000	3,000	8,681	5,681	189%	3,319
Intergovernmental (Grants, etc.)	1,016,020	254,005	281,132	27,127	11%	734,888
Charges for Services:						
General Government Services	263,000	65,750	88,463	22,713	35%	174,537
Court	94,624	23,656	16,545	(7,111)	-30%	78,079
Public Safety	80,900	20,225	25,333	5,108	25%	55,567
Culture and Recreation	718,900	179,725	56,050	(123,675)	-69%	662,850
Red Light Running Infractions	1,200,000	300,000	344,990	44,990	15%	855,010
Other fees and penalties	157,850	39,463	19,331	(20,131)	-51%	138,519
Fees/Charges/Fines Subtotal	\$ 3,774,294	\$ 943,574	\$ 952,140	\$ 8,566	1%	\$ 2,822,154
Interest Income	40,000	10,000	8,784	(1,216)	-12%	31,216
Rentals and Leases	344,869	86,217	167,769	81,552	95%	177,100
Contributions and Donations	10,600	2,650	3,385	735	28%	7,215
Miscellaneous	25,925	6,481	4,119	(2,362)	-36%	21,806
Interfund Charges	1,571,728	392,932	0	(392,932)	-100%	1,571,728
Transfers In	1,058,759	264,690	0	(264,690)	-100%	1,058,759
Other Revenues Subtotal	\$ 3,051,881	\$ 762,970	\$ 184,057	\$ (578,913)	-76%	\$ 2,867,824
Total Operating Revenues	\$ 24,809,248	\$ 6,202,312	\$ 4,719,632	\$ (1,482,680)	-24%	\$ 20,089,616
Operating Expenditures						
City Council	\$ 96,129	\$ 24,032	\$ 13,618	(10,414)	-43%	82,511
City Manager/Administration	1,627,728	406,932	617,530	210,598	52%	1,010,198
City Clerk	718,782	179,696	266,490	86,794	48%	452,292
Human Resources	542,420	135,605	123,445	(12,160)	-9%	418,975
Finance	1,425,025	356,256	375,546	19,289	5%	1,049,479
Technology Services	1,322,951	330,738	319,832	(10,906)	-3%	1,003,119
City Attorney	881,428	220,357	202,184	(18,173)	-8%	679,244
Municipal Court	1,735,114	433,779	355,264	(78,515)	-18%	1,379,850
Public Safety - Business Office	1,244,972	311,243	282,317	(28,926)	-9%	962,655
Police	11,393,049	2,848,262	3,016,001	167,739	6%	8,377,048
Social Services	486,416	121,604	113,344	(8,260)	-7%	373,072
Parks, Recreation, and Senior Services	5,283,559	1,320,890	720,154	(600,736)	-45%	4,563,405
Transfers Out	488,900	122,225	-	(122,225)	-100%	488,900
Total Operating Expenditures	\$ 27,246,473	\$ 6,811,618	\$ 6,405,723	\$ (405,895)	-6%	\$ 20,840,750
Total Operating Income (Loss)	\$ (2,437,225)	\$ (609,306)	\$ (1,686,091)	\$ (1,076,785)		

** March is month 3 of 12 = 25%

BEGINNING FUND BALANCE 8,041,404
 ENDING FUND BALANCE 6,355,313 23.3%

16.67% Minimum Ending Fund Balance 4,541,987

2023 1ST QUARTER FINANCIAL REPORT

**City of Des Moines
Deposits and Investment Portfolio
Year-to-date March 31, 2023**

Security Type	Fair Value as of 1/1/2023	2023 Activity	Fair Value as of 3/31/2023	% of Portfolio
Federal Farm Credit Bank	\$ 9,024,625	\$ 101,505	\$ 9,126,130	19.1%
Federal Home Loan Bank	4,264,860	53,025	4,317,885	9.0%
Federal Home Loan Mtg. Corp.	6,228,667	71,928	6,300,595	13.2%
Federal Agricultural Mortgage Corp	748,485	(878)	747,608	1.6%
Federal National Mortgage Association	1,422,975	18,930	1,441,905	3.0%
US Treasury Notes/Bonds	5,294,300	55,515	5,349,815	11.2%
United States Treasury STRIP	2,819,324	40,783	2,860,107	6.0%
Key Bank	3,573,280	285,617	3,858,897	8.1%
LGIP	17,193,610	(3,324,674)	13,868,936	29.0%
Total	\$ 50,570,126	\$ (2,698,249)	\$ 47,871,877	100.0%

Bond Investments	29,803,236	59%	30,144,044	63%
Local Government Investment Pool	17,193,610	34%	13,868,936	29%
Key Bank Account	3,573,280	7%	3,858,897	8%
	\$ 50,570,126	100%	\$ 47,871,877	95%

**CITY OF DES MOINES
Voucher Certification Approval**

June 22, 2023

Auditing Officer Certification

Voucher transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **June 22, 2023** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through June 9, 2023 and payroll transfers through June 5, 2023 included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:



 Jeff Friend, Finance Director

		# From	# To	Amounts
Claims Vouchers:				
EFT's		8415	8542	928,134.64
Wires		2222	2252	1,206,699.41
Accounts Payable Checks		164938	165017	267,097.70
Total Vouchers paid				2,401,931.75
Payroll Vouchers				
Payroll Checks		19681	19686	1,677.65
Direct Deposit	6/5/2023	5599	5776	501,339.65
Total Paychecks & Direct Deposits				503,017.30
Total checks and wires for A/P & Payroll				2,904,949.05

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2023 Lodging Tax Advisory
Committee Spending Recommendations

FOR AGENDA OF: June 23, 2023

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: June 15, 2023

- 1. Application for Des Moines Lodging Tax Funds

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance *[Signature]*
- Human Resources _____
- Legal *Is/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider and approve the Lodging Tax Advisory Committee’s (LTAC) recommendations for expenditures of Lodging Tax funds collected by the City. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion 1: “I move to approve the recommendations as submitted by the Lodging Tax Advisory Committee for the expenditure of Lodging Tax funds.”

Background

The City charges a 1% special excise tax on the sale of or charge made for overnight lodging stays. The Des Moines Lodging Tax Advisory Committee is responsible for reviewing applications for lodging tax funds and making recommendations to the City Council regarding the distribution of those funds.

Lodging taxes are only eligible to be used for limited purposes pursuant to state law. Revised Code of Washington (RCW) 67.28.1815 limits the use of lodging tax funds as follows:

[A]ll revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities.

Only the following entities are eligible to apply for direct lodging tax funding:

1. Cities, towns, and counties of Washington State;
2. Convention and Visitors Bureaus;
3. Public Facilities Districts; and
4. Non-Profits organized as either a 501(c)(3) or 501(c)(6).

Requests to use lodging tax funds – including requests by the City itself – are submitted to the City. The lodging tax advisory committee reviews the applications for funding and then forwards a list of candidates to the City Council for final action. As part of the application process, a requestor must provide to the City estimates on how the lodging tax funds will result in an increase in the number of people traveling for businesses or pleasure on a trip.

After a recommendation is made by the Committee, the City Council can either:

1. Agree and fund the request.
2. Seek a modified funding amount, this requires notice to the Committee and a chance to respond.
3. Deny the funding request.

The Council cannot award funds to a request that is not recommended for funding by the Committee.

Discussion

The City currently has approximately \$206,000 in unspent lodging tax funds. One application for funding has been received this year and is summarized below:

1. Application from the City of Des Moines for reimbursement of expenses to host the 4th of July Drone Show. Total application request = \$145,000

The Lodging Tax Committee reviewed and discussed this application at their meeting in June and unanimously approved the application to be fully funded. At this time, the Committees recommendation is being forwarded to the City Council for review and approval.

The application for lodging tax funds is attached as required by state law.

Alternatives

The City Council could elect to spend the Lodging Taxes in a different manner. If the funds are not spent in the exact manner that is recommended by the Lodging Tax Advisory Committee, there are specific conditions that must be met prior to expenditure, including allowing 45 days for the Committee to review the Council's recommendations and to respond.

Financial Impact

The expenditure of these funds is limited by state law. There is no negative financial impact from spending them as they cannot be used for general funds purposes.

Recommendation

Approve the motion as written.

Application for Des Moines Lodging Tax Funds**Amount of Lodging Tax Requested \$145,000**

Organization/Agency Name:		City of Des Moines	
Federal Tax ID Number:		91-6016496	
Event or Activity Name (if applicable):		4 th of July Celebration	
Contact Name and Title:		Ashley Young	
Mailing Address: 22307 Dock Street South	City: Des Moines	State: WA	Zip: 98198
Phone: 206-870-9370	Email Address: ayoung@desmoineswa.gov		
<input type="checkbox"/> Non-Profit <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Agency			

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service. If awarded, my organization intends to enter into a Municipal Services Contract with the City.
- The City of Des Moines will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- Funds must be expended within the calendar year.
- Reporting requirements meeting state guidelines outlined in this application must be submitted with final request for reimbursement.

Signature: /s/ Ashley Young	Date: 03/28/2023
--------------------------------	---------------------

Application Overview

Provide us with an overview of your request:

Attach:

1. Description and itemized budget showing how you intend to use the amount requested from the City of Des Moines (income and expenses).
2. If your agency is a non-profit a copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
3. A copy of your organization's business plan (please limit to not more than two pages) and annual budget.
4. Brochures or other information about your event/activity/facility, in particular items showing recent tourism promotion efforts. (Optional)

This proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

Tell us who you expect to attract:

The State of Washington requires an estimate for the following questions below:

As a direct result of your proposed tourism-related service, provide an estimate of:		What method was used to determine attendance in previous years?
a. Overall Attendance Enter the total number of people predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 8,000	<input checked="" type="checkbox"/> Direct Count <input type="checkbox"/> Indirect Count <input type="checkbox"/> Representative Survey <input type="checkbox"/> Informal Survey <input type="checkbox"/> Structured Estimate
b. Attendance, 50+ Miles Enter the number of people who traveled greater than 50 miles predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 500	<input type="checkbox"/> Direct Count <input type="checkbox"/> Indirect Count <input type="checkbox"/> Representative Survey <input type="checkbox"/> Informal Survey <input checked="" type="checkbox"/> Structured Estimate
c. Attendance, Out of State, Out of Country Enter the number of people from outside the state and country predicted to attend this activity, and select the method used to determine the attendance.	Predicted: 100	<input type="checkbox"/> Direct Count <input type="checkbox"/> Indirect Count <input type="checkbox"/> Representative Survey <input type="checkbox"/> Informal Survey <input checked="" type="checkbox"/> Structured Estimate
d. Attendance, Paid for Overnight Lodging Enter the number of predicted to attend this activity and pay for overnight lodging, and select the method used to determine the attendance.	Predicted: 100	<input type="checkbox"/> Direct Count <input type="checkbox"/> Indirect Count <input type="checkbox"/> Representative Survey <input type="checkbox"/> Informal Survey <input checked="" type="checkbox"/> Structured Estimate
e. Attendance, Did Not Pay for Overnight Lodging Enter the number of predicted to attend this activity without paying for overnight lodging, and select the method used to determine the attendance.	Predicted: 7,900	<input type="checkbox"/> Direct Count <input type="checkbox"/> Indirect Count <input type="checkbox"/> Representative Survey <input type="checkbox"/> Informal Survey <input checked="" type="checkbox"/> Structured Estimate

Methods

Direct Count: Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.

Indirect Count: Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.

Representative Survey: Information collected directly from individual visitors/participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.

Informal Survey: Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.

Structured Estimate: Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).

Actual data will be required with your final reimbursement.

Application Submittal

Submit a PDF or one original signed copy to:

City of Des Moines Lodging Tax Advisory Committee
c/o Bonnie Wilkins
21630 11th Ave S.,
Des Moines, WA 98198
Email: BWilkins@desmoineswa.gov

You must complete and sign the cover sheet with this packet

- ⇒ **You may use the Supplemental Form or type the questions and answers on separate sheets of paper.**
- ⇒ **Please number each page in your packet, except for the optional brochures/information.**

General Information

City of Des Moines Lodging Tax Fund Overview

The City's Lodging Tax Fund is the primary source of City funding for activities, operations, and expenditures designed to increase tourism. In any given year, the City may maintain a reserve in the Fund, and will assess on an annual basis how much of the fund to appropriate in a given year.

The Des Moines City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration.

HIGH PRIORITY will be given to tourism activities that:

- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Des Moines.
- Promote Des Moines and/or events, activities, and places in the City to potential tourists from outside King County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Des Moines.
- Have a demonstrated history or success in Des Moines, or are proposed by a group with a demonstrated history or high potential of success with similar activities.
- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.
- Provide, maintain, operate or enhance City-owned tourism facilities or infrastructure.

State Law Excerpts

RCW 67.28.1816 – Use of Lodging Tax Fund.

Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitors bureau or destination marketing organization for:

- a. Tourism marketing;
- b. The marketing and operations of special events and festivals designed to attract tourists;
- c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
- d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) or the internal revenue code of 1986, as amended.

RCW 67.28.080 – Definitions.

- "Municipality" means any county, city or town of the state of Washington.

- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.
- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

Event: City of Des Moines 4th of July Celebration and Drone Show

Date: Monday, July 3, 2022

Location: Des Moines Marina, Des Moines Beach Park, Sound View Park, Overlook Park

Set Up Start Time: 10:00 AM

Event Start Time: 12:00 PM

Checkpoints Open: 12:30 PM

Outside Entertainment: 4:00 PM

Fireworks Begin: Estimated 10:20 PM

Event End Time: 10:55 PM

Tear Down End: 2:00 AM

Sunrise- 5:17 AM PDT

Moonrise- 10:45 AM PDT

Sunset- 9:09 PM PDT

Moonset- 12:07 AM PDT

Tide Schedule:

Low- 3:48 AM PDT 6.15 ft

Low- 2:59 PM PDT 0.06 ft

High- 8:18 AM PDT 8.19 ft

High- 10:17 PM PDT 11.62 ft

MAXIMUM Space Capacity (10 sq. ft. per person)

Beach Park- Meadow, Lawn, Picnic Shelter

Sound View and Overlook Park II

76,491 sq. ft.

19,812 sq. ft.

7,649 capacity

9,812 Capacity

Des Moines Marina- Center Lot

Overlook Park I

17,045 sq. ft.

1,984 sq. ft.

1,704 Capacity

198 capacity

Maximum expected attendance= 10,000+/-

Vendors

Honey Bucket

- Portable Restrooms

Emerald City statewide

- Promontory and Harbormaster House Fencing

Recology

- Dumpsters
- 96 gallon Trash
- 96 gallon Recycle

Alexander Party Rental

- 10 x 10 tents
- Coolers

Seattle's Finest

- Security Officers (TBD)

Pete's Towing

- Standby Towing

Allied Universal

- Checkpoint staffing

WAMSAudio

- Stage and Sound

Makers Market

- TBD

Entertainment

- TBD

Food Vendors

- TBD

DAY- OF RUN OF SHOW

Monday, July 3, 2023

3:00 PM

Vendor Arrival

- WAMS Audio North Lot and Beach Park

4:00 PM

Vendor Delivery

- Honey Bucket- Porta-potties (Marina)
- Recology- Garbage and Recycle Cans and Dumpsters
- Alexander Party Rental- Tents, Coolers

10:00 PM

Vendor Delivery

- Emerald City Fencing

Tuesday, July 4, 2023

9:00 AM

Barricades set up at Beach Park and Marina to restrict parking (Marina Staff)

Position Trash and Recycle cans and porta-potties (Marina Staff)

SkyElements Arrive and staging

10:00 AM

Stage check points (Events Staff) **See Site Map**

- o (1) 10 x 10 tent
- o (1) 6' table
- o (2) Plastic folding chairs
- o (1) Cooler
- o (2) Bags of ice
- o (1) Case of water
- o (1) A-Frame with "No Fun" Sign
- o (1) Walkie-talkie
- o Copy of Run of Show
- o Large Garbage Cans
- o 5 Gallon bucket of water
- o (1) People counter

Set Up roadblocks and barriers (Public Works Staff)

12:00 PM

Vendor Arrival- Allied Universal. **Report to Beach Park Founders Lodge at arrival**

12:30 PM

Check points 1-8 open

- (2) Allied Universal Staff

South Lot parking management begins (Events Staff)

Roving patrol begins- PD and Seattle's Finest

Quarterdeck Concessions and Entertainment begin

Pete's Towing on Call for stranded or illegally parked vehicles

Vendor Arrival- WAMS Audio, Market Vendors, Food Trucks

2:00 PM

Entertainment Arrive 1hr prior to performance time for load in and sound check

4:00 PM Band 1 Marina and the Dreamboats

6:30 PM Magician Nate Jester

9:00 PM Band 2 QueenMother

Makers Market and Food Trucks Open Marina and Center North Lot

10:00 PM

Checkpoints drop to (1) staff all other staff report to Staff Point Location 1

10:10 PM

Drive AU Staff to traffic flow locations

- 6th and 223rd
- 6th and 225th
- 6th and 226th
- 6th and 227th

10:20 PM

Roadblocks and barriers moved for traffic flow (Allied Universal and Seattle's Finest) **See Traffic Control Map**

10:20 PM- 10:30 PM

Drone display begins

10:30 PM

Break Down check points (Events Staff)

10:40 PM- 10:55 PM

Drone display ends

11:00 PM

Load checkpoints and store at Beach Park Picnic Shelter (Events Staff)

Drone Display load out (2-3 hours)

Day of Contacts

Ashley Young- Events and Facilities Manager

Cell Phone: 206-718-8437

Patti Richards- Des Moines Police Department Commander

Cell Phone: 206-396-4690

Des Moines Marina

Day Time Phone: 206-960-266

After Hours Phone: 206-406-7149

Public Works/Des Moines Park Maintenance

On Call Phone: 206-550-5612

Scott Wilkins Harbormaster

Cell Phone: 206-383-0662

Pete's Towing (On Call Driver)

Nate Cell Phone: 206-712-0736

PD Non-Emergency

Dispatch Phone: 206-878-3301

Honey Bucket

Summer Taggert 206-510-6405

Day of Staff

All staff and vendors report to staff point location 1 at Marina North Lot upon arrival

Staff Parking will be located at the Des Moines Marina South Lot

Allied Universal parking will be at the North end of the parking lot at check point 6.

7:00 AM

- Pat (Marina)
- Luke (Marina) *Staying all day
- Ashley (Events)

9:00 AM

- Cortney (Events)

10:00 AM

- Josh (PW)
- Sam (PW)
- Andrew (Events)
- Mike (Events)
- Dave (Marina)

11:00 AM

- Shawn (Marina)

12:00 PM

- Patti (PD)
- Allied Universal Staff

4:00 PM

- Ryan (PW)
- Christ (PW)
- Scott (Marina)
- Geoff (Marina)
- Katy (Marina)
- Seattle's Finest

5:00 PM

- Andrea (Marina)
- Rory (Parks and Rec)

Parking Plan

Access to the Marina and Beach Park will be blocked at 223rd & 5th Ave S. Parking will be limited to the South Lot of the Marina and Street parking



This Agreement is made this the 16th day of February 2023, by and between Sky Elements, LLC, a Texas limited liability company, whose address is 3819 Rufe Snow Drive Ste 203, North Richland Hills, TX 76180, and hereinafter referred to as “**Sky Elements**” and **City of Des Moines** hereinafter referred to as “**Customer**.” Sky Elements is in the business of providing drone display services, and Customer desires to have Sky Elements provide drone display services at Customer’s event(s). The parties therefore agree as follows:

DRONE DISPLAYS: Sky Elements agrees to furnish to Customer with drone display services, hereinafter referred to as “**Display(s)**” The Display(s) will be conducted in accordance with the specifications attached hereto as Addendum “**A**”.

SHOW DESIGN WORKFLOW: The drone display(s) design process is as follows:

- 1. Storyboard Process:** Sky Elements shall create a storyboard of Customer approved images. The storyboard contains rough sketches or images, or screen captures of all scenes and action notes, which describe the layout of the animations. Sky Elements shall send the storyboard to Customer for feedback and suggestions. Sky Elements will modify the storyboard in accordance with the Customer feedback. Images and order of shapes can be changed for no additional fee during the storyboard process.
- 2. Show Programming and Animation:** After completion of the storyboard process, Sky Elements shall begin the drone show design and animation process in accordance with the storyboard. After the animation and editing process, Sky Elements shall compile each sequence and render a video to Customer. Adjustments to shapes and images will be completed in accordance with Customer’s suggestions. Changes to order of animations or substitution of images not yet animated will result in a \$5,000 reanimation fee.
- 3. Final Delivery:** Sky Elements will perform the drone display(s) at Customer’s Event.

SECURE AREA: Customer agrees to furnish sufficient space for Sky Elements to properly conduct each Display as determined by the FAA (hereinafter “**Secure Area**”). For the purposes of the Agreement, “**Unauthorized Persons**” shall mean anyone other than the employees of Sky Elements or persons specifically designated in writing by Customer or the FAA.

INDEMNIFICATION AND HOLD HARMLESS: To the extent authorized by Texas law, Customer agrees to hold Sky Elements harmless from any damages caused to Customer which results as a consequence of unauthorized persons entering the Secure Area. Furthermore, Customer agrees to defend and indemnify Sky Elements from any and all claims brought against Sky Elements for damages caused wholly or in part by Unauthorized Person who have entered the Secure Area.

AMENDMENT & ASSIGNMENT: This agreement may not be sold, assigned, amended, or transferred without the prior written consent of Sky Elements.

FORCE MAJEURE. If for any reason beyond its control including, but not limited to, strikes, labor disputes, accidents, government requisitions, acts of war, acts of God, epidemic, pandemic, governmental restrictions, or other similar events that would make the event impractical or impossible, the Parties agree Customer's sole remedy is to transfer the display date subject to Sky Element's availability. In no event will Sky Elements be liable for any damages, including, but not limited to consequential damages.

PERMITS AND FAA APPORVAL: Sky Elements shall obtain all necessary approvals to enable Sky Elements to perform fully hereunder including airspace authorization needed for the Display(s).

JURISDICTION AND VENUE. It is hereby stipulated that this Agreement is governed by the laws of the State of Washington, and any suit involving this Contract shall be brought in King County, Washington. For Displays that include licensed music accompaniment, Customer agrees to verify with their organization, venue, sponsor, and/or municipality, the permission to simulcast music and agrees to pay any and all fees associated with the broadcast of said music in the public environment of the Display(s).

INSURANCE: Sky Elements will provide Aviation Liability Insurance in the amount of \$5,000,000.00, combined single limit, covering its activities and services in connection with the Displays described in this contract. Sky Elements also agrees to include Customer as additional insured under the terms of this coverage. Sky Elements will provide a Certificate of Insurance. All entities listed on the certificate will be deemed an additional Insured per this contract.

CANCELLATION: Sky Elements shall determine what weather conditions prohibit Sky Elements from proceeding with the Display(s); in which case, Sky Elements agrees to conduct the Display(s) on a mutually agreed upon rain/postponement date. Should Sky Elements be unable to perform the display(s) at the Event or otherwise cancel, Sky Elements shall be entitled to 33% of the contract price for each of the work flow processes completed. For example, if Sky Elements has completed the Show Programming workflow, Sky Elements shall be entitled to 66% of the display price (33% for Storyboard, 33% for Show Programing and Animation). Final delivery is deemed to have occurred upon Sky Elements' arrival at the display location on the display date. Customer also acknowledges that damages corresponding to lost opportunity by reason of cancellation are inherently difficult to calculate, and that the liquidated damages amounts set forth above are a reasonable attempt to measure and liquidate those highly speculative damages.

PAYMENT TERMS: Customer shall pay Sky Elements \$90,000 Customer shall submit a 50% deposit upon execution of this contract. The balance remaining for each display will be paid to Sky Elements the day prior to each display.

[Signatures to follow on next page]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SKY ELEMENTS, LLC

BY: _____

Date: _____

Preston Ward, Manager / General Counsel

CUSTOMER

BY: _____

Date: _____

Printed Name: _____

Title: _____

Addendum A Display Specifications

Display #1

Date of Event: 7/4/2023

Approximate Time of Display: 10:20PM

Estimated Number of Transitions: 8-11

Number of Drones in Display:
2 Flights- 100 drones/flight for 20 minute performance

Display Cost: \$90,000

Display Location #1:

Des Moines Marina
22307 Dock Ave S
Des Moines, WA 98198

Customer On-Site Day of Contact Information:

Name: Ashley Young

Cell Phone: (206) 870-9370

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 24th Ave S Improvements Project -
Right-of-Way Acquisition

FOR AGENDA OF: June 22, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: June 14, 2023

ATTACHMENTS:

1. Legal Description and Exhibit - Parcel #162204-9144, C. Wood
2. Appraisal Report
3. Administrative Settlement Recommendation
4. Temporary Easement, Warranty Deed and Real Property Voucher

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance *[Signature]*
- Human Resources _____
- Legal /s/ TG
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works *[Signature]*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for a fee simple acquisition and temporary construction easement on the Tax Parcel# 162204-9144 to construct 24th Ave S Improvements consistent with the approved 24th Project Right of Way Plans. The following motion will appear on the consent calendar:

Suggested Motion

Motion: “I move to approve and accept a fee simple acquisition of 987 SF and a temporary construction easement of 905 SF on Tax Parcel# 162204-9144, owned by Corenia C. Wood, as well as provide compensation to the owners in the amount of \$40,484.00 for said Right-of-Way acquisition as well as damages in the amount of \$25,150.00 for a total of \$65,634.00 (rounded), and further authorize the City Manager to sign the fee simple acquisition, the temporary construction easement and Real Property Voucher Agreement substantially in the form as submitted.”

Background

The 24th Ave S Improvements Project (Kent-Des Moines Rd. (SR 516) to S 223rd St) is an element of the adopted City of Des Moines Comprehensive Transportation Plan (CTP), Transportation Improvement Plan (TIP), and Capital Improvement Plan (CIP). This project is Segment 2 of the 24th Ave S Corridor Improvements, with future Segment 1 improvements designated between S 223rd St and S 216th St.

The 24th Ave S corridor is a critical north-south arterial roadway connecting Kent-Des Moines Road, two public schools, and multiple churches with the Des Moines Creek Business Park, Federal Aviation Administration regional headquarters, Prologis, SeaTac commercial aviation support, Angle Lake Sound Transit Light Rail Station, and SeaTac International Airport. The recently completed Transportation Gateway Projects just north of the project on S 216th Street and 24th Ave S, between S 216th Street and S 208th Street, have supported growing capacity and development as defined in the City's Comprehensive Transportation Plan.

This project proposes to construct sidewalks, bike lanes, reduced travel lane widths for traffic calming, two-way left turn lane, storm drainage, and illumination. The project will improve non-motorized user safety by the construction of bike lanes and ADA sidewalks on both sides of the roadway and enhanced pedestrian crossings near Midway Elementary and Pacific Middle schools.

At the February 13, 2020 City Council meeting, the City Council accepted \$3,663,432 from the Washington State Transportation Improvement Board (TIB) for project funding support to complete design, right-of-way acquisition, and construction.

On December 15, 2021, City staff held a virtual public open house to provide information and updates to the community. All properties along the proposed project were notified by mail of the public house as well as public notification via the City's website. Staff has also regularly updated the project website to include current progress of the project.

At the May 12, 2022 City Council meeting, the City Council approved the Draft Right of Way Plan for the 24th Ave S Improvements Project (Kent- Des Moines Rd (SR 516) to S. 223rd St and approved a task assignment with Parametrix for right-of-way acquisition services on the 24th Ave S Improvements Project under the 2022-2023 On-Call General Civil Engineering Services Contract. The consultant team is currently pursuing right-of-way acquisitions.

In order to facilitate the widening of 24th Ave S Segment II, the Project Team had determined that the requested fee simple acquisition and temporary construction easement, shown graphically on the Exhibits of Attachment 1, on Tax Parcel# 162204-9144 is necessary to secure property for placement of a retaining wall, curb & gutter, streetlights and pedestrian facilities. The requested action is consistent with the Council motion of May 12, 2022, approving the Draft ROW plan.

Discussion

The Project's ROW consultant, United Field Services and R.F. Duncan & Associated Inc., was tasked by the City to prepare an Appraisal Report for before/after valuation of the Parcel #162204-9144, C. Wood (Attachment 2). The Appraisal Report determined that the Total Just Compensation of the proposed fee simple, temporary construction easement and impacted site improvements was \$53,900.00. The property owner felt the offer was low and proposed a counter-offer of \$75,000. City staff and the

Project's ROW consultant reviewed the owner's counter-offer and recommended an administrative settlement amount of \$11,734, which bring the City's offer to a total of \$65,634.00 (Attachment 3). Upon review, the property owner agreed with the City's administrative settlement and the City staff proposes to move toward a negotiated settlement.

Parametrix's licensed surveyor prepared a legal description and Exhibit (Attachment 1) for the fee simple acquisition and temporary construction, in consistent the ROW plans endorsed by the City Council on May 12, 2022. Total cost for this ROW acquisition is \$65,634.00, plus closing and administrative costs. The fee simple acquisition would allow the City, and its assigns, to access, install and maintain the 24th Project's proposed retaining wall, streetlights and pedestrian facilities.

Alternatives

The City Council could elect not to approve the proposed ROW acquisition. This will delay the City's 24th Ave S Improvements Project construction schedule as the final design and alignment for the roadway requires the proposed ROW acquisition.

Financial Impact

The City's CIP Budget Worksheet include revenues to achieve full project funding and fund proposed fee simple acquisition

Recommendation

Staff recommends the adoption of the motion.

Council Committee Review

Not Applicable

EXHIBIT A
RIGHT OF WAY ACQUISITION DESCRIPTION
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144

THAT PORTION OF THE EAST HALF OF THE EAST HALF OF THE WEST HALF OF THE
SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 22
NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF
COUNTY ROAD NO. 1288 KENT DES-MOINES ROAD AND EAST OF COUNTY ROAD
NO. 919;

EXCEPT THE NORTH 462 FEET AND EXCEPT THE EAST 17.91 FEET THEREOF.

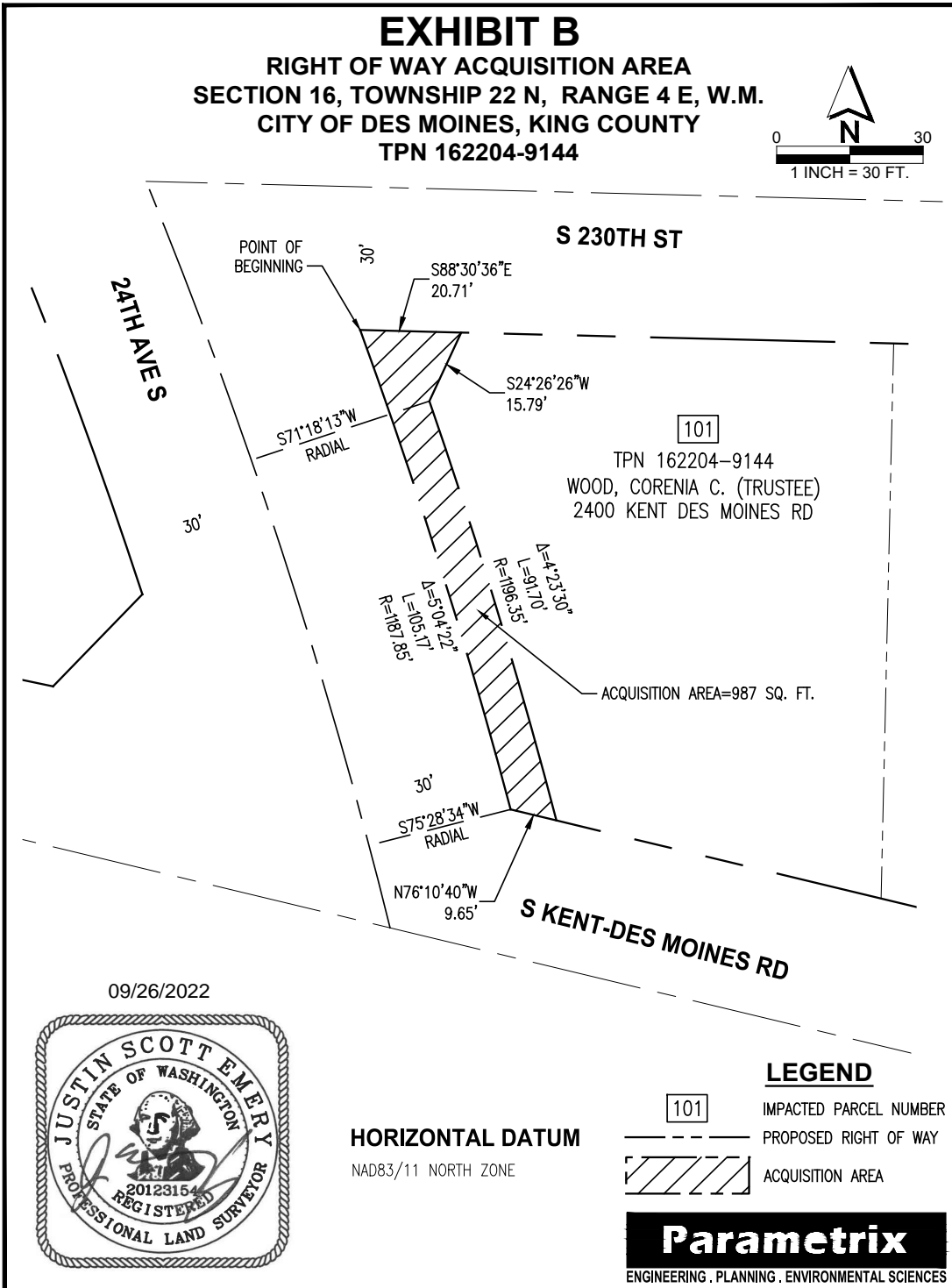
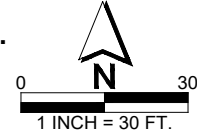
BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL, THENCE
ALONG THE NORTH LINE OF SAID PARCEL SOUTH 88°30'36" EAST 20.71 FEET;
THENCE SOUTH 24°26'26" WEST 15.79 FEET TO THE BEGINNING OF A NON-TANGENT
CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE OF WHICH BEARS
SOUTH 71°18'13" WEST, HAVING A RADIUS OF 1196.35 FEET;
THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°23'30"
FOR AN ARC LENGTH OF 91.70 FEET THE SOUTH LINE OF SAID PARCEL;
THENCE ALONG SAID SOUTH LINE NORTH 76°10'40" WEST 9.65 FEET TO THE
SOUTHWEST CORNER OF SAID PARCEL, SAID POINT ALSO BEING THE BEGINNING OF A
NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE OF WHICH
BEARS SOUTH 75°28'34" WEST, HAVING A RADIUS OF 1187.85 FEET;
THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°04'22"
FOR AN ARC LENGTH OF 105.17 FEET TO THE **POINT OF BEGINNING**

SAID PORTION CONTAINING 987 SQUARE FEET, MORE OR LESS

09/26/2022



EXHIBIT B
RIGHT OF WAY ACQUISITION AREA
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144



09/26/2022



HORIZONTAL DATUM
 NAD83/11 NORTH ZONE

- LEGEND**
- 101 IMPACTED PARCEL NUMBER
 - PROPOSED RIGHT OF WAY
 - ACQUISITION AREA



EXHIBIT A
TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144

THAT PORTION OF THE EAST HALF OF THE EAST HALF OF THE WEST HALF OF THE
SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 22
NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF
COUNTY ROAD NO. 1288 KENT DES-MOINES ROAD AND EAST OF COUNTY ROAD
NO. 919;

EXCEPT THE NORTH 462 FEET AND EXCEPT THE EAST 17.91 FEET THEREOF.

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL, THENCE ALONG
THE NORTH LINE OF SAID PARCEL SOUTH 88°30'36" EAST, 20.71 FEET TO THE
TRUE POINT OF BEGINNING;

THENCE SOUTH 11°53'23" EAST, 15.19 FEET TO THE BEGINNING OF A
NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE WHICH
BEARS SOUTH 71°28'23" WEST, HAVING A RADIUS OF 1205.35 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
04°27'03" FOR AN ARC LENGTH OF 93.63 FEET TO A POINT ON THE SOUTH LINE
OF SAID PARCEL;

THENCE ALONG SAID SOUTH LINE NORTH 76°10'40" WEST, 10.19 FEET TO THE
BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE
RADIAL LINE WHICH BEARS SOUTH 75°41'43" WEST, HAVING A RADIUS OF
1196.35 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
04°23'30" FOR AN ARC LENGTH OF 91.70 FEET;

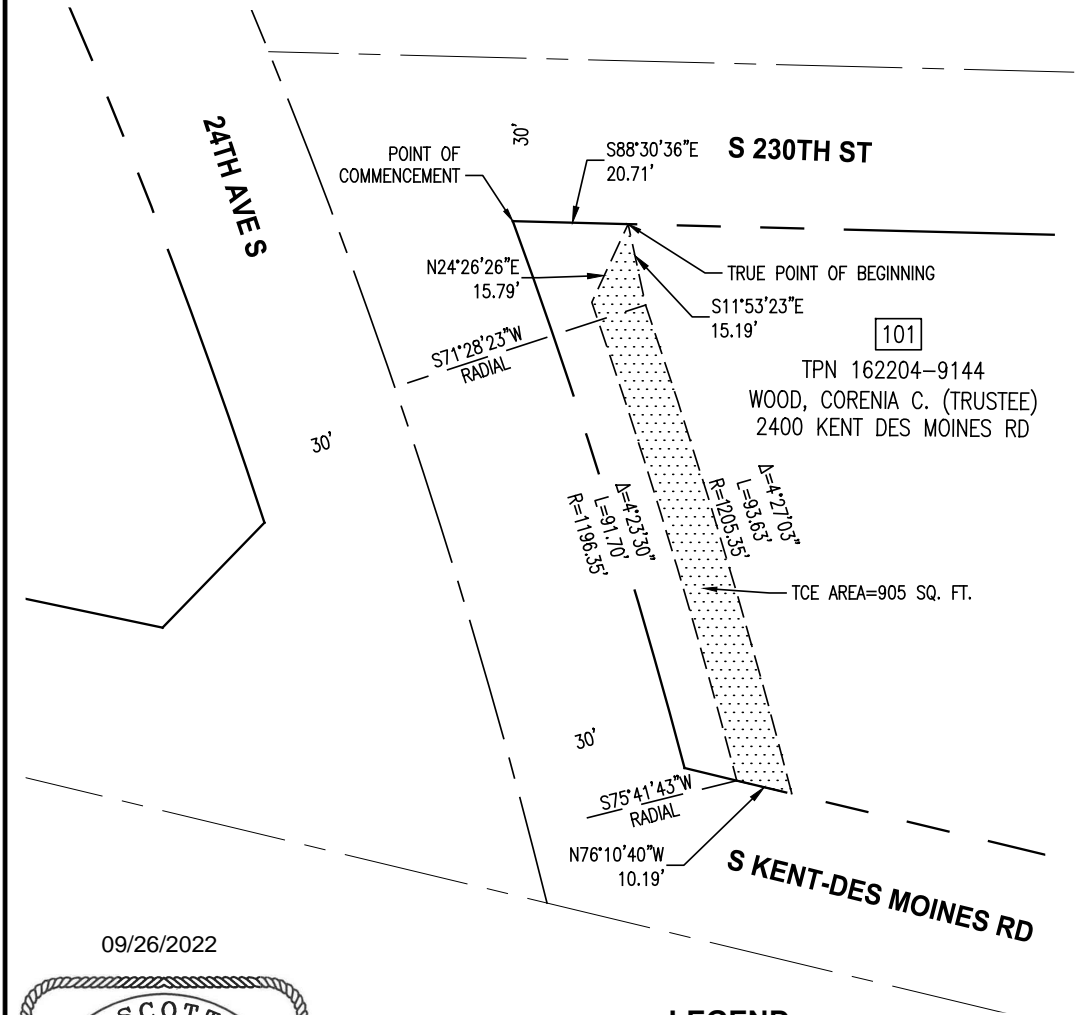
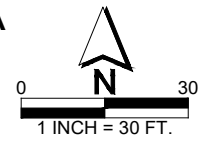
THENCE NORTH 24°26'26" EAST, 15.79 FEET TO THE **TRUE POINT OF BEGINNING**

SAID PORTION CONTAINING 905 SQUARE FEET, MORE OR LESS

09/26/2022



EXHIBIT B
TEMPORARY CONSTRUCTION EASEMENT AREA
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144



09/26/2022



LEGEND

- 101 IMPACTED PARCEL NUMBER
- TEMPORARY CONSTRUCTION LIMIT
- TEMPORARY CONSTRUCTION EASEMENT (TCE)

HORIZONTAL DATUM

NAD83/11 NORTH ZONE



Appraisal Report

**City of Des Moines – 24th Avenue South; Segment 2 – Roadway
Improvements (Job No. 214-1792-033)**

**Corenia C. Wood (Trustee)
Parcel No. 162204-9144**

Located at

2400 S. Kent-Des Moines Road, Des Moines, WA.



As of January 6, 2023

Prepared for:

**Universal Field Services
111 Main Street, #105
Edmonds, WA 98020**

**R. F. DUNCAN & ASSOCIATES, INC.
Richard F. Duncan, MAI**

R. F. DUNCAN
& ASSOCIATES INC.

APPRAISERS & CONSULTANTS IN REAL ESTATE

February 13, 2023

Mr. Mitch Legal, SR/WA
Universal Field Services
111 Main Street, #105
Edmonds, WA 98020

RE: City of Des Moines – 24th Avenue South; Segment 2 – Roadway Improvements (Job No. 214-1792-033); Corenia C. Wood (Trustee) Parcel No. 162204-9144; 2400 S. Kent-Des Moines Road, Des Moines, WA.

Dear Mr. Legal:

At your request, we have made an inspection and prepared an appraisal of the above referenced parcel. This appraisal is an appraisal report as defined by the Uniform Standards of Professional Appraisal Practice (USPAP) formulated by the Appraisal Foundation. This report has been prepared in compliance with USPAP, and all appraisal requirements of the Washington State Department of Transportation (WSDOT).

The appraisal problem is to support the impact on the fair market value of the subject parcel due to the proposed fee acquisition consisting of approximately 987 square feet and a temporary construction easement consisting of approximately 905 square feet, which is needed for the proposed project.

Based upon our investigation and analysis of available information, the fair market value of the subject parcel, in fee simple estate, as of January 6, 2023, was:

Fair Market Value Before Acquisition and Project:	\$259,150
Fair Market Value After Acquisition and Project:	<u>\$205,250</u>
Difference:	\$53,900

The reader's attention is directed to the Underlying Assumptions and Limiting Conditions, which are included in the accompanying appraisal report.

Respectfully submitted,

Richard F. Duncan

Richard F. Duncan, MAI
WA State General Cert. No. 1100496

Anthony Duncan

Anthony Duncan Appraiser
WA Appraisal Trainee Cert. No.20123052

TELEPHONE (360) 951-8258 • FAX (360) 867-1059
PO BOX 12300 • OLYMPIA, WASHINGTON 98508

Table of Contents

Letter of Transmittal..... I

Table of Contents.....II

Certificate of Appraiser..... Page 1

Appraisal Problem and Larger Parcel Analysis..... Page 2

Summary of Salient Facts..... Page 3

Subject Maps and Photos..... Page 4

Assumptions and Limiting Conditions.....Page 10

Project Description Page 16

Property Rights Acquired/Effects of Acquisition and Project..... Page 17

Neighborhood Description..... Page 18

Site Description..... Page 20

Highest and Best Use Analysis..... Page 24

Property Valuation..... Page 26

Report of Owner Contact..... Page 38

Appraiser’s Qualifications..... Page 40

.....Addenda.....

Map of Comparable Sales.....

Market Data Sheets

Drainage Details

Title Report

WSDOT NARRATIVE APPRAISAL REPORT

**Universal Field Services and
City of Des Moines**

Parcel No.: 162204-9144
Owner: Corenia C. Wood (Trustee)
Federal Aid No.: N/A
Project: City of Des Moines – 24th Avenue South; Segment 2 – Roadway Improvements
R/W Plan Title: City of Des Moines – 24th Avenue South; Segment 2 – Roadway Improvements
Plan Sheet: RW3 of RW5
Plan Approval Date: 9-14-2022
Date of Last Map Revision: N/A

CERTIFICATE OF APPRAISER

I certify that, to the best of my knowledge and belief:

- ◆ the statements of fact contained in this appraisal are true and correct;
- ◆ the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conclusions, and are my personal, unbiased professional analyses, opinions, and conclusions;
- ◆ I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment;
- ◆ I have no present or prospective interest in the property that is the subject of this appraisal, and I have no personal interest or bias with respect to the parties involved;
- ◆ my compensation is not contingent upon the reporting of a predetermined value or direction that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event;
- ◆ my analyses, opinions, and conclusions were developed, and this appraisal has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions;
- ◆ I have made a personal inspection of the property that is the subject of this report. I have made a personal inspection of the comparable sales contained in the report addenda;
- ◆ I have afforded the owner or a designated representative of the property that is the subject of this appraisal the opportunity to accompany me on the inspection of the property;
- ◆ No one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated);
- ◆ I have disregarded any increase in Fair Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation. I have disregarded any decrease in Fair Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation, except physical deterioration within the reasonable control of the owner;
- ◆ this appraisal has been made in conformity with the appropriate State and Federal laws and requirements and complies with the contract between the agency and the appraiser.

The property has been appraised for its fair market value as though owned in fee simple, or as encumbered only by the existing easements as described in the property information certificate dated N/A. I last made a personal inspection of the property that is the subject of this report on 1-6-2023.

The **Date of Value** for the property that is the subject of this appraisal is 1-6-2023.

Per the FAIR MARKET VALUE definition herein, the value conclusions for the property that is the subject of this appraisal are on a cash basis and are:

Fair Market Value Before Acquisition and Project:	\$259,150
Fair Market Value After Acquisition and Project:	<u>\$205,250</u>
Difference:	\$53,900

Richard F. Duncan, MAI

Anthony Duncan

Date Signed: 2-13-23



WA Gen. Cert. No. 1100496



WA Appraisal Trainee Cert.
No. 20123052

CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

DEFINITIONS & FACTUAL DESCRIPTION

Appraisal Problem/Preliminary Discussion

The subject consists of a 9,147 square foot (0.21 acre) site improved with a single-family residence located at 2400 S. Kent-Des Moines Road, Des Moines, WA. The project proposes a fee acquisition consisting of approximately 987 SF and a temporary construction easement (TCE) consisting of approximately 905 SF. There will be no damages to the subject parcel, except for a cost to cure to apply a vegetative screen for the residence from the new sidewalk.

Larger Parcel Analysis

In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages. The subject owners do not own any contiguous property. The larger parcel for the purpose of this appraisal is Tax Parcel No. 162204-9144, consisting of 9,147 square feet (0.21 acre).

DEFINITIONS & FACTUAL DESCRIPTION

Summary of Salient Facts and Conclusions

Type of Appraisal:	Appraisal Report.
Owners of Record:	Corenia C. Wood as Trustee of the Corenia C. Wood Revocable Living Trust.
Location:	2400 S. Kent-Des Moines Road, Des Moines, WA
Tax Parcel Number:	162204-9144.
Date of Value:	January 6, 2023.
Zoning:	Single-Family Residential (RS-9600).
Improvements:	The subject is improved with a single-family residence.
Highest and Best Use Site as Vacant:	Residential Development.
Subject as Improved:	Continued use "as is".
Land Area Before Acquisition:	9,147 square feet (0.21 acre).
Land Area After Acquisition:	8,160 square feet (0.19 acre).
Fee Acquisition:	987 square feet.
Permanent Easement:	None.
Temporary Construction Easement:	905 square feet.

Fair Market Value, as of January 6, 2023:

Value of Subject in Before Situation:	\$259,150
Value of Remainder:	\$205,250
Value Difference:	\$53,900

DEFINITIONS & FACTUAL DESCRIPTION

SUBJECT PLOT PLAN

Before Area: 9,147 SF	After Area: 8,160 SF	Fee Acquisition: 987 SF
Permanent Easement: -0-	Temporary Construction Easement: 905 SF	
Limited Access/Access Notes: N/A		



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

DEFINITIONS & FACTUAL DESCRIPTION

Aerial Photo

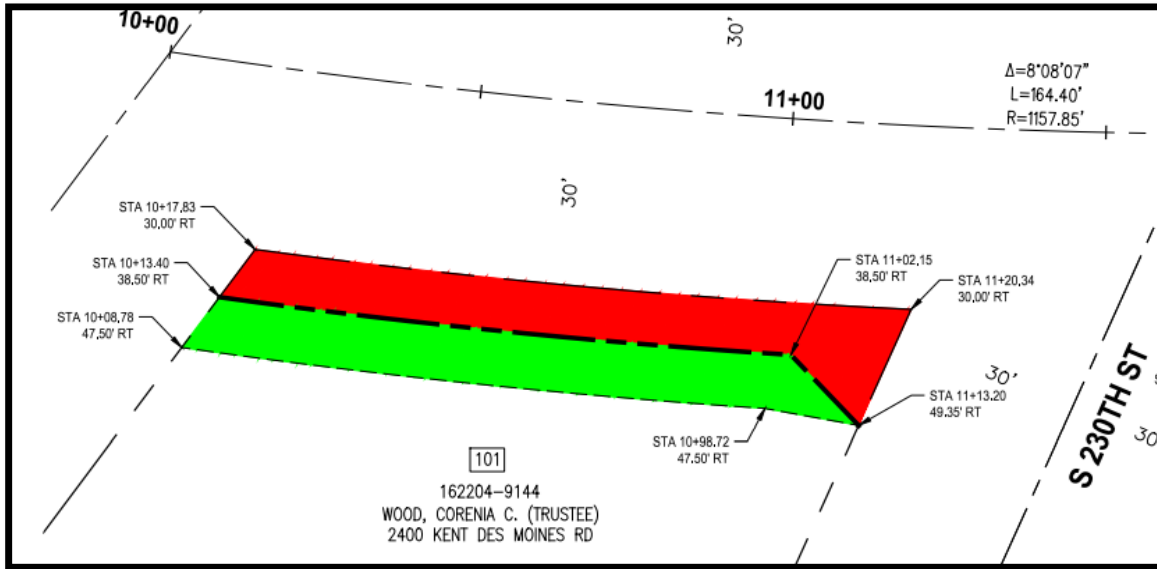


CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

DEFINITIONS & FACTUAL DESCRIPTION

ROW Way Plan Sheet

RW3



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

DEFINITIONS & FACTUAL DESCRIPTION

Subject Photos
(All Photos Taken by Anthony Duncan, on November 29, 2022)



Facing East Along the Subject's S. 230th Street.



Facing South Along the Subject's 24th Avenue S. Frontage.

DEFINITIONS & FACTUAL DESCRIPTION

Subject Photos

(All Photos Taken by Anthony Duncan, on November 29, 2022)



Facing East Along the Subject's S. Kent-Des Moines Road Frontage.



Facing North Along the Subject's 24th Avenue S. Frontage.

DEFINITIONS & FACTUAL DESCRIPTION

Subject Photos

(Photos Taken by Anthony Duncan, on November 10, 2022)



Facing South Towards the Proposed Acquisition Area.



Facing SE Towards the Subject Residence.

DEFINITIONS & FACTUAL DESCRIPTION

ASSUMPTIONS AND LIMITING CONDITIONS

1. The property descriptions supplied to the appraiser are assumed to be correct.
2. No survey of the properties has been made by the appraiser, and no responsibility is assumed in connection with such matters. Maps in this study are included only to assist the reader in visualizing the property. Property dimensions and size should be considered as approximate.
3. No responsibility is assumed for matters of a legal nature affecting title to the property, nor is an opinion of title rendered. The title is assumed to be good and merchantable.
4. Information furnished by others is assumed to be true, correct and reliable. A reasonable effort has been made to verify such information; however, no responsibility for its accuracy is assumed by the appraiser.
5. All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report. The properties are assumed to be under responsible ownership and competent management.
6. It is assumed that there are no hidden or un-apparent conditions of the properties, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
7. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the properties, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the properties. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the properties. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The employer (client) is urged to retain an expert in this field, if desired.
8. Unless otherwise stated in this report, no environmental impact studies were either requested or made in conjunction with this appraisal, and the appraiser hereby reserves the right to alter, amend, revise, or rescind any of the value opinions based upon any subsequent environmental impact studies, research, or investigation.
9. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
10. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.
11. It is assumed that all required licenses, consents, or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

DEFINITIONS & FACTUAL DESCRIPTION

12. The appraiser will not be required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been previously made therefore.
13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event, only with properly written qualification and only in its entirety.
14. Neither all nor any part of the contents of this report, or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales, or any other media without written consent and approval of the appraiser. Nor shall the appraiser, employer, firm, or professional organization of which the appraiser is a member be identified without written consent of the appraiser.
15. It is assumed that the public project which is the object of this report will be constructed in the manner proposed and in the foreseeable future.
16. Acceptance of and/or use of this report constitutes acceptance of the foregoing assumptions and limiting conditions.
17. The appraiser is current with respect to the continuing education requirements of the Appraisal Institute for the MAI designation.

DEFINITIONS & FACTUAL DESCRIPTION

Assignment Scope of Work

The client of this report is Universal Field Services and the City of Des Moines. Universal Field Services and the City of Des Moines require that in addition to compliance with USPAP this report must also meet the WSDOT Standards as set forth in the WSDOT R/W Manual Chapter 4, the WSDOT Appraisal Report Guide, and Federal Regulations as defined in 49 CFR part 24.

In the event of conflict or dispute in determining correct appraisal procedures that are not addressed in the standards noted above the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) will be the determining authority.

Under 49 CFR, Universal Field Services and the City of Des Moines are required to take an active role in developing the Scope of Work. However, it is the ultimate responsibility of the appraiser to develop a complete Scope of Work and produce a credible appraisal report. The appraisers SCOPE of WORK is included in Section 5 of the report. The report must adhere to the WSDOT and Federal Standards as described above and the specific task assignment for this parcel. The task assignment for this report must be included in the report or addendum.

Eminent Domain Appraisal Information and Definitions

The intended use of this appraisal is to provide information to the client, as a basis for acquiring the property rights needed for the proposed project.

Unless stated otherwise in the report, the property rights appraised constitute the fee simple interest.

"Fair Market Value" is defined as: the amount in cash which a well-informed buyer, willing but not obliged to buy the property, would pay, and which a well-informed seller, willing but not obligated to sell it would accept, taking into consideration all uses to which the property is adapted and might in reason be applied (Washington Pattern Instruction 150.08).

The intended users of this report is Universal Field Services and the City of Des Moines. Additionally, its funding partners may review the appraisal as part of their oversight activities. A copy of this report may be provided to the property owner as a courtesy and part of the good faith bargaining process. However, this does not imply that the property owner has standing as an intended user and is not authorized to publish or use the report for any other purpose.

Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) and Washington State RCW 8.26.180 both require that the owner or owner's representative be given an opportunity to accompany the appraiser during the inspection of the property. "If the appraiser is advised that the property owner is represented by legal counsel, all owner contact and property inspections must be arranged through the owner's attorney, unless the attorney specifically authorizes the appraiser to make direct contact with the owner".

In condemnation, the larger parcel is the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for consideration of severance damages. This is also known as the "parent parcel".

Extraordinary assumptions or hypothetical conditions include but may not be limited to the following:

DEFINITIONS & FACTUAL DESCRIPTION

State and Federal standards require the appraiser to disregard any decrease or increase in the fair market value of the subject caused by the project. The appraiser may cite the Jurisdictional Exception Rule to comply with this requirement which is found in RCW 8.26.180 and WAC 468-100-102 (2).

The after value is based on the assumption that the project has been constructed as proposed in the Right-of-Way plans as of the date of value.

The subject has been appraised as clean. However, apparent environmental hazards or contamination observed or discovered during the appraisal process must be noted in the report.

DEFINITIONS & FACTUAL DESCRIPTION

ACQUISITION APPRAISAL SALIENT INFORMATION

TYPE OF REPORT

This appraisal is an appraisal report as defined by the Uniform Standards of Professional Appraisal Practice (USPAP) formulated by the Appraisal Foundation. This report has been prepared in compliance with USPAP, and the Appraisal Requirements of the Washington State Department of Transportation (WSDOT).

PROPERTY RIGHTS APPRAISED

Unless specified otherwise in this report, the property rights appraised constitute the fee simple interest.

COMPETENCE OF APPRAISER

The appraiser has both the knowledge and experience required to competently perform this appraisal.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal was to estimate the fair market value of the subject, both immediately prior to the acquisition of the property rights acquired and the construction of the project, and after the acquisition of the property rights required and the construction of the project, and to allocate the value difference between the property rights acquired and any damages to the remainder.

DEFINITION OF CASH EQUIVALENT

A price expressed in terms of cash (money) as distinguished from a price which is expressed all or partly in terms of the face amount of notes or other securities which cannot be sold at their face amount. Market data in this appraisal are compared to the subject on an all-cash basis to satisfy the definition of Fair Market Value.

DEFINITION OF CLIENT

The term "Client" is defined in USPAP as -
The party or parties who engage an appraiser (by employment or contract) in a specific assignment.

The clients (intended users) are Universal Field Services and the City of Des Moines.

SALES HISTORY

The subject has not sold in the last 5 years, and it is not currently listed for sale.

DEFINITIONS & FACTUAL DESCRIPTION

SCOPE OF APPRAISAL

As part of this appraisal assignment, the appraisers made a number of independent investigations and analyses. In conducting our investigation, various governmental entities were contacted for demographic data, land policies and trends, and growth estimates. Neighborhood data were supplemented by physical inspection of the defined area. Information regarding zoning, utilities, and other limitation on site utilization was obtained. Both the site and the surrounding area were inspected to determine highest and best use. The market was analyzed for past trends and current data; estimated income, absorption and occupancy levels, and anticipated expenses were based upon this market evidence.

A diligent search for comparable data was conducted, and comparable information was obtained from both public and private sources. Attempts were made to contact the buyers or sellers or other knowledgeable third parties to verify that the transactions were at arm's length, cash equivalent, and market reflective. A reconciliation of all data considered was then completed, resulting in the final estimate of value, as set forth herein.

DEFINITIONS & FACTUAL DESCRIPTION

PROJECT DESCRIPTION

The 24th Ave S Improvements Project (Segment 2) will construct improvements on 24th Ave S, between Kent-Des Moines Road and S 223rd Street. These improvements include sidewalks, bike lanes, reduced travel lane widths, a two-way left turn lane, storm drainage, and decorative street lighting.

DEFINITIONS & FACTUAL DESCRIPTION

PROPERTY RIGHTS TO BE ACQUIRED AND EFFECTS OF ACQUISITION/PROJECT: (Include description of area being acquired in fee, in easement and access if applicable)

The project proposes to acquire some ROW in fee consisting of approximately 987 SF. The proposed fee acquisition is a strip of land along the subject's 24th Avenue South frontage, and it measures approximately 8.50-feet in east-west depth from the subject's SW corner and expands to approximately 19.35-feet in east-west depth over the subject's NW corner.

The project also proposes a TCE consisting of approximately 905 SF along the proposed fee acquisition. The proposed TCE will expire on March 31, 2025, which is a total term of 2 years and 3 months (2.25 years) from the date of the value in this appraisal. The TCE area is a strip of land that measures approximately 9-feet in east-west depth starting from the subject's SW corner and tapers off to a point with the proposed fee acquisition area at the subject's NW corner.

Landscaping acquired includes approximately 500 SF of grass lawn, 2 mature deciduous trees, 400 SF of asphalt driveway, and 105 LF of 4-foot-tall chain-link fencing.

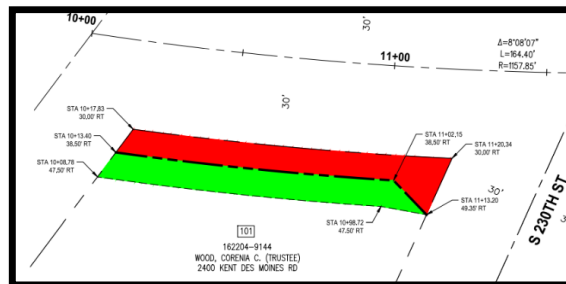
The subject has a large evergreen tree with branches which have been sculpted to spread out along the subject's chain link fence to provide an effective vegetative screen for the residence from the intersection of 24th Avenue S. and Kent-Des Moines Road. The large tree will be removed by the project and we have addressed this impact as a cost to cure to replace the lost screening function.

The project will also impact a water spigot, and we have addressed this as a cost to cure damage.

The project will also remove 3 medium sized shrubs which are located within the Existing ROW, and we have not applied any compensation for these improvements.

The new right of way will be approximately 20 feet, at its closest point to the main body of the residence (SW corner of the residence), and approximately 12 feet, at its closest point to the residence's enclosed porch. The travelled way of the street will be over 40 feet from the residence. The project will install a sidewalk, and a bike line, with the traveled way of the road coming no closer to the residence, than in the before situation. The subject is also approximately 20-feet above grade from the road. We have concluded the subject will not suffer any proximity damages, but we believe the market would seek to mitigate the closeness of the proposed sidewalk to the residence by installing a visual barrier, which is addressed in the cost to cure to replace the lost screening function of the mature tree as discussed above.

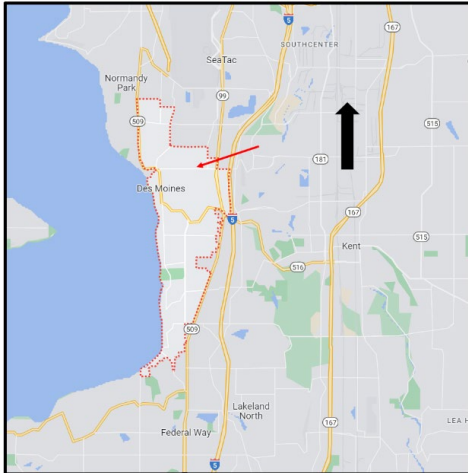
There are no other damages to the subject parcel.



DEFINITIONS & FACTUAL DESCRIPTION

NEIGHBORHOOD DESCRIPTION

The subject neighborhood is within the city limits of Des Moines, WA., within southwesterly King County. The City of Des Moines is located adjacent to Puget Sound, which is its westerly border, and it is bordered on the north by the Cities of SeaTac, and Normandy Park; on the south by the City of Federal Way; and on the east by the City of Kent.



The City of Des Moines has a 2022 population of approximately 33,532, and it has experienced a growth in the population of approximately 2 percent since the 2020 census.

The subject’s neighborhood is a primarily residential area of Des Moines, and its approximate boundaries are described below:

Neighborhood Boundaries

North:	City of Limits of Des Moines
South:	SR-516
East:	Highway 99
West:	Puget Sound

Physical Profile:

Predominate Land Use: The primary land use in the neighborhood is single family and multiple family residential development, with a variety of commercial shopping and services along its easterly, and westerly boundaries.

Neighborhood Cycle: The neighborhood is in a period of slow growth.

Property Maintenance: The properties in the neighborhood are generally maintained in average condition.

Road Infrastructure: Most of the newer streets in the neighborhood are asphalt paved with sidewalks, concrete curb, and gutter. Some of the older established streets include paved surfaces with gravel shoulders.

Transportation Routes/Linkage: Highway 99 along its easterly boundary, and Interstate Five which runs north-south just east of the neighborhood, allowing convenient commuting times to the north and south. Des Moines is located just a few miles south of the Sea-Tac International Airport.

Governmental Profile:

Zoning & Land Use Policy: The neighborhood includes a mix of single family, multiple family, and commercial zoning classifications.

DEFINITIONS & FACTUAL DESCRIPTION

- Protective Services:* The neighborhood enjoys police and fire protection.
- Utilities:* All of the neighborhood has power, telephone, public sewer and public water available.
- Environmental Concerns:* None noted.
- External Obsolescence:* None noted.

Development Trends

Most of the housing ranges from approximately \$500,000 to \$900,000, and recent sales of single-family lots range mainly from \$150,000 to \$300,000. Raw residential land ranges mainly from \$7.00 to \$12.00 per SF depending upon parcel size and potential development density.

Summary:

The neighborhood is located along Puget Sound in southwesterly King County, within a few miles of the SeaTac International Airport. The neighborhood is in close vicinity to major transportation routes and services, and it is expected that the neighborhood will continue to grow at a slow pace into the foreseeable future.

DEFINITIONS & FACTUAL DESCRIPTION

SITE DESCRIPTION

The following is based on available public records, verified by an on-site inspection. Please refer to map below:



Location: The subject’s address is 2400 S. Kent-Des Moines Road, Des Moines, WA, which is on the east side of 24th Avenue S.

Shape & Size: The subject parcel consists of approximately 9,147 SF (0.21 acres), according to the project ROW plans and the King County GIS. The subject is mostly rectangular in shape.

Topography: The subject is approximately 20 feet above grade 24th Avenue S. and it is mostly level in topography with exception to a slight slope down towards S. 230th Street from the subject’s driveway.

Adjacent Properties:

Abutting Subject Property:

Abuts	Description
<i>North:</i>	S. 230 th Street.
<i>South:</i>	S. Kent-Des Moines Road.
<i>East:</i>	Single-Family Residence.
<i>West:</i>	24 th Avenue S.

Frontage:

Street	Frontage
S. Kent-Des Moines Rd.	80 ± Feet.
24 th Avenue S.	105 ± Feet.
S. 230 th Street	110 ± Feet.

Access: The subject has a paved access to S. 230th Street.

Flood Plain and Critical Area Impacts: According to the King County GIS, the subject is not impacted by any flood plains or wetlands.

DEFINITIONS & FACTUAL DESCRIPTION

Environmental Hazards & Nuisances:

There was no Phase One Environmental Assessment available on the subject for this assignment. We did not notice any obvious areas of contamination in our site inspection, but we are not qualified to detect the presence of environmental contamination, and the client may wish to have a level one assessment performed by a qualified person in that field. We have appraised the subject as "clean".

Easements:

There are no easements which negatively impact the value of the subject parcel. Please refer to the title report in the addenda for a full list of easements and other encumbrances.

Utilities:

Available utilities include power, telephone, public water, and public sewer.

Soils:

Based on the subject's use and the surrounding uses, the subject soil appears conducive to most types of development.

Covenants, Conditions & Restrictions:

None.

DEFINITIONS & FACTUAL DESCRIPTION

ZONING

The subject is zoned Single-Family Residential (RS-9600), by King County. The principal objective and purpose to be served by this zone and its application is to create a living environment of the highest standards for single-family dwellings. Other related uses contributing directly to a complete living environment are considered compatible and therefore also permitted. A further related consideration is to make it possible to more efficiently and economically design, install, and maintain all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. The minimum lot size is 9,600 SF.

TAXES

The subject is assessed for real estate taxes as follows:

Tax Parcel No. 162204-9144

Land:	\$138,000 (\$15.09/SF)
Improvements:	<u>\$326,000</u>
Total:	\$464,000
2023 Taxes	\$4,889.75

DEFINITIONS & FACTUAL DESCRIPTION

IMPROVEMENTS DESCRIPTION

The subject is improved with a 1-level single-family residence that was built in 1960. The King County Assessor's Records describes the building as having 1,307 SF, 3 bedrooms, and 1½ baths. The subject is also improved with a 420 SF attached garage.

Other improvements include some landscaping, fencing, and a paved driveway.

The proposed project will not impact the subject's building improvements and they are not described in detail or valued in this report.

ANALYSIS OF DATA AND OPINION OF APPRAISER

HIGHEST AND BEST USE

The Appraisal of Real Estate, 14th Edition, a publication of the Appraisal Institute, defines highest and best use for a property as:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."

Summarizing the Above:

- The use must be within a realm of *probability*, i.e., it must be likely, not speculative or conjectural.
- The use must be *legal*.
- The use must be *physically possible*.
- The use must be *financially feasible*.
- The use must be such as to return to land the highest net return (*maximally productive*).

Data collected concerning the surrounding neighborhood and the subject property is analyzed to provide the evidence upon which the highest and best use conclusion is based. The highest and best use analysis allows an appraiser to gradually narrow the field of possible uses by testing it with the criteria above. The highest and best use of a property is the foundation for the selection and analysis of market data and is the basis upon which a property is valued.

AS VACANT

The Highest and Best Use of land or a site as though vacant assumes that a parcel of land is vacant or can be made vacant by demolishing any improvements. The questions to be answered in this analysis are: If the land is, or were, vacant, what use should be made of it? What type of building or other improvement, if any, should be constructed on the land, and when?

Legally Permissible

Legal considerations which impact the subject include governmental restrictions such as zoning and comprehensive plan classifications.

The subject's zoning of RS-9600 supports residential development with minimum lot size of 9,600 SF. The subject is 9,147 SF and it is considered to be a legally non-conforming homesite, with respect to its size of under 9,600 SF.

The legal considerations support residential development of the subject as one homesite.

Physically Possible

The subject's location and its physical characteristics are analyzed in this section.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Location

The subject is in a residential neighborhood in close proximity to major transportation linkages and services. The subject is surrounded by residential development. The location supports a residential development of the site as vacant.

Physical Characteristics

Size, shape, soils, and topography affect the uses to which a site may be developed. The utility of a parcel may depend on its frontage and depth. Irregularly shaped parcels may cost more to develop and, when developed, may have less utility than a rectangular parcel.

The subject's shape, size, available utilities, and topography are conducive to residential development.

Financially Feasible

This analysis involves consideration of those uses determined to be legally permissible and physically possible in order to establish those uses which are financially feasible. The subject residential market is presently very strong, with many single-family sites being acquired and developed. Though interest rates have increased recently, there is still significant present demand, and we believe that financial considerations support development of the subject for residential application.

Maximally Productive

After considering the legally permissible, physically possible, and financially feasible uses to which the subject could be applied, we believe the highest and best use of the subject site as vacant is for residential development as one homesite.

Highest and Best Use as Improved

The Highest and Best Use of the subject as improved is for continued use as a single-family residence.

ANALYSIS OF DATA AND OPINION OF APPRAISER

PROPERTY VALUATION

The Cost Approach, Income Approach and Sales Comparison Approach are the three basic techniques or approaches to value when appraising real property.

In applying the Cost Approach, the objective is to estimate the difference in worth to a buyer, between the property being appraised and a newly constructed building having optimal utility. The cost to construct a reproduction of, or replacement for, the existing structure and site improvements is estimated, and a deduction is made for all accrued depreciation present. When the value of the site is added to this figure, the result is an indication of value, under the principle of substitution.

In the Sales Comparison Approach, market value is estimated by comparing the subject property to similar properties that have recently sold, are listed for sale, or are under contract to be sold. A major premise of this approach is that the market value of a property is directly related to the prices of comparable, competitive properties. The comparative analysis focuses on similarities and differences among properties and transactions that affect value. These may include differences in the property rights, the motivations of buyers and sellers, financing terms, market conditions at the time of sale, size, location, physical features, and, if the properties produce income, economic characteristics. This approach will be used to support the market value of the subject land.

Income-producing real estate is typically purchased as an investment, and from an investor's point of view earning power is the critical element affecting value. An investor who purchases income-producing real estate is essentially trading present dollars for the right to receive future dollars. The Income Approach to value consists of methods, techniques and mathematical procedures used to analyze a property's capacity to generate future income, and to convert this income into an indication of present value.

The Income and Cost Approaches would not yield credible value conclusions for the subject and they are not applied. The Sales Comparison Approach is applied in supporting the market value of the subject land.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Site Valuation

Sales Comparison Approach

Scope of Data Search

In searching for comparable sales data, we confined the search criteria to land sales within the subject's surrounding area for the period January 01, 2019, to the date of this appraisal. Sales sources utilized included, The Northwest Multiple Listing Service and the King County Public Records. Individual market data sheets for each sale, along with property sketches and photographs, are included in the addenda of this report. Confirmation of each sale has been obtained from buyer, seller, broker, or other parties believed to be knowledgeable about the details of the transaction, whenever possible. When direct verification was not possible, we relied upon public records or similar data sources.

Unit of Comparison

The comparable sales are analyzed on a price per homesite basis as this is the most prevalent indicator of value employed by market participants.

Adjustments

Lack of uniformity within the available comparable sales data prevents the direct extraction of adjustments. General analysis reflecting market behavior is used to determine which comparables are superior or inferior to the subject. This analysis establishes value parameters for the subject, allowing for a final conclusion of value.

Table of Comparable Land Sales

Sale	Location	Date	Price	Size	\$/SF	Zoning	Comments
1	Res. Site 1231 S. 234th Place, Des Moines, WA	10-22	\$285,000	7,221 SF	\$39.47	RS-7200	This is a newly subdivided homesite that is mostly rectangular in shape. The site is mostly level in topography with all public utilities available. The parcel is located towards the end of a cul-de-sac.
2	Res. Site S. of 20938 Marine View Drive SW, Normandy Park, WA	7-22	\$325,000	14,400 SF	\$22.57	R-15	This is a rectangular shaped homesite in Normandy Park. The site is mostly level with all public utilities available. Located in an area of upscale homes.
3	Res. Site 24719 15 th Ave. S. Des Moines, WA	3-22	\$225,000	7,500 SF	\$30.00	RS-7200	Rectangular shaped homesite consisting of 7,500 SF. The site is mostly level with all public utilities. The site has an older mobile home of no value.
4	Res. Site 27509 148th Ave SE, Kent, WA	4-21	\$210,000	5,903 SF	\$35.58	SR-6	This is a rectangular shaped parcel zoned for single-family residential. The parcel has all utilities available, and it is level in topography. It is located in a newer residential subdivision.
5	Res. Site SW corner of Cedar Street & Hazel Avenue, Kent, WA	6-22	\$217,000	5,500 SF	\$39.45	SR-6	This is a rectangular shaped parcel zoned for residential development. This parcel is mostly level in topography, and it has water, sewer, and electricity in the street.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Comparative Analysis: The comparables are now compared to the subject for major value influencing characteristics including location, site size, topography, and market conditions at the time of sale. The comparables are all cash equivalent and they are considered to be market transactions.

Comparable One is located on S. 234th Place in Des Moines, approximately 1.0 miles SW of the subject. This comparable is roughly equal to the subject for its date of sale, zoning, size, topography, and utilities. This comparable is superior for its more interior location. Overall, this comparable is considered to be a high value indicator at \$285,000.

Comparable Two is located on Marine View Drive SW in Normandy Park, approximately 2.0 miles NW of the subject. This comparable is roughly equal for its topography, utilities, and its homesite potential. This comparable is superior for its larger size and more interior location. Overall, this comparable is considered to be a high value indicator at \$325,000.

Comparable Three is located on 15th Ave. S. in Des Moines, approximately 1.30 miles SW of the subject. This comparable is roughly equal to the subject for its zoning, size, topography, and utilities. This comparable is inferior for its slightly older date of sale. Overall, this comparable is considered to be a low value indicator at \$225,000.

Comparable Four is located on 148th Ave SE. in Kent, approximately 7.90 miles SE of the subject. This comparable is roughly equal to the subject for its topography and utilities. This comparable is inferior for its older date of sale and its smaller size. Overall, this comparable is considered to be a low value indicator at \$210,000.

Comparable Five is located on the SW corner of Cedar Street & Hazel Avenue in Kent, approximately 3.50 miles SE of the subject. This comparable is roughly equal to the subject for its topography and utilities. This comparable is inferior for its much smaller size. Overall, this comparable is considered to be a low value indicator at \$217,000.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Comparable	Subject	One	Two	Three	Four	Five
Sales Price/Site		\$285,000	\$325,000	\$225,000	\$210,000	\$217,000
Property Rights Conveyed	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Adjustment		-0-	-0-	-0-	-0-	-0-
Adjusted Price		\$285,000	\$325,000	\$225,000	\$210,000	\$217,000
Financing		market	Market	market	market	market
Adjustment		-0-	-0-	-0-	-0-	-0-
Adjusted Price		\$285,000	\$325,000	\$225,000	\$210,000	\$217,000
Conditions of Sale		Arm's Length	Arm's Length	Arm's Length	Arm's Length	Arm's Length
Adjustment		-0-	-0-	-0-	-0-	-0-
Adjusted Price		\$285,000	\$325,000	\$225,000	\$210,000	\$217,000
Market Conditions at Time of Sale	1/6/23	Equal ==	Equal ==	Inferior ++	Inferior ++	Equal ==
Location	S. Kent-Des Moines Road	Superior --	Superior --	Superior --	Superior --	Superior --
Size (SF)	9,147 SF	7,221 SF Equal ==	14,400 SF Superior --	7,500 SF Equal ==	5,903 SF Inferior ++	5,500 SF Inferior ++
Topography	Level to Sloping	Equal ==	Equal ==	Equal ==	Equal ==	Equal ==
Density	1 site	Equal ==	Equal ==	Equal ==	Equal ==	Equal ==
Adjusted Price		\$285,000	\$325,000	\$225,000	\$210,000	\$217,000
Price Per SF		\$39.47/SF	\$22.57/SF	\$30.00/SF	\$35.58/SF	\$39.45/SF
Net Adjustment		Superior --	Superior --	Inferior ++	Inferior ++	Inferior ++
Value Range for Subject		\$225,000 to \$285,000				

ANALYSIS OF DATA AND OPINION OF APPRAISER

Correlation and Conclusion of Land Value:

The comparable sales support a value range for the subject of approximately \$210,000 to \$325,000. Comparables One and Two support the high end of the range from \$285,000 to \$325,000 due to their more interior locations and Comparable Two's larger size. Comparables Three, Four, and Five support the low end of the range for the subject parcel from \$210,000 to \$225,000 for Comparable Four and Five's smaller size, and Comparable Three's older date of sale.

After analyzing the five comparable land sales, we have refined the value range for the subject parcel from \$225,000 to \$285,000 as supported by Comparables One and Three. In our opinion, the market would place the subject in the middle of the refined value range, and we estimate a site value for the subject land of approximately \$250,000, or \$27.33/SF (\$250,000/9,147 SF)

ANALYSIS OF DATA AND OPINION OF APPRAISER

Value of Subject as Improved

As indicated earlier, the value of the subject's building improvements will not be impacted by the proposed acquisition and project, and they are not valued in this report.

Value of Site Improvements Acquired

Based on our inspection, the project will acquire approximately 500 SF of grass lawn, 2 mature deciduous trees, 400 SF of asphalt driveway, and 105 LF of 4-foot-tall chain-link fencing.

There is also a large evergreen tree to be acquired which has had its branches sculpted in such a way that it drapes over the subject's chain link fencing and provides an effective vegetative screen for the residence from the street frontage. Because we have included compensation for the owner to replace the lost vegetative screening as a cost to cure, we have not allocated any compensation for the acquisition of the tree.

The project will also remove approximately 3 medium sized shrubs which are located within the Existing ROW, and we have not applied any compensation for these improvements.

Landscaping and site improvements impacted include the following items with their estimated replacement cost from Section 66 of the Marshall Valuation Service, which includes all appropriate multipliers:

Item and Quantity	Unit Cost	Cost/Value
500 SF of grass lawn	\$2.50/SF	\$1,250
2 mature deciduous trees	\$2,000 per tree	\$4,000
400 SF of asphalt driveway	\$4.50/SF	\$1,800
105 LF of 4-foot-tall chain-link fencing	\$20/LF	\$2,100
Total Replacement Cost		\$9,150

The total value of subject larger parcel (not including buildings and unimpacted site improvements) is summarized below:

Land Value:	\$250,000
Site Improvements Acquired:	<u>\$9,150</u>
Total Value of Subject Larger Parcel:	\$259,150

ANALYSIS OF DATA AND OPINION OF APPRAISER

REMAINDER EVALUATION:

Neighborhood Factors:

The subject neighborhood will benefit from newly constructed sidewalks, bike lanes, reduced travel lane widths, a two-way left turn lane, storm drainage, and decorative street lighting along 24th Avenue S.

Description of Remainder

The subject will be largely unchanged by the project, except for the land rights acquired, the lost site improvements, the need to relocate a water spigot, and the need to install a vegetative screen for the residence from the new sidewalk along 24th Avenue S.

For the reader's reference we have included a summary of the proposed property rights acquired below:

Summary of Property Rights Acquired

The project proposes to acquire some ROW in fee consisting of approximately 987 SF. The proposed fee acquisition is a strip of land along the subject's 24th Avenue South frontage, and it measures at approximately 8.50-feet in east-west depth from the subject's SW corner and expands to approximately 19.35-feet in east-west depth over the subject's NW corner.

The project also proposes a TCE consisting of approximately 905 SF along the proposed fee acquisition. The proposed TCE will expire on March 31, 2025, which is a total term of 2 years and 3 months., of which 6 months will be inactive, and 18 months (1.5 years) will be active construction. The TCE area is a strip of land that measures approximately 9-feet in east-west depth starting from the subject's SW corner and tapers off to a point with the proposed fee acquisition area over the subject's NW corner.

The project will also impact a water spigot, and we have addressed this as a cost to cure damage.

The new proposed right of way will be approximately 20 feet, at its closest point to the main body of the residence (SW corner of the residence), and approximately 12 feet, at its closest point to the residence's enclosed porch.

The project will install a sidewalk and a bike line, with the traveled way of the road will be coming no closer to the residence. The subject is also approximately 20-feet above grade from the road and proposed improvements, and we have concluded the subject will not suffer any proximity damages, but we believe the market would seek to mitigate the closeness of the proposed improvements to the residence by installing a visual barrier. We have addressed this as a cost to cure damage.

There are no other damages to the subject parcel.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Highest and Best Use Analysis

The highest and best use of the remainder site as vacant will still be for residential development as one homesite.

Value Impacts

Fee Acquisition (987 SF)

The project proposes to acquire some ROW in fee consisting of approximately 987 SF. The proposed fee area is a strip of land measuring approximately 8.50 to 19.35 feet in east-west depth along the subject's 24th Avenue S. frontage.

The fee acquisition will have a total impact of approximately \$27,000® (987 SF x \$27.33/SF).

Temporary Construction Easement (905 SF)

The project also proposes to acquire a TCE consisting of approximately 905 SF along the subject's 24th Avenue S. frontage and has a total term of 27 months, of which 9 months will be inactive, and 18 months will be active construction.

Short term land leases in the subject market typically range from approximately 6 to 10 percent, and we have estimated the impact of the TCE based on an annual land rent of approximately 10 percent for the 18 month (1.5 years) active construction period, and 5 percent during the inactive term.

The proposed TCE will have a total impact of approximately \$4,650® ((Active- 905 SF x \$27.33/SF x 0.10 x 1.5 years = \$3,710) + (Inactive- 905 SF x \$27.33/SF x .05 x 0.75 years = \$928)).

Cost to Cure- Water Spigot

There is a water spigot in the subject's front yard which will have to be relocated to the remainder. Based on a written estimate provided by Mr. Kyle Cook, of KSC, Improvements, LLC, a general contractor (see addenda) we have allocated a cost to relocate the water spigot of approximately \$1,250® which includes sales tax (\$1,100 (cost) x 1.101(sales tax)).

Cost to Cure- Vegetative Screening

The new proposed right of way will be approximately 20 feet, at its closest point to the main body of the residence (SW corner of the residence), and approximately 12 feet, at its closest point to the residence's enclosed porch.

The project will install a sidewalk and a bike line, with the traveled way of the road coming no closer to the residence. The subject is also approximately 20-feet above grade from the road and proposed improvements, and we have concluded the subject will not suffer any proximity damages, but we believe the market would seek to mitigate the closeness of the proposed improvements to the residence by installing a visual barrier along the new right of way. It will take approximately 85 feet of vegetation to effectively screen the residence from the sidewalk.

ANALYSIS OF DATA AND OPINION OF APPRAISER

Market participants often install a row of mature arborvitae, or other tall shrubs, to create a visual barrier from a street, or sidewalk, and we have approached the installation of the visual barrier in similar fashion. The Marshall Valuation Service indicates a cost to install mature tall shrubs of approximately \$275.00 per shrub, including all appropriate multipliers. Based on planting the tall shrubs approximately 2.00 feet apart, it will take approximately 43 tall shrubs (85 feet/2 feet apart) to replace the lost screening provided by the existing trees, which has a cost of approximately \$11,850® (43 tall shrubs x \$275/shrub).

We have applied a cost to cure in the amount of approximately \$11,850 for the owners to install a vegetative screen for the residence from the new sidewalk.

The cost to cures total approximately \$13,100 (\$1,250® + \$11,850®).

There are no other damages to the subject parcel.

The total impacts are summarized below:

Value of Land Acquired in Fee:	\$27,000®
Impact of TCE:	\$4,650®
Permanent Easement:	-0-
Contributory Value of Site Improvements Impacted:	\$9,150
Damages:	<u>\$13,100</u>
Total Impact:	\$53,900

Recapitulation

A. Value of property 'before' acquisition	<u>\$259,150</u>
B. Value of property 'after' acquisition	<u>\$205,250</u>
C. Difference between 'before' and 'after' values	<u>\$53,900</u>

ANALYSIS OF DATA AND OPINION OF APPRAISER

12. SUMMARY OF APPRAISAL CONCLUSIONS:

(Accounting tabulation - NOT indicative of appraisal method employed)

Indicated Subject Value 'Before' Project		
Highest and Best Use 'Before' Homesite		
Land Value 'Before' - \$9,147 x \$27.33/SF	\$250,000®	
	Total Land Value	\$250,000
Total Units 'Before'		
Improvements Value 'Before'		
Buildings- Not Valued		
Site Improvements Acquired	\$9,150	
	Total Improvement Value	\$9,150
TOTAL SUBJECT VALUE 'BEFORE' PROJECT:		\$259,150
Indicated Subject Value 'After' Project		
Land Value \$250,000-\$31,350 (Fee & TCE)	\$218,650	
Less Cost-to-Cure (if any)- \$13,100	\$13,100	
TOTAL SUBJECT VALUE 'AFTER' PROJECT:		\$205,250
Estimated Value Allocation of Rights Acquired		
Fee- 987 SF x \$27.33/SF	\$27,000®	
Drainage Easement – None	-0-	
TCE- (905 SF x \$27.33/SF x 0.10 x 1.5-year) + (905 SF x \$27.33/SF x 0.05 x 0.75-year)	\$4,650®	
Total Land		\$31,650
Site Improvements – Landscaping, Fencing, trees, grass lawn	\$9,150	
Total Improvements		\$9,150
Total Acquisition		\$40,800
Plus, Damages and Cost-to-Cure		
Cost-to-Cure- Water Spigot & Install Vegetative Screen	\$13,100	
Loss in Value 'After'	-0-	
Total Damages and Cost-to-Cure		\$13,100
Less Special Benefits (if any)		-0-
Total Estimated Owner Compensation		\$53,900

Note: Totals should be rounded to nearest significant market number. Total Subject value 'before' Less Total Subject value 'after' must equal Estimated Owner Compensation.

ANALYSIS OF DATA AND OPINION OF APPRAISER

13. REPORT OF CONTACT WITH OWNER:

Person(s) Contacted: Mr. Reggie Wood
Address: 2400 S. Kent-Des Moines Road, Des Moines, WA 98198
Date of Contact: 11-29-2022
Relationship to Owner: Son of Owner
Date of Joint Inspection: 11-29-2022
Phone:
Identify all participants in the inspection: Tony MacDonald of Universal Field Services, Reggie Wood (Son of Owner), Anthony Duncan and Richard Duncan of Duncan Appraisal
Comments: We met with Mr. Wood on November 29, 2022, and he was cordial and cooperative.

14. PERSONALITY REALTY REPORT:

State and Federal standards require the appraiser to identify the Ownership of real property improvements and personal property.

Item	Owner	Tenant	Realty	Personalty	Salvage Value for Realty
Land	X		X		
Residence and Garage	X		X		
Fencing and Gates	X		X		
Landscaping, Trees	X		X		

14. ADDENDA:

APPRAISER'S QUALIFICATIONS

RICHARD F. DUNCAN, MAI

EXPERIENCE

- PRESIDENT
R.F. Duncan & Associates, Inc. *Olympia, WA*
- FEE APPRAISER
Anderson Appraisal, Inc. *Olympia, WA*
- REAL ESTATE APPRAISER
Clark County Department of Public Works *Vancouver, WA*
- REAL ESTATE APPRAISER/RIGHT-OF-WAY AGENT
Washington State Department of Transportation *Vancouver, WA*
- REAL PROPERTY MANAGER
Phoenix Properties, Inc. *Gresham, OR*

EDUCATION

The Evergreen State College, Olympia, Washington
Bachelor of Arts, Major – Business Management, 1987

APPRAISAL EDUCATION:

Real Estate Courses

- Real Estate Law
- Real Estate Finance
- Real Estate Practices
- Principles of Real Estate Appraisal I
- Principles of Real Estate Appraisal II
- Uniform Standards of Professional Appraisal Practice

Appraisal Institute Courses

- Successfully challenged Real Estate Appraisal Principles
- Successfully challenged Basic Valuation Principles
- Capitalization Theory and Techniques
Part A
- Capitalization Theory and Techniques
Part B
- Report Writing and Valuation Analysis
- Advanced Applications

CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 38

APPRAISER'S QUALIFICATIONS

Appraisal Institute Courses (Cont.)

- Standards of Professional Practice Part A
- Standards of Professional Practice Part B

International Right-of-Way Assoc. Courses

- Appraisal of Partial Acquisitions
- Principles of Real Estate Acquisition
- Appraisal of Easements
- Engineering Plan Development and Application
- Ethics and the Right-of-Way Profession
- Communication in Real Estate Acquisition
- Bargaining Negotiations
- Relocation Assistance
- Land Titles

National Highway Institute Courses

- Appraisal and Appraisal Review for Federal Aid Highway Programs
- Moving Cost Estimating

BUSINESS AND PROFESSIONAL ORGANIZATIONS

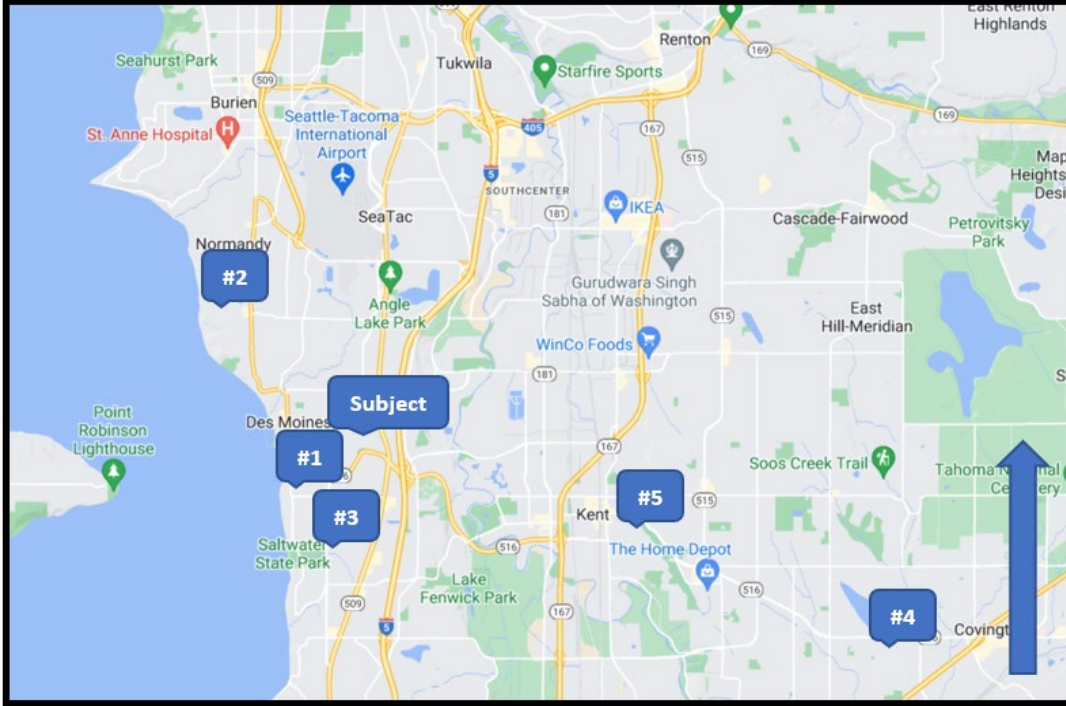
- Member, Appraisal Institute (MAI)
- Certified Real Estate Appraiser (General) – State of Washington No. 1100496

TYPES OF APPRAISAL ASSIGNMENTS

- Apartments
- Eminent Domain Takings – Strip and Before/After Reports
- Funding Feasibility Studies for Governmental Projects (roads, parks, bike trails, etc.)
- Office Buildings
- Retail
- Special Benefit Studies
- Subdivisions
- Undeveloped Land
- Warehouses
- Wetlands/Open Space

ADDENDA

Map of Comparable Sales



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

ADDENDA

**MARKET DATA
Sale No. 1**

(1) ADDRESS or LOCATION: 1231 S. 234th Place, Des Moines, WA

(2) SALE SKETCH AND PHOTO ARE ON FOLLOWING PAGE;

- (3)
- a. Access: S. 234th Place
 - b. Use at Sale: Undeveloped
 - c. H & B Use: Residential
 - d. Zoning: RS-7200
 - e. Dimensions: See plat map
 - f. Area: 7,221 SF
 - g. Sale Date: 10/20/2022
 - h. Price: \$285,000
 - i. Instrument Type: WD
 - j. Terms: Cash to Seller
 - k. Ex. Tax# or AF #: E. 3215726
 - l. Seller: Kennedy E. & Doris O. Akinlosotu
 - m. Buyer: Judith Otiato
 - n. Confirmed with: King County GIS
 - o. Confirmed by: Richard F. Duncan
 - p. Date Inspected: 1/6/2023

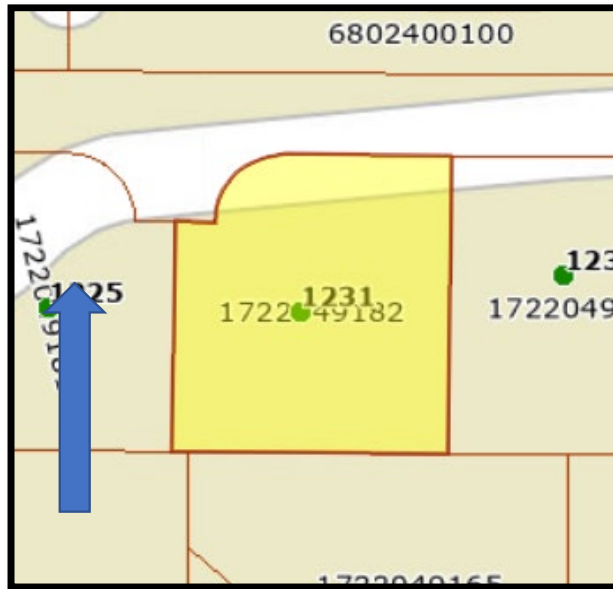
(4) LEGAL DESCRIPTION or TAX PARCEL NUMBER: Tax Parcel Number 172204-9182

(5) PHYSICAL CHARACTERISTICS (confirmation information, property description at sale, changes since sale, etc.): This is a homesite that is mostly rectangular in shape. The site is mostly level in topography with all public utilities available. The parcel is located towards the end of a cul-de-sac.

(6) ANALYSIS:

ITEM	CONTRIBUTION VALUE	MARKET UNIT
Land: 7,221 SF	\$ 285,000	\$ 39.47/SF
	\$	\$
	\$	\$
Buildings: -0-	\$	\$
	\$	\$
	\$	\$
Other (Site, Yard, etc.): -0-	\$	\$
	\$	\$
TOTAL SALE PRICE	\$ 285,000	\$

ADDENDA



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 42

ADDENDA

MARKET DATA
Sale No. 2

(1) ADDRESS or LOCATION: S. of 20938 Marine View Drive SW, Normandy Park, WA

(2) SALE SKETCH AND PHOTO ARE ON FOLLOWING PAGE;

- (3)
- a. Access: Marine View Drive
 - b. Use at Sale: Undeveloped
 - c. H & B Use: Residential
 - d. Zoning: R15
 - e. Dimensions: See plat map
 - f. Area: 14,400 SF
 - g. Sale Date: 7-22
 - h. Price: \$325,000
 - i. Instrument Type: WD
 - j. Terms: Cash to Seller
 - k. Ex. Tax# or AF #: E. 3202463
 - l. Seller: Pelger
 - m. Buyer: Terrain 20946 LLC
 - n. Confirmed with: Cindy Stewart • Windermere Chambers Bay
 - o. Confirmed by: Richard F. Duncan
 - p. Date Inspected: 9-5-22

(4) LEGAL DESCRIPTION or TAX PARCEL NUMBER: Tax Parcel Number 061600-0255

(5) PHYSICAL CHARACTERISTICS (confirmation information, property description at sale, changes since sale, etc.): This is a rectangular shaped homesite in Normandy Park. The site is mostly level with all public utilities available. Located in an area of upscale homes.

(6) ANALYSIS:

ITEM	CONTRIBUTION VALUE	MARKET UNIT
Land: 14,400 SF	\$ 325,000	\$ 22.57/SF
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Buildings: -0-	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Other (Site, Yard, etc.): -0-	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL SALE PRICE	\$ 325,000	\$ _____

ADDENDA



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

ADDENDA

MARKET DATA

Sale No. 3

(1) ADDRESS or LOCATION: 24719 15th Ave. S. Des Moines, WA

(2) SALE SKETCH AND PHOTO ARE ON FOLLOWING PAGE;

- (3)
- a. Access: 15th Ave. S.
 - b. Use at Sale: Old Mobile Home-no value
 - c. H & B Use: Residential
 - d. Zoning: RS-7200
 - e. Dimensions: See Exhibit
 - f. Area: 7,500 SF
 - g. Sale Date: 3-22
 - h. Price: \$225,000
 - i. Instrument Type: WD
 - j. Terms: Cash Equivalent
 - k. Ex.Tax# or AF #: E. 3177982
 - l. Seller: Rathjen
 - m. Buyer: Singh
 - n. Confirmed with: Joshua Friend • Keller Williams Rlty Bellevue
 - o. Confirmed by: Richard F. Duncan
 - p. Date Inspected: 10-25-22

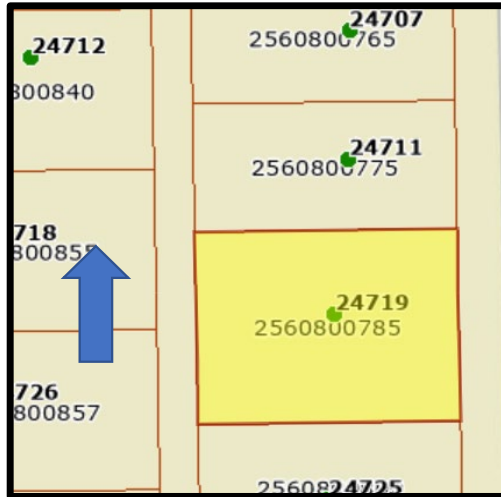
(4) LEGAL DESCRIPTION or TAX PARCEL NUMBER: 256080-0785

(5) PHYSICAL CHARACTERISTICS (description at sale, confirmation information, changes since sale, etc.):
 Rectangular shaped homesite consisting of 7,500 SF. The site is mostly level with all public utilities. The site has an older mobile home of no value.

(6) ANALYSIS:

ITEM	CONTRIBUTION VALUE	MARKET UNIT
Land: 7,500 SF	\$ 225,000	\$ 30.00/SF
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Buildings: No value	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Other (Site, Yard, etc.):	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL SALE PRICE	\$ 225,000	\$ _____

ADDENDA



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 46

ADDENDA

**MARKET DATA
Sale No. 4**

(1) ADDRESS or LOCATION: 27509 148th Ave SE, Kent, WA

(2) SALE SKETCH AND PHOTO ARE ON FOLLOWING PAGE;

- (3)
- a. Access: 148th Ave SE
 - b. Use at Sale: Undeveloped
 - c. H & B Use: Residential
 - d. Zoning: SR-6
 - e. Dimensions: See plat map
 - f. Area: 5,903 SF
 - g. Sale Date: 4/19/2021
 - h. Price: \$210,000
 - i. Instrument Type: WD
 - j. Terms: Cash to Seller
 - k. Ex. Tax# or AF #: E. 3113381
 - l. Seller: Pavitarpal & Rashpal Purewal
 - m. Buyer: Ackley Brown Real Estate LLC
 - n. Confirmed with: Michael Purewal, Better Properties Kent listing agent
 - o. Confirmed by: Richard F. Duncan
 - p. Date Inspected: 3/12/22

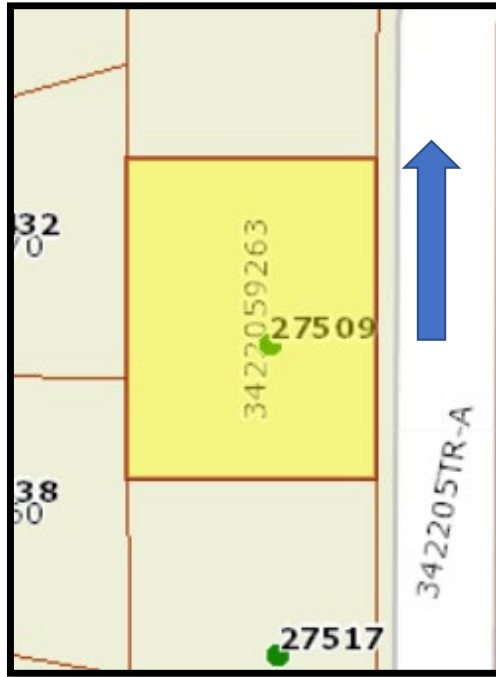
(4) LEGAL DESCRIPTION or TAX PARCEL NUMBER: Tax Parcel Number 3422059263

(5) PHYSICAL CHARACTERISTICS (confirmation information, property description at sale, changes since sale, etc.): This is a rectangular shaped parcel zoned for single-family residential. The parcel has all utilities available, and it is level in topography. It is located in a newer residential subdivision.

(6) ANALYSIS:

ITEM	CONTRIBUTION VALUE	MARKET UNIT
Land: 5,903 SF	\$ 210,000	\$ 35.58/SF
	\$	\$
	\$	\$
Buildings: -0-	\$	\$
	\$	\$
	\$	\$
Other (Site, Yard, etc.): -0-	\$	\$
	\$	\$
TOTAL SALE PRICE	\$ 210,000	\$

ADDENDA



CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 48

ADDENDA

MARKET DATA
Sale No. 5

(1) ADDRESS or LOCATION: SW corner of Cedar Street & Hazel Avenue, Kent, WA 98031

(2) SALE SKETCH AND PHOTO ARE ON FOLLOWING PAGE;

- (3)
- a. Access: Hazel Avenue
 - b. Use at Sale: Undeveloped
 - c. H & B Use: Residential
 - d. Zoning: SR-6
 - e. Dimensions: See plat map
 - f. Area: 5,500 SF
 - g. Sale Date: 6/8/2022
 - h. Price: \$217,000
 - i. Instrument Type: WD
 - j. Terms: Cash to Seller
 - k. Ex. Tax# or AF #: E. 3194880
 - l. Seller: Darrell L. Ehlers
 - m. Buyer: Acadia Builders Group LLC.
 - n. Confirmed with: Brandy Brazeau • Windermere Professional Partners, listing agent
 - o. Confirmed by: Richard F. Duncan
 - p. Date Inspected: 9/22/2022

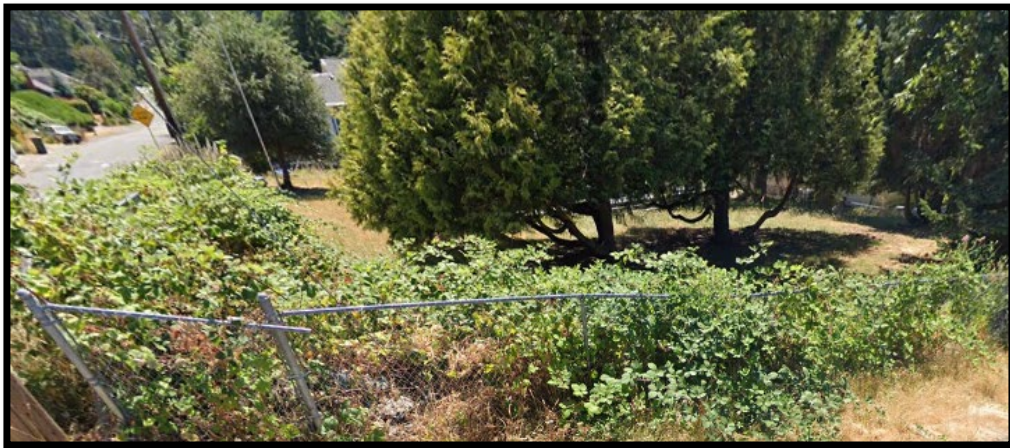
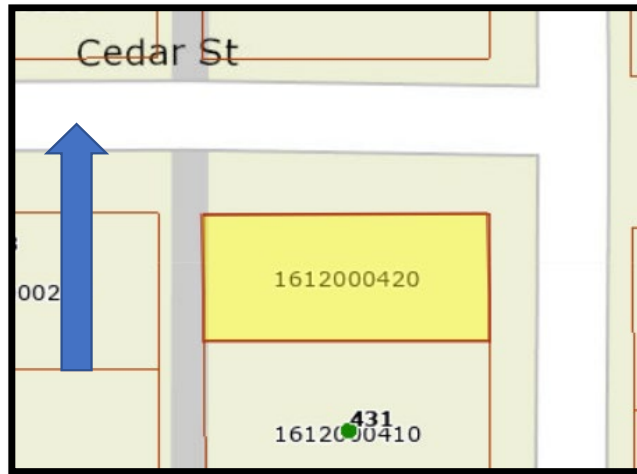
(4) LEGAL DESCRIPTION or TAX PARCEL NUMBER: Tax Parcel Number 1612000420

(5) PHYSICAL CHARACTERISTICS (confirmation information, property description at sale, changes since sale, etc.): This is a rectangular shaped parcel zoned for residential development. This parcel is mostly level in topography, and it has water, sewer, and electricity in the street.

(6) ANALYSIS:

ITEM	CONTRIBUTION VALUE	MARKET UNIT
Land: 5,500 SF	\$ 217,000	\$ 39.45/SF
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Buildings: -0-	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
Other (Site, Yard, etc.): -0-	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL SALE PRICE	\$ 217,000	\$ _____

ADDENDA



ADDENDA

Title Report



First American

First American Title Insurance Company

920 5th Avenue, Suite 1250
Seattle, WA 98104

June 29, 2022

Metro Area Title Team

920 5th Avenue, Suite 1250, Seattle, WA 98104
Fax No. (866) 904-2177
Fax No. (866) 561-3729

EMAIL: TITLEKINGWA@firstam.com

Recording Department

Email: recording.wa@firstam.com

Pat Fullerton
(206) 615-3055

Kelly Cornwall
(206) 336-0725

Jennifer Salas
(206) 615-3011

Curtis Goodman
(206) 615-3069

Amy Garza
(253) 200-3089

Order Number: 4209-3966166

Please send all recording packages to 920 5th Avenue, Suite 1250, Seattle, WA 98104

Property: 2400 S Kent-Des Moines Road
Des Moines, WA 98198


Attached please find the following item(s):

ALTA Commitment for Title Insurance

Thank you for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

Customer First!

ADDENDA

 Schedule A	ALTA Commitment for Title Insurance
	ISSUED BY First American Title Insurance Company
	File No: 4209-3966166

Transaction Identification Data for reference only:

Issuing Agent: First American Title Insurance Company	Issuing Office: 920 5th Avenue, Suite 1250, Seattle, WA 98104
Issuing Office's ALTA® Registry ID:	Issuing Office File No.: 4209-3966166
Commitment No.: 4209-3966166	
Property Address: 2400 S Kent-Des Moines Road, Des Moines, WA 98198	
Revision No.:	

SCHEDULE A

1. Commitment Date: June 22, 2022 8:00 AM
2. Policies to be issued:
 - (A) Eagle Owners Policy
Homeowner's Rate
Proposed Insured: To Follow
Proposed Policy Amount: \$To Follow Premium: \$To Follow Tax: \$To Follow
3. The estate or interest in the Land described or referred to in this Commitment is
Fee Simple
4. The Title is, at the Commitment Date, vested in: CORENIA C, WOOD AS TRUSTEE OF THE CORENIA C, WOOD REVOCABLE LIVING TRUST
5. The Land is described as follows:

See Exhibit "A" attached hereto and made a part hereof

FIRST AMERICAN TITLE INSURANCE COMPANY


Curtis Goodman, Title Officer

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.

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Form 50003700WA (8-23-18)	Page 2 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 52

ADDENDA

 Schedule BI & BII	<i>First American</i> First American Title Insurance Company File No: 4209-3966166	ALTA Commitment for Title Insurance ISSUED BY First American Title Insurance Company File No: 4209-3966166
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**SCHEDULE B, PART I
Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. The marital status of the vested owner described in Paragraph 4 of Schedule A is consistent with the marital status identified in the most current instrument vesting Title. First American Title Insurance Company does not represent that this is the current marital status of the vested owner. The current marital status of the vested owner should be provided to the Company prior to closing. Additional requirements may be imposed based upon any change in marital status since the recording of the current vesting deed.

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Form 50003700WA (8-23-18)	Page 3 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
---------------------------	--------------	--

CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

ADDENDA

 First American Schedule BI & BII (Cont.)	ALTA Commitment for Title Insurance
	ISSUED BY First American Title Insurance Company File No: 4209-3966166

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
3. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easement or encumbrances which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the Public Records; (D) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
7. Any lien, or right to a lien, for services, labor or materials or medical assistance heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.

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Form 50003700WA (8-23-18)	Page 4 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
---------------------------	--------------	--

ADDENDA

9. Lien of Real Estate Excise Tax upon sale of said premises, or transfer of a controlling interest, if unpaid. As of the date herein, the excise tax rates are as follows:
Levy/Area Code: 1126

State Excise Tax for real property classified as Timberland (RCW 84.34 or RCW 84.33) or Agricultural land (RCW 84.34.020):

1.28% of the selling price

All other State Excise Tax:

1.10% of the selling price less than or equal to \$500,000.00
1.28% of the selling price from \$500,000.01 to \$1,500,000.00
2.75% of the selling price from \$1,500,000.01 to \$3,000,000.00
3.00% of the selling price over \$3,000,000.00

Local Excise Tax for Des Moines:

.50% of the selling price

In addition to the Excise Tax due, a fee of \$5.00 will be charged on all taxable transactions (\$10.00 on all exempt transactions)

10. Terms, provisions, conditions of the Trust Agreement of The Corenia C. Wood Revocable Living Trust, and any subsequent modifications, a copy of which should be submitted to this office for inspection.
11. Exceptions and reservations contained in deed from the State of Washington, whereby said Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc. and the right of entry for exploring, opening, developing and working the same, provided that no rights shall be exercised until provision has been made for full payment of all damages sustained by reason of such entry; and Right of the State of Washington or any Grantee or Lessee thereof, upon paying reasonable compensation, to acquire right of way for private railroads, skid roads, flumes, canals, water courses or other easements for transportation and moving timber, stone, minerals or other products from the lands, all pursuant to statutes in effect as of the date of conveyance by the state.
Recording Information: [1288914](#)
12. Easement, including terms and provisions contained therein:
Recording Information: [19990714000972](#)
In Favor of: The Port of Seattle, a Washington State municipal corporation
For: Avigation
13. This transaction may be subject to a Geographic Targeting Order ("GTO") issued pursuant to the Bank Secrecy Act. Information necessary to comply with the GTO must be provided prior to the closing. This transaction will not be insured until this information is submitted, reviewed and found to be complete.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part I-Exceptions.

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Form 50003700WA (8-23-18)	Page 5 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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ADDENDA

INFORMATIONAL NOTES

- A. Effective January 1, 1997, and pursuant to amendment of Washington State Statutes relating to standardization of recorded documents, certain format and content requirements must be met (refer to RCW 65.04.045). Failure to comply may result in rejection of the document by the recorder or additional fees being charged, subject to the Auditor's discretion.
- B. Any sketch attached hereto is done so as a courtesy only and is not part of any title commitment or policy. It is furnished solely for the purpose of assisting in locating the Land and First American expressly disclaims any liability which may result from reliance made upon it.
- C. The description can be abbreviated as suggested below if necessary to meet standardization requirements. The full text of the description must appear in the document(s) to be insured.

PTN SEC 16 TWP 22N RGE 4E SW QTR NE QTR, KING COUNTY
APN: 162204914400
Property Address: 2400 S Kent-Des Moines Road, Des Moines, WA 98198

- D. Potential charges, for the King County Sewage Treatment Capacity Charge, as authorized under RCW 35.58 and King County Code 28.84.050. Said charges could apply for any property that connected to the King County Sewer Service area on or after February 1, 1990. Note: Properties located in Snohomish County may be subject to the King County Sewage Treatment Capacity Charges.
- E. The following deeds affecting the property herein described have been recorded within 36 months of the effective date of this commitment: NONE

- F. General taxes for the year 2022, which have been paid.

Tax Account No.:	162204914400
Code Area:	1126
Amount:	\$ 4,889.75
Assessed Land Value:	\$ 113,000.00
Assessed Improvement Value:	\$ 258,000.00

- G. We don't find any voluntary liens of record affecting subject property. Inquire as to the existence of any unrecorded lien or other indebtedness which could give rise to any security interest in the subject property.

NOTE: The forthcoming Mortgagee's Policy will be the ALTA 2006 Policy unless otherwise noted on Schedule A herein.

NOTE: We find no judgments or Federal tax liens against the vestee herein, unless otherwise shown as a numbered exception above.

NOTE: A FEE MAY BE CHARGED UPON THE CANCELLATION OF THIS COMMITMENT PURSUANT TO WASHINGTON STATE INSURANCE CODE AND THE FILED RATE SCHEDULE OF THIS COMPANY.


This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.

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Form 50003700WA (8-23-18) Page 6 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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ADDENDA

	ALTA Commitment for Title Insurance
	ISSUED BY
	First American Title Insurance Company
	File No: 4209-3966166

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, **First American Title Insurance Company**, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

First American Title Insurance Company



Kenneth D. DeGiorgio, President

Greg L. Smith, Secretary

If this jacket was created electronically, it constitutes an original document.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.

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Form 50003700WA (8-23-18)	Page 7 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 57

ADDENDA

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
 - (b) the Commitment to Issue Policy;
 - (c) the Commitment Conditions;
 - (d) Schedule A;
 - (e) Schedule B, Part I—Requirements; and
 - (f) Schedule B, Part II—Exceptions.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

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Form 50003700WA (8-23-18)	Page 8 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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ADDENDA

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.


8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

ADDENDA

 Exhibit A	<i>First American</i> ISSUED BY First American Title Insurance Company File No: 4209-3966166
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File No.: 4209-3966166

CORENIA C. WOOD AS TRUSTEE OF THE CORENIA C. WOOD REVOCABLE LIVING TRUST

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE EAST HALF OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF COUNTY ROAD NO. 1288 "KENT-DES MOINES ROAD" AND EAST OF COUNTY ROAD NO. 919;

EXCEPT THE NORTH 462 FEET THEREOF;
AND EXCEPT THE EAST 17.91 FEET THEREOF.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

162204914400

2400 S Kent-Des Moines Road
Des Moines, Washington 98198

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.

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Form 50003700WA (8-23-18)	Page 10 of 10	ALTA Commitment for Title Insurance (8-1-16) Washington
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CORENIA C. WOOD (TRUSTEE) PARCEL NO. 162204-9144
R. F. DUNCAN AND ASSOCIATES, INC.

Page 60

ADDENDA

Cost to Cure-Water Spigot

KSC IMPROVEMENTS AND INVESTMENTS, LLC

December 11, 2022

Richard Duncan
Duncan Appraisal
PO Box 12300
Olympia, WA 98508

RE: Wood Appraisal at 2400 S. Kent-Des Moines Road, Des Moines, WA

Rich:

Per our discussion, the cost to relocate the water spigot on this parcel is \$1,100 plus sales tax.

Estimate includes, labor, materials.

Call me if questions.

Kyle Cook

DBA KSC Improvements and Investments, LLC
4217 Oyster Bay Rd NW Olympia WA 98502
360.701.6089

UNIVERSAL FIELD SERVICES, INC.
111 Main Street, Suite 105
Edmonds, WA 98020
Tel: (425) 673-5559
Fax: (425) 673-5579



Date: May 3, 2023
To: Khai Le, P.E., Civil Engineer II
From: Anthony "Tony" MacDonald
Subject: Administrative Settlement Recommendation
24th Ave South Roadway Improvements Project
Project Parcel No. 101; Parcel Tax ID No. 1622049144
Owner: Corenia C. Wood

Amount of Approved AOS or DV:	\$53,900.00
Amount of Proposed Administrative Settlement:	\$11,734.00
Amount of Proposed Total Settlement:	\$65,634.00

BACKGROUND

The City of Des Moines (Agency) plans to proceed with the 24th Ave South Roadway Improvements Project. The project will provide pedestrian and roadway safety improvements along 24th Avenue South, between Kent-Des Moines Road and So. 223rd Street. These proposed improvements will include sidewalks, bike lanes, reduced travel lane widths, a two-way left turn lane, storm drainage, and decorative street lighting.

The subject consists of a single-family residence located at 2400 S. Kent-Des Moines Road. The project proposes a fee acquisition consisting of approximately 987 SF and a temporary construction easement (TCE) consisting of approximately 905 SF. The appraisal noted landscaping acquired includes 500 SF of grass lawn, 2 mature deciduous trees, 400 SF of asphalt driveway, and 105 LF of 4-foot-tall chain-link fencing. The subject has a large evergreen tree with branches which have been sculpted to spread out along the subject's chain link fence to provide an effective vegetative screen for the residence from the intersection of 24th Avenue S. and Kent-Des Moines Road. The large tree will be removed by the project. The project will also impact a water spigot.

The owner is Corenia Wood, and she is 90 years old. Her Executor is Susan Hughes, and she will be managing negotiations for Mrs. Wood. The offer was presented on April 10, 2023, and consists of:

Land Conveyed Fee: 987 SF x \$27.33/SF	\$27,000.00
Temporary Easement: 905 SF x \$27.33/SF x 0.10 x 1.5-year	\$ 3,710.00
905 SF x \$27.33/SF x 0.05 x 0.75-year	\$ 940.00 (R)
Improvements: Landscaping, fencing, trees, grass lawn	\$ 9,150.00
Cost-to-Cure: Water Spigot & Vegetative Screen	\$13,100.00
Total Amount (Rounded)	\$53,900.00

Susan Hughes said the owner felt the offer was low and referred to the appraisal's range of values based on a sales comparison. The range of values are \$22.57/sf, \$30/sf, \$35.58/sf, \$39.45/sf, and \$39.47/sf. The appraisal had assigned a value at the low end at \$27.33/sf for the subject parcel. The Executor proposed the land value should be in the mid-range of values at \$35/sf for the owner's property. In addition, a recent exhibit provided by the design engineer identified 2 additional trees would be removed as part of the project. A large conifer and a large monkey puzzle tree. The Executor provided an estimate from a local vendor with a certified arborist. The arborist estimated the value of the conifer at \$1,500 and the monkey puzzle tree at \$3,500. Taking these items into account and the temporary inconvenience of construction for 2 years, the Executor proposed a counteroffer of \$75,000 which is \$21,100 more than the original offer.

Calculating a \$35/sf land value and the loss of the additional 2 trees the total came to \$67,734.00. The Agency offered to rebuild the fence, therefore the cost to cure for the fencing of \$2,100 would be subtracted for a total amount of \$65,634. After much discussion, the owner is willing to accept an additional \$11,734 and the city proposes to move towards a negotiated settlement.

Land Conveyed Fee: 987 SF x \$35.00/SF	\$34,545.00
Temporary Easement: 905 SF x \$35.00/SF x 0.10 x 1.5-year	\$ 4,751.00
905 SF x \$35.00/SF x 0.05 x 0.75-year	\$ 1,188.00
Improvements: Landscaping, fencing, trees, grass lawn	\$ 9,150.00
Cost-to-Cure: Water Spigot & Vegetative Screen	\$13,100.00
Two Additional Trees (\$1,500 / Conifer and \$3,500 / Monkey Puzzle)	\$ 5,000.00
Sub-Total Amount	\$67,734.00
Deduct for City Built Fence	\$ 2,100.00
Total Settlement Amount	\$65,634.00

JUSTIFICATION

The Executor’s position regarding land value is well within the range of values in the agency’s appraisal. In addition, the value for the additional 2 trees is supported by an estimate from a certified arborist. Extended negotiations could cause delays advertising for construction and result in a potential increase in construction costs subject to the time of year when school may be in session. The Agencies offer and the proposed Administrative Settlement are compared below.

Allocation	Agency’s Offer (Just Compensation)	Owner’s Counter Offer	Agency’s Agreed Amounts	Administrative Settlement (Difference)
987 S.F. of Land in Fee	\$27,000	\$34,545	\$34,545	\$7,545
905 S.F. a Temporary Construction Easement	\$4,650	\$5,939	\$5,939	\$1,289
Improvements: Landscaping, Trees, fencing, grass lawn	\$9,150	\$14,150	\$14,150	\$5,000
Less \$2,100 fencing / City to Build			(\$2,100)	(\$2,100)
Cost to Cure: Water Spigot /Screening	\$13,100	\$13,100	\$13,100	\$0
TOTAL	\$53,900	\$67, 734	\$65,634	\$11,734


CONCLUSION

I recommend that an Administrative Settlement of \$11,734 be approved for a total settlement of \$65,634 as being reasonable and in the public interest.

Recommended:  May 3, 2023
 Anthony J. MacDonald, Right-of-Way Agent Date

Concur:  May 3, 2023
 Mitch Legel, SR/WA Date
 Universal Field Services Project Manager

Administrative Settlement Approved:

By:  5/8/2023
 Date
 Print Name: Andrew Merges, P.E., EMPA
 Title: Public Works Director
City of Des Moines

After recording return document to:

**City Clerk
21630 11th Ave S. Ste. A
Des Moines, WA 98198**

**Document Title: Warranty Deed
Reference Number of Related Document:
Grantor(s): CORENIA C. WOOD
Grantee(s): CITY OF DES MOINES
Legal Description: PTN SEC 16 TWP 22N RGE 4E SW QTR NE QTR, KING
COUNTY
Additional Legal Description is on Page 4 of Document.
Assessor's Tax Parcel Number: 162204-9144**

WARRANTY DEED

24th Ave South Roadway Improvements

The Grantor, **CORENIA C. WOOD AS TRUSTEE OF THE CORENIA C. WOOD REVOCABLE LIVING TRUST**, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby convey(s) and warrant(s) to the **CITY OF DES MOINES, a municipal corporation of the State of Washington**, Grantee, the following described real property situated in King County, in the State of Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain:

For legal description and additional conditions
See Exhibit A, and depiction in Exhibit B, attached hereto and made a part hereof.

WARRANTY DEED

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the **CITY OF DES MOINES** unless and until accepted and approved hereon in writing for the **CITY OF DES MOINES**, by its authorized agent.

Date: 6-20, 2023

Corenia C. Wood
CORENIA C. WOOD AS TRUSTEE

Accepted and Approved

CITY OF DES MOINES

By: _____

Title
Authorized Agent

Date: _____

WARRANTY DEED

STATE OF WASHINGTON)

County of King) : ss

On this 2nd day of June 2023, before me personally appeared **CORENIA C. WOOD**, as Trustee(s) of the **CORENIA C. WOOD REVOCABLE LIVING TRUST**, to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that (he, she) signed the same as (his, her) free and voluntary act and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Anthony MacDonald
Notary Public in and for the State of
Washington, residing at Tacoma

My commission expires April 4, 2025

EXHIBIT A
RIGHT OF WAY ACQUISITION DESCRIPTION
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144

THAT PORTION OF THE EAST HALF OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF COUNTY ROAD NO. 1288 KENT DES-MOINES ROAD AND EAST OF COUNTY ROAD NO. 919;

EXCEPT THE NORTH 462 FEET AND EXCEPT THE EAST 17.91 FEET THEREOF.

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL, THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 88°30'36" EAST 20.71 FEET;

THENCE SOUTH 24°26'26" WEST 15.79 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE OF WHICH BEARS SOUTH 71°18'13" WEST, HAVING A RADIUS OF 1196.35 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°23'30" FOR AN ARC LENGTH OF 91.70 FEET THE SOUTH LINE OF SAID PARCEL;

THENCE ALONG SAID SOUTH LINE NORTH 76°10'40" WEST 9.65 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE OF WHICH BEARS SOUTH 75°28'34" WEST, HAVING A RADIUS OF 1187.85 FEET;

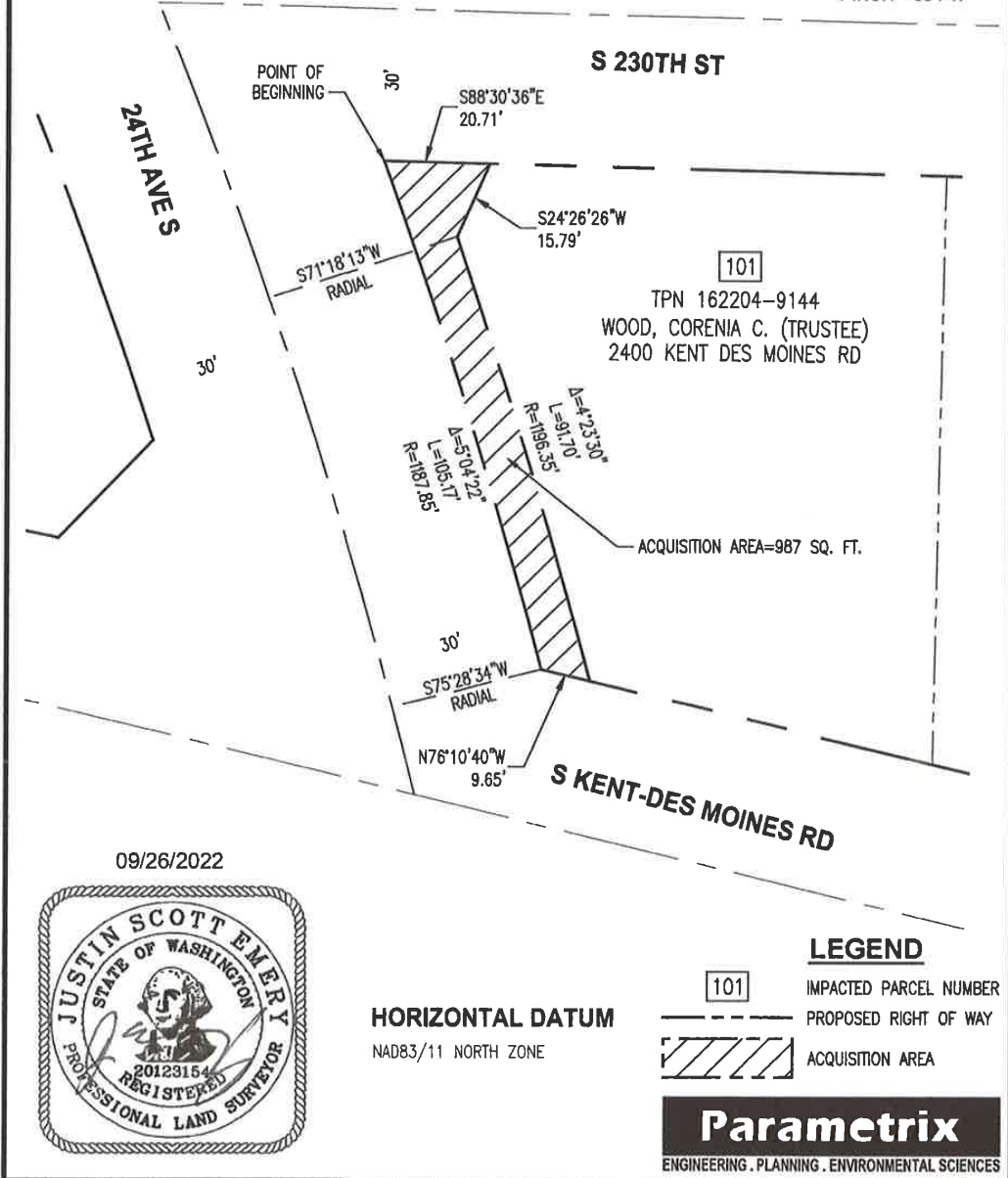
THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°04'22" FOR AN ARC LENGTH OF 105.17 FEET TO THE **POINT OF BEGINNING**

SAID PORTION CONTAINING 987 SQUARE FEET, MORE OR LESS

09/26/2022



EXHIBIT B
RIGHT OF WAY ACQUISITION AREA
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144



After recording return document to:

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

Document Title: Temporary Easement
Reference Number of Related Document: N/A
Grantor(s): CORENIA C. WOOD
Grantee(s): CITY OF DES MOINES
Legal Description: PTN SEC 16 TWP 22N RGE 4E SW QTR NE QTR, KING COUNTY
Additional Legal Description is on Page 4 of Document.
Assessor's Tax Parcel Number: 162204-9144

TEMPORARY EASEMENT

24th Ave South Roadway Improvements

The Grantor(s), **CORENIA C. WOOD AS TRUSTEE OF THE CORENIA C. WOOD REVOCABLE LIVING TRUST**, for and in consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration, conveys and grants unto the **CITY OF DES MOINES, a municipal corporation of the State of Washington**, and its employees, contractors, agents, permittees and licensees, the right, permit, license and easement to use and occupy the hereinafter described lands, together with rights of ingress and egress, for the purposes of road widening and related intersection improvement construction on adjacent real property until the completion of the construction of the above referenced project, and for purposes of removing vegetation that interferes with Grantee's use of the temporary construction easement area, and for modification or reconstruction of driveways on the easement property to blend with new construction, and for any and all other purposes incidental to the construction of said project over, under, through, across, in and upon the hereinafter described lands in the County of King County, State of Washington, under the imminent threat of the Grantee's exercise of its right of Eminent Domain.

Said lands being situated in King County, State of Washington, and described in Exhibit A, and depicted in Exhibit B, attached hereto and made a part hereof.

TEMPORARY EASEMENT

The term of this Temporary Easement shall commence on the date of acceptance of this Temporary Easement by Grantee and shall terminate on March 31, 2025, hereinafter the "Term".

It is further agreed that this Temporary Easement may be extended by up to 1 YEAR at the Grantee's option. The rate associated with this extension shall be at the same rate as the original Temporary Easement, or at the newly established rate determined by an updated Administrative Offer; whichever is higher. Grantee shall notify Grantor in writing, and render payment, prior to exercising this option.

Grantee shall provide Grantor written notice no less than 30 days in advance of Grantee's intent to exercise its rights under this Temporary Easement.

It is understood and agreed that delivery of this temporary easement is hereby tendered and that the terms and obligations hereof shall not become binding upon the **CITY OF DES MOINES** unless and until accepted and approved hereon in writing for the **CITY OF DES MOINES**, by its authorized agent.

Dated: June 2nd, 2023

Corenia C. Wood
CORENIA C. WOOD AS TRUSTEE

Accepted and Approved

CITY OF DES MOINES

By: _____

Title: _____
Authorized Agent

Date: _____, 20____

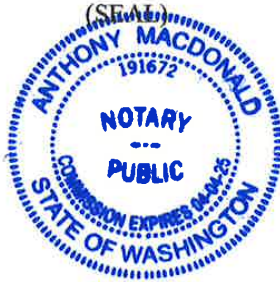
TEMPORARY EASEMENT

STATE OF WASHINGTON)

County of King) : ss

On this 2nd day of June 2023, before me personally appeared **CORENIA C. WOOD, as Trustee(s) of the CORENIA C. WOOD REVOCABLE LIVING TRUST**, to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledge that (he, she) signed the same as (his, her) free and voluntary act and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.



Anthony J. Macdonald

Notary Public in and for the State of Washington, residing at Tacoma

My commission expires April 4, 2025

EXHIBIT A
TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144

THAT PORTION OF THE EAST HALF OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF COUNTY ROAD NO. 1288 KENT DES-MOINES ROAD AND EAST OF COUNTY ROAD NO. 919;

EXCEPT THE NORTH 462 FEET AND EXCEPT THE EAST 17.91 FEET THEREOF.

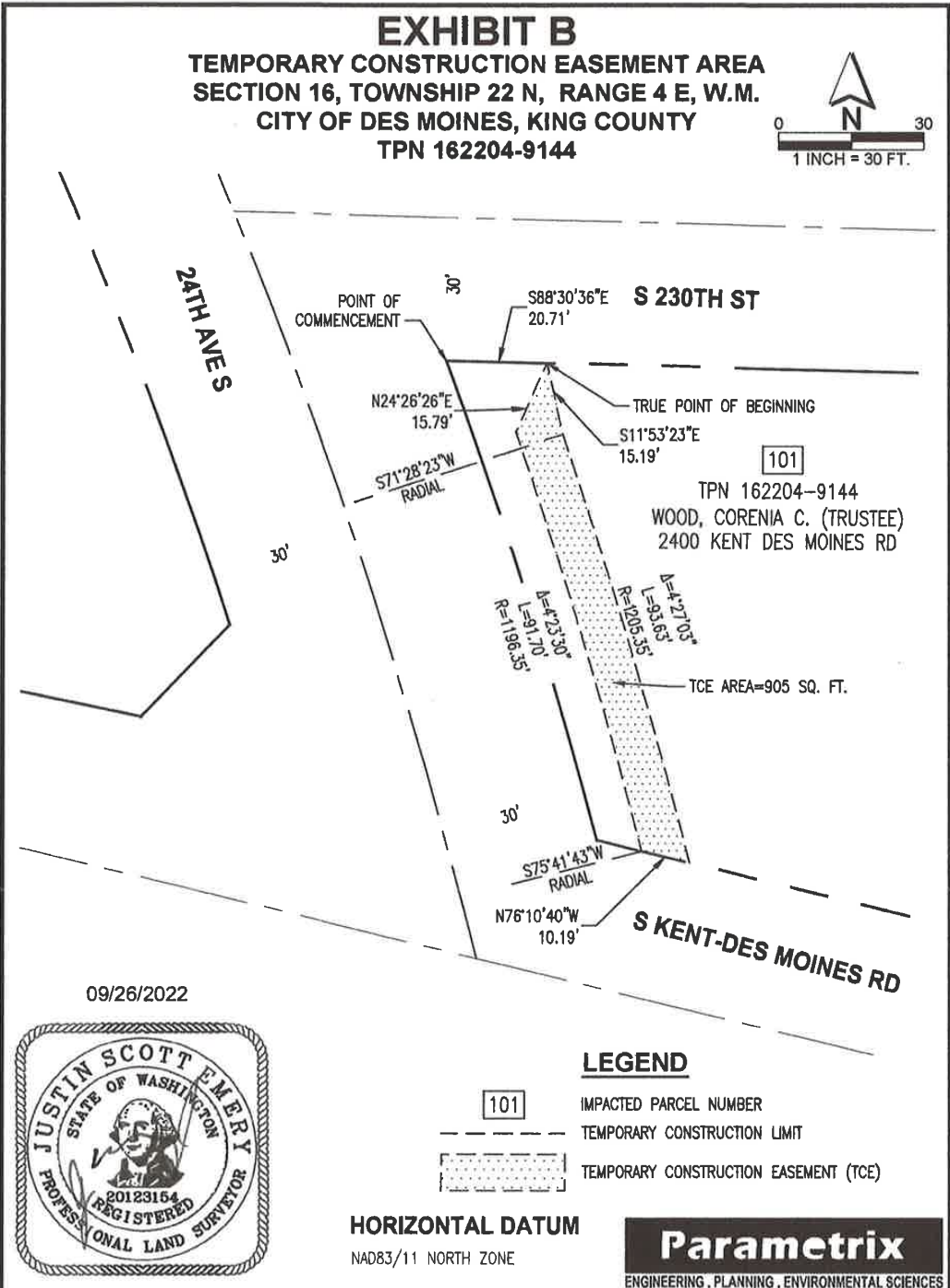
COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL, THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 88°30'36" EAST, 20.71 FEET TO THE **TRUE POINT OF BEGINNING**;
THENCE SOUTH 11°53'23" EAST, 15.19 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE WHICH BEARS SOUTH 71°28'23" WEST, HAVING A RADIUS OF 1205.35 FEET;
THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°27'03" FOR AN ARC LENGTH OF 93.63 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL;
THENCE ALONG SAID SOUTH LINE NORTH 76°10'40" WEST, 10.19 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, THE RADIAL LINE WHICH BEARS SOUTH 75°41'43" WEST, HAVING A RADIUS OF 1196.35 FEET;
THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°23'30" FOR AN ARC LENGTH OF 91.70 FEET;
THENCE NORTH 24°26'26" EAST, 15.79 FEET TO THE **TRUE POINT OF BEGINNING**

SAID PORTION CONTAINING 905 SQUARE FEET, MORE OR LESS

09/26/2022



EXHIBIT B
TEMPORARY CONSTRUCTION EASEMENT AREA
SECTION 16, TOWNSHIP 22 N, RANGE 4 E, W.M.
CITY OF DES MOINES, KING COUNTY
TPN 162204-9144



09/26/2022



LEGEND

- 101 IMPACTED PARCEL NUMBER
- TEMPORARY CONSTRUCTION LIMIT
- ▨ TEMPORARY CONSTRUCTION EASEMENT (TCE)

HORIZONTAL DATUM
 NAD83/11 NORTH ZONE



REAL PROPERTY VOUCHER

AGENCY NAME CITY OF DES MOINES 21630 11th Ave S., Suite A Des Moines, WA 98198		I hereby certify under penalty of perjury that the items and amounts listed herein are proper charges against the Agency, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant.	
		SIGNATURE (IN INK) FOR EACH CLAIMANT X <i>Corenia C. Wood</i>	DATED 6/21/2023
GRANTOR OR CLAIMANT (NAME, ADDRESS) CORENIA C. WOOD 2400 S Kent-Des Moines Road Des Moines, WA 98198	TIN/SSN: X	CORENIA C. WOOD	
PROJECT NO. AND TITLE 24th Ave South Roadway Improvements		X	
FEDERAL AID NO.	PARCEL NO. 162204-9144		
In full, complete and final payment and settlement for the title or interest conveyed or released, as fully set forth in:		DATED	\$ AMOUNT
LAND:			
987 SF X \$27.33/SF		+	\$ 27,000.00
IMPROVEMENTS:			
Landscaping, fencing, trees, grass lawn		+	\$ 9,150.00
DAMAGES:			
Cost to Cure		+	
Proximity		+	
Other Water spigot & Vegetative Screen		+	\$ 13,100.00
Temporary Easement: (905 SF x \$27.33/SF x 0.10 x 1.5-year) + (905 SF x \$27.33/SF x 0.05 x 0.75 year)		\$	4,650.00
JC (Just Compensation) Amount		\$	53,900.00
REMAINDER:			
Uneconomic Remnant		+	
Excess Acquisition		+	
DEDUCTIONS:			
Amount Previously Paid			
Performance Bond			
Salvage Amount			
Pre Paid Rent			
Other			
ADMINISTRATIVE SETTLEMENT		+	\$ 11,734.00
STATUTORY EVALUATION ALLOWANCE		+	
ESCROW FEE		+	
REAL ESTATE EXCISE TAX		+	
OTHER:			
		+	
ACQUISITION AGENT Anthony MacDonald <i>Anthony J. MacDonald</i>	DATE 6-2-23	Voucher No.	TOTAL AMOUNT PAID \$ 65,634.00
AUTHORIZED AGENT FOR AGENCY	DATE		

LPA-321 10/2014

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Field House Playground Equipment
Upgrade: Construction Contract
and Consultant Agreement

FOR AGENDA OF: June 22, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: June 14, 2023

ATTACHMENTS:

1. CIP Project Budget Worksheet
2. Public Works Contract
3. Bid Proposal (Responsive Low Bid)
4. Pertect Inc. 2022-2023 On-Call General Civil Engineering Services, Task Assignment 2022-03

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *[Signature]*
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services */s/ KE*
- Public Works *[Signature]*

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

Purpose and Recommendation

The purpose of this agenda item is for City Council to direct administration to bring forward an amendment to the 2023-2028 Capital Improvement Plan and 2023 Capital Budget (Attachment 1), seek City Council approval of the Public Works Contract (Attachment 2) with Pavement Maintenance of Washington LLC (PMOW LLC), and seek City Council approval for a 2022-2023 On-Call General Civil Engineering Services Task Assignment 2022-03 with Pertect Inc. (Attachment 4) to provide Construction Administration Services. The following motions will appear on the consent calendar:

Suggested Motions

Motion 1: "I move to direct administration to bring forward a budget amendment to the 2023-2028 Capital Improvement Plan and the 2023 Capital Budget to include the amended Field House Playground Equipment Upgrade Project as shown in (Attachment 1) and as described herein, and include such amendment in the next available budget amendment ordinance."

Motion 2: “I move to approve the Public Works Contract with PMOW LLC (Contractor), for Field House Playground Equipment Upgrade Project Base Bid + Bid Additive #1 Proposal, in the amount of \$520,525.28, authorize a project construction contingency in the amount of \$47,500.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

Motion 3: “I move to approve the 2022-2023 On-Call General Civil Engineering Services Task Assignment 2022-03 with Perteet Inc. for the Field House Playground Equipment Upgrade Project in the amount of \$23,724.00 for Construction Administration Services, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.”

Background

Field House Park was transferred to the City by King County in 1993. The portion of the play equipment currently on site was purchased by the Des Moines Rotary Club and installed at Beach Park in 1996. It was later removed and stored until repainted and reinstalled in 2008.

The current 2022-2027 Parks, Recreation, and Senior Services Master Plan identifies several needs at this site as follows:

- Replace a portion of the play structure
- Renovation of play area for safety and ADA access
- Improve South 219th Street entry
- Replace drinking fountain

This project proposes to remove the existing play equipment in its entirety, and replace it with new equipment. The South 219th Street entry adjacent to the skate park will receive treatment to remove the current tree root trip hazards. As part of this project, the contractor will be installing a new drinking fountain at the SW corner of the play area, along with a new bench within the play area at the NE corner. This project also resolves current drainage issues within the existing play area by adding new conveyance from the play area to the bottom of the existing hill. Bid Additive #1 will install a new hill slide from the play area heading west to terminate at the foot of the hill just shy of the ballfield limits.

Solicitation for Bids was published on May 17, 2023 and May 24, 2023 in both the Seattle Times and the Daily Journal of Commerce, with a Public Bid Opening held on June 7, 2023 at 11:00 AM.

Discussion

Budget Amendment (Motion #1)

COVID Impacts can still be observed throughout the industry impacting supply chain materials, labor, and equipment. The Responsive Low Bid for this project was higher than expected. Across the heavy civil industry, inflation is remaining a significant challenge. Given the Responsive Low Bid and recommended 10% contingency, the project budget is experiencing a funding shortfall.

The recommended full funding strategy for the project will utilize a redistribution of unused ARPA funds. If the project contingency does not get expended for the Field House Playground Equipment Upgrade Project, the funding will be re-appropriated by City Council.

Public Works Contract (Motion #2)

The Field House Playground Equipment Upgrade Project was advertised for bids in accordance with State law, WSDOT LAG Manual, and requirements for competitive bidding of public works contracts. Bids from four contractors were received. Bids were publicly opened and read aloud on June 7, 2023 by the City Clerk designee and are summarized below.

BID RESULTS

<u>Engineer’s Estimate (including tax)</u>	<u>\$486,727.33</u>
<u>Contractor Name</u>	<u>Bid Proposal</u>
PMOW LLC	\$520,525.28 (Responsive Low Bid)
Key Peninsula Construction	\$532,773.90
Judha of Lion Landscaping	\$625,742.34
Northwest Cascade, Inc.	\$673,383.71

PMOW LLC is the Responsive Low Bidder (Attachment 3). The bid tabulation and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to PMOW LLC.

Construction Administration Services Task Assignment (Motion #3):

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration of the Project. These services are proposed to be provided by Perteet Inc. (Attachment 4). The scope of work for Perteet includes the following services: reviewing construction schedule commitments, review and approval of proposed material submittals, responding to contractor requests for information to clarify construction requirements, preparing change orders and work instructions, and engineering solutions to unforeseen problems.

Alternatives

(Motion #1) - Not Pursue Budget Amendment

The City Council could elect to not act on the motion, thereby deferring the project to a later date when full funding could be achieved. This is not advisable given the high usage and visibility of this park, along with the highly volatile current bidding climate and expected future cost inflation.

(Motion #2) - Reject All Bids

The City Council could direct staff to reject all Bid Proposals and re-submit for construction bids at a later time. However, there is no reason to believe project bids would be lower given the present extremely busy bidding climate, construction material inflationary pressures, and national labor shortages across all sectors.

(Motion #3) - Not Approve On-Call Task Assignment with Perteet

The City Council could elect not to approve the Task Assignment with Perteet for Construction Administration Services. The City does not have adequate resources to perform complete Construction Administration in compliance with the general project requirements or the WSDOT LAG Manual. Council could direct staff to solicit for proposals, but this will cause project delay and potential need to re-bid the project.

Financial Impact

The City's CIP Budget Worksheet includes revenues to achieve full project funding and fund consultant services (Attachment 1).

Recommendation

Staff recommends the adoption of the motion(s).

Council Committee Review

Not Applicable

**CITY OF DES MOINES
2023-2028 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)**

Field House Play Equipment	Project #	MCCIP0005
#REF!	Previous Project #	310.071

Summary Project Description:
 Replace a portion of the aging play structure. Park renovation will include ADA compliance. There is a companion project for the repair to the skate park and ballfield drainage.

CIP Category: Park Facility & Playground Projects

Managing Department: Parks, Recr & Sr Services

Justification/Benefits: Replace a portion of the aging play structure for safety reasons. Field House Park was transferred to the city by King County in 1993. The portion of the play equipment currently on site was purchased by the Des Moines Rotary Club and installed at the Beach Park in 1996. Later it was removed and stored until repainted and reinstalled in 2008. Some of the equipment doesn't meet current Play Equipment safety and ADA standards and must be replaced.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	11	26	52
Land & Right of Way	-	-	-
Construction	278	368	646
Contingency	15	-	15
Total Expenditures	304	394	698

ANNUAL ALLOCATION							
Project to Date 12/31/21	Scheduled Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028
11	26	15	-	-	-	-	-
-	-	-	-	-	-	-	-
1	-	645	-	-	-	-	-
-	-	-	-	-	-	-	-
12	26	660	-	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
REET 2	54	-	54
King County Parks Levy	-	333	333
ARPA Funding	-	284	284
Private Contributions	-	27	27
King County Grant (Unsecured)	250	(250)	-
Total Funding	304	394	698
Funding Shortfall/Excess	-	-	-

Project to Date 12/31/21	Scheduled Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028
11	43	-	-	-	-	-	-
-	-	333	-	-	-	-	-
50	-	234	-	-	-	-	-
-	27	-	-	-	-	-	-
-	-	-	-	-	-	-	-
61	70	567	-	-	-	-	-

OPERATING IMPACT		
Operating Impact		6 Year Total
Revenue	-	-
Expenses	-	-
Net Impact	-	-

ANNUAL OPERATING IMPACT							
12/31/21	2022	2023	2024	2025	2026	2027	2028
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

CASH FLOW IMPACT		
Operating Impact		6 Year Total
Revenue	-	184
No Funding Source Identified	-	-
Expenses	-	(184)
Net Impact	-	49
Cash Balance	-	-

ANNUAL OPERATING IMPACT							
12/31/21	2022	2023	2024	2025	2026	2027	2028
61	-	637	-	-	-	-	-
-	-	-	-	-	-	-	-
(12)	-	(686)	-	-	-	-	-
49	-	-	-	-	-	-	-
49	49	(49)	-	-	-	-	-



PUBLIC WORKS CONTRACT
between City of Des Moines and
Pavement Maintenance of Washington LLC

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Pavement Maintenance of Washington LLC organized under the laws of the State of Washington, located and doing business at 19411 SE Green Valley Road, Auburn, WA 98092, (425) 495-2464, Max Stickley (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit "A", Scope of Work shown in the approved project plans and specifications, incorporated herein by reference.

Demolition, removal, and disposal of existing playground equipment; installation of new playground equipment and other appurtenances per Exhibit "A", Scope of Work shown in the approved project plans and specifications.

This contract is for Base Bid + Bid Additive #1 as included in the Proposal.

a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for those items mentioned therein to be furnished by the City.

c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated.

In addition, the work shall be in conformance with the following documents which are by reference incorporated herein and made part hereof:

- (i) the Standard Specifications of the Washington State Department of Transportation (WSDOT) (current edition);
- (ii) the American Public Works Association (APWA) (current edition);
- (iii) the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
- (iv) the Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
- (v) the American Water Works Association Standard (AWWA) (current edition), and;
- (vi) shall perform any changes in the work in accord with the Contract Documents.

d. Any inconsistency in the parts of the Contract and the documents referenced in section I c above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

- 1. Terms and provisions of the Contract
- 2. Addenda,
- 3. Proposal Form,
- 4. Special Provisions, including APWA General Special Provisions, if they are included,
- 5. Contract Plans,
- 6. Amendments to the Standard Specifications,
- 7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
- 8. Contracting Agency's Standard Plans (if any), and
- 9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit "A", Scope of Work shown in the approved project plans and specifications, will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I within **60 Working Days**. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed \$472,775.00, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract per Exhibit "A", Scope of Work shown in the approved project plans and specifications. Total amount of contract, including applicable

sales tax, not to exceed \$520,525.28. The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the Contractor's request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.
- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

V. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. LIQUIDATED DAMAGES. This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the

work are extremely difficult to ascertain. However, City and Contractor agree that due to the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

Although difficult to quantify and ascertain, City and Contractor agree that the sum listed as liquidated damages represents a fair and reasonable forecast of the actual damage caused by a delay in the performance or completion of the work specified in the Contract. In addition, City and Contractor agree that the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Contractor declares that it is familiar with liquidated damages provisions, and understands their intent and purpose. By signing this Contract, Contractor further declares that it understands the liquidated damages provision of this contract, that it is a product of negotiation, and that it is a fair estimation of the damage and loss that City will suffer in the event of delay.

City and Contractor further agree that the contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes.

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$1,301.31** [*Liquidated Damages = (0.15*Contract Amount)/Time for Completion*] shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

In the event that the Contract is terminated by City for cause pursuant to the general conditions of the contract, this liquidated damages section shall apply, but only to the extent that the contract is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

VII. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work and an Affidavit of prevailing wages paid after completion of the work. The Statement of Intent to Pay Prevailing Wages," shall include Contractor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the

Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

VIII. HOURS OF LABOR. Contractor shall comply with the "hours of labor" requirements and limitations as set forth in Chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of Chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as over-time of crews) incurred by the City as a result of work beyond eight (8) hours per day or forty (40) hours per week. Additional hours beyond a forty (40)-hour workweek will be pro-rated against contractual workdays.

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. DAYS AND TIME OF WORK. Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 7:00 p.m.
Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

XI. WORKERS' COMPENSATION. The Contractor shall maintain Workers' Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workers' Compensation Laws. In jurisdictions not providing complete Workers' Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workers' Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have

known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

XIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within seven (7) calendar days of the occurrence of the events giving rise to the claims, or within seven (7) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Contractor's claim;
 2. The nature and circumstances that caused the claim;
 3. The provisions in this Contract that support the claim;
 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and

5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

- B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

XIV. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XV. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XVI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

XVII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Contract.

XVIII. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

E. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing insurance of the Contractor before commencement of the work.

F. Subcontractors

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

G. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

H. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

XIX. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XX. BOND - SEPARATE PAYMENT AND PERFORMANCE BONDS REQUIRED. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the full amount of the bid with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company/companies providing such bonds shall agree to be bound to the laws of the State of Washington, and subjected to the jurisdiction of the State of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bonds are supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bonds, elect to have the City retain 10% of the contract amount for

a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

XXI. DEBARMENT. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

XXII. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XVII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of the Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days

after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

F. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

G. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.

I. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by representatives of the Parties and copies of all records, accounts, documents, or other data pertaining to the Work shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

J. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, then the order of precedence shall be in accordance with Section I c of this Contract.

K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

<p>CONTRACTOR:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: _____</p> <p>Its: _____ <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: <u>Michael Matthias</u></p> <p>Its: <u>City Manager</u> <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right; margin-top: 20px;">Approved as to Form:</p> <p style="text-align: right; margin-top: 5px;">_____</p> <p style="text-align: right; margin-top: 5px;">City Attorney</p> <p style="text-align: right; margin-top: 5px;">DATE: _____</p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Max Stickley Pavement Maintenance of Washington LLC 19411 SE Green Valley Road Auburn, WA 98092 (425) 495-2464 (telephone) maxs@pmowllc.com (e-mail address)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Scott J. Romano City of Des Moines 21650 11th Avenue South Des Moines, WA 98198 (206) 870-6539 (telephone) sromano@desmoineswa.gov (e-mail address)</p>
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At the direction of the Des Moines
City Council taken at an open
Public meeting on _____.

PUBLIC WORKS PAYMENT BOND
to City of Des Moines, WA

Bond No. _____

The City of Des Moines, Washington, (City) has awarded to _____ (Principal), a contract for the construction of the project designated as _____, (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in one (1) original counterpart, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature

Date

Surety Signature

Date

Printed Name

Printed Name

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

PUBLIC WORKS PERFORMANCE BOND
to City of Des Moines, WA

Bond No. _____

The City of Des Moines, Washington, (City) has awarded to _____ (Principal), a contract for the construction of the project designated as _____, (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in one (1) original counterpart, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature

Date

Surety Signature

Date

Printed Name

Printed Name

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

REVISED PROPOSAL**Des Moines Field House Playground Equipment Upgrade Project**

This document is a proposed form of agreement. It is subject to revision by agreement of the parties, following award of the contract, and prior to execution of the final agreement.

TO: Honorable Mayor and City Council
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The undersigned Bidder hereby certifies that he has examined the site of all the proposed work under this Contract and that he has read and thoroughly understands the Plans, Specifications and other Contract Documents pertaining to this Contract, that he is fully aware of the construction problems and costs involved, and proposes to perform all work for the following stated prices.

NOTE: The Bidder shall complete the entire proposal or the bid may be considered non-responsive. Additionally, the Owner has the right to correct obvious mathematical errors and reserves the right to update and/or modify contract documents before final execution.

Item	Description	Qty	Unit	Unit Cost	Item Total
	BASE BID				
1.	UNEXPECTED SITE CHANGES	1	EST	\$15,000.00	\$15,000.00
2.	MOBILIZATION	1	LS	\$ 10,000	\$ 10,000 -
3.	REMOVAL OF STRUCTURES AND OBSTRUCTIONS -- PLAY STRUCTURES AND WOOD CHIPS	1	LS	\$ 71,500	\$ 71,500 -
4.	REMOVING PAVEMENT	15	SY	\$ 150	\$ 2250 -
5.	REMOVING CURB	30	LF	\$ 30	\$ 900 -
6.	REMOVING SIDEWALK (INCLUDES CURB RAMP)	25	SY	\$ 100	\$ 2500 -
7.	CRUSHED SURFACING BASE COURSE	10	TN	\$ 75	\$ 750 -
8.	HMA CL. 1/2" PG 58H-22	5	TON	\$ 300	\$ 1500 -
9.	STORM SEWER PIPE 12 IN. DIAM.	85	LF	\$ 150	\$ 12750 -
10.	TRENCH DRAIN	10	LF	\$ 250	\$ 2500 -
11.	EROSION/WATER POLLUTION CONTROL	1	LS	\$ 5000	\$ 5000 -
12.	INLET PROTECTION	1	EA	\$ 250	\$ 250 -
13.	HIGH VISIBILITY SILT FENCE	175	LF	\$ 10	\$ 1750 -
14.	CEMENT CONCRETE SIDEWALK	15	SY	\$ 300	\$ 4500 -
15.	ADA COMPLIANT REPAIR	1	LS	\$ 3500	\$ 3500 -

REVISED PROPOSAL
1 OF 3

16.	PLAYGROUND EQUIPMENT	1	LS	\$ 169,400	\$ 169,400 -
17.	BENCH	1	EA	\$ 2500	\$ 2500 -
18.	DRINKING FOUNTAIN	1	LS	\$ 4500	\$ 4500 -
19.	TOPSOIL TYPE A	10	SY	\$ 200	\$ 2,000 -
20.	SEED LAWN INSTALLATION	24	SY	\$ 50	\$ 1,200 -
21.	PROPERTY RESTORATION	1	EST	\$1,500.00	\$1,500.00
22.	ENGINEERED WOOD FIBER SURFACING	4,750	SF	\$ 10	\$ 47,500 -
23.	PLAY AREA WEAR MAT	4	EA	\$ 1500	\$ 6,000 -
24.	PLAY AREA CONCRETE CURB	20	LF	\$ 55	\$ 1,100 -
25.	PLAY AREA CONCRETE RAMP	1	EA	\$ 3500	\$ 3,500 -

Subtotal Base Bid	\$ 373,850
Sales Tax (10.1%)	\$ 37,758.85
Total Base Bid	\$ 411,608.85

BID ADDITIVE #1 – HILL SLIDE		Qty	Unit	Unit Cost	Item Total
26.	MOBILIZATION	1	LS	\$ 7,500	\$ 7,500 -
27.	EROSION/WATER POLLUTION CONTROL	1	LS	\$ 2,500	\$ 2,500 -
28.	PLAY AREA CONCRETE CURB (6" WIDTH X 18" DEPTH)	120	LF	\$ 55	\$ 6,600 -
29.	PLAY AREA CONCRETE RAMP	1	EA	\$ 2,300	\$ 2,300 -
30.	PLAY AREA SURFACING	650	SF	\$ 38.50	\$ 25,025 -
31.	PLAY EQUIPMENT (HILL SLIDE)	1	LS	\$ 55,000	\$ 55,000 -

Subtotal Bid Additive #1	\$ 98,925
Sales Tax (10.1%)	\$ 9,991.43
Total Bid Additive #1	\$ 108,916.43

Total Project Bid Amount – Base Bid + Bid Additive #1	\$ 520,525.28
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Basis for award shall be Total Project Bid Amount – Base Bid + Bid Additive #1. The City reserves the right to award Base Bid + Bid Additive #1, Base Bid alone, or not make an award at all.

PROPOSAL (cont'd)

Name of Bidder: PAVEMENT MAINTENANCE OF WASHINGTON LLC

Registration or license, Division of Professional Licensing:

1. License number: PAVEMMW899J7

Date: 06 / 06 / 2023

2. Bidder's Signature: *Max Stidley*

Title: PROJECT MANAGER

Address of Bidder: 19411 SE GREEN VALLEY RD AUBURN 98092
Street City Zip Code

Bidder Telephone Number: 425-495-2464 425-495-2464
Office Cell

Bidder E-mail Address: MAXS@PMOWLLC.COM

Date of Bid: 06 / 06 / 2023

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the Bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Bidder's Signature: *Max Stidley* Date: JUNE 6TH, 2023

Receipt is hereby acknowledged for the following Addenda:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Signature</u>
<u>1</u>	<u>5 / 26 / 2023</u>	<u><i>Max Stidley</i></u>
<u>2</u>	<u>6 / 6 / 2023</u>	<u><i>Max Stidley</i></u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

FORM OF A BID BOND

BID BOND DEPOSIT

Herewith find deposit in the form of a bid bond
(state whether certified check, cashier's check, postal money order, or bid bond) for the amount
of Five Percent (5%) of the Total Bid Amount, which amount is not less than five
percent (5%) of the total bid, including sales tax.

Pavement Maintenance of Washington LLC:


Signature

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Pavement Maintenance of Washington LLC, as Principal,
and Merchants National Bonding, Inc., as Surety, are held and firmly
bound unto the City of Des Moines, as Obligee, in the penal sum of
Five Percent of the Total Bid Amount
dollars (\$ 5% of the Total Bid Amount) for the payment of which the Principal and Surety bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
by these presents.

The Condition of this obligation is such that if the Obligee shall make award to the
Principal for the **Des Moines Field House Playground Equipment Upgrade Project**,
according to the terms of the proposal or bid made by the Principal therefore and the Principal
shall duly make and enter into a contract with the Obligee in accordance with the terms of said
proposal or bid and award and shall give bond for the faithful performance thereof, with Surety
or Sureties approved by the Obligee; or, if the Principal shall in case of failure so to do, pay and
forfeit to the Obligee the penal amount of the deposit specified in the call for bids; then this
obligation shall be null and void; otherwise it shall be and remain in full force and effect and the
Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the
amount of this bond.

SIGNED, SEALED AND DATED THIS 7th DAY OF June,
2023.

Pavement Maintenance of Washington LLC:


PRINCIPAL

Merchants National Bonding, Inc.:


SURETY

Katharine J Snider, Attorney-in-Fact

Received return of deposit in the sum of _____

Date: _____

Signature: _____

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Aliceon A Keltner; Alyssa J Lopez; Amelia G Burrill; Annelies M Richie; Brandon K Bush; Brent E Heilesen; Carley Espiritu; Christopher Kinyon; Cynthia L Jay; Eric A Zimmerman; Holli Albers; James B Binder; Jamie L Marques; Julie R Truitt; Justin Dean Price; Katharine J Snider; Lindsey Elaine Jorgensen; Lois F Weathers

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 8th day of December, 2022.

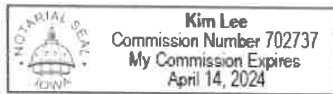


MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 8th day of December 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 7th day of June, 2023.



William Warner Jr.
Secretary

POA 0018 (10/22)


CERTIFICATION OF NON-SEGREGATED FACILITIES

The Bidder certifies that s/he does not maintain or provide for his/her employees any segregated facilities at any of her/his establishments, and that s/he does not permit her/his employees to perform their services at any locations under her/his control where segregated facilities are maintained. The undersigned certifies further that s/he will not maintain or provide for her/his employees any segregated facilities at any of her/his establishments, and that s/he will not permit her/his employees to perform their services at any location under her/his control where segregated facilities are maintained. The undersigned agrees that a breach of this certification will be in violation of the Equal Opportunity clause set forth in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The undersigned agrees that, except where s/he has obtained identical certification from subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that s/he will obtain identical certifications from subcontractors and that s/he will retain such certifications in her/his files.

DATE: JUNE 6, 2023

Signature: 

Name/Title: MAX STICKLEY - PROJECT MANAGER

Bidder Name: PAVEMENT MAINTENANCE OF WA LLC

Address: 19411 SE GREEN VALLEY RD

City/State/Zip: AUBURN, WA 98092

CERTIFICATION OF NON-SEGREGATED FACILITIES

1 OF 1

STATEMENT OF BIDDER'S QUALIFICATIONS

Each bidder submitting a proposal on work included in these Plans and Specifications shall prepare and submit as part of this bid the following schedule:

1. Name of bidder: PAVEMENT MAINTENANCE OF WA LLC
2. Business address and telephone number:
19411 SE GREEN VALLEY ROAD, AUBURN, WA 98092
425-495-2464
3. Name of Owner: APRIL WITTENBORN
4. Year Business Originated: 2011
5. How many years has said bidder been engaged in the contracting business under present firm name: 12 YEARS
6. Have you operated three years without interruption? Yes No
7. Contracts now in hand (gross amount): \$ 600,000
8. Bank references:
INCREDIBLE BANK
BUSINESS REP: TRINA DETENNIS @ 608-203-9829
TDETENNIS@INCREDIBLEBANK.COM
9. Dept. of Labor and Industries' firm number: 206,526 - 00
10. Dept. of Revenue registration number: 27-4468444
11. Washington State Business License Number: PAVEMMW899J7
12. **Identify at least two other public agencies that the company has provided equivalent services to within the past three years. Identify other work performed in the past three years to detail additional experience and qualifications.**
 - 1) Customer Reference: CITY OF FIFE
Dollar value of work on an annualized basis: \$ 22,087.89

STATEMENT OF BIDDER'S QUALIFICATIONS
1 OF 2

Customer Phone Number: 253-606-8877

Date of Work: SEPTEMBER 2019

May we Contact the Named Customer? Yes No

2) Customer Reference: KING COUNTY HOUSING AUTHORITY

Dollar value of work on an annualized basis: \$ 700,000

Customer Phone Number: 206-826-5315

Date of Work: JUNE - AUGUST 2020

May we Contact the Named Customer? Yes No

3) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes No

4) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes No

PAVEMENT MAINTENANCE OF WA LLC

Name of Bidder _____

By: MAX STICKLEY

Title: PROJECT MANAGER

Date: 6/6/2023

STATEMENT OF BIDDER'S QUALIFICATIONS
2 OF 2



Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (June 7, 2023), the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

PAVEMENT MAINTENANCE OF WA, LLC

Bidder's Business Name

Paul W. [Signature]

Signature of Authorized Official*

APRIL WITTENBORN

Printed Name

OWNER

Title

6/6/2023

Date

AUBURN

City

WA

State or country

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

WASHINGTON

If a co-partnership, give firm name under which business is transacted:

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

Statement of Bidder Responsibility Criteria

I, by signing the proposal and this statement, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association, or corporation meet all the bidder responsibility criteria for public works contracts under RCW 39.04.350.
2. That the undersigned person(s), firm, association, or corporation meet all the bidder responsibility as identified in the Contract Documents.
3. That by signing the proposal and this form, I am deemed to have signed and to have agreed to the provisions of this statement.
4. That by signing the proposal and this form, if omissions are found the bidder will be deemed an unresponsive bidder or if awarded a public works project, the contract will be immediately terminated by the Contracting Agency.

Contract Title: Des Moines Fieldhouse Playground Equipment Upgrade

Bidder's Business Name: PAVEMENT MAINTENANCE OF WASHINGTON LLC

Bidder's Name: MAX STICKLEY

Bidder's Signature: 

Bidder's Title: PROJECT MANAGER

Date: JUNE 6, 2023

STATEMENT OF PROPOSED SUBCONTRACTORS AND MATERIAL SUPPLIERS

Subcontractor's Name, Address and Phone Number	Description of Work
NORTHWEST PLAYGROUND EQUIPMENT INC.	PLAYWORLD, SEAGER, AND POURED-IN-PLACE

Material Suppliers	Material (major items only)
MILES RESOURCES	CONCRETE & ASPHALT



FORMAL TASK ASSIGNMENT DOCUMENT

Task Number 3
Supplement Number 3

The general provisions and clauses of Agreement _____
Shall be in full force and effect for this Task Assignment.

Location of Project: 2022-23 On-Call Civil Engineering Services

Project Title: Field House Park Playground

Maximum Amount Payable Per Task Assignment: \$23,724.00

Completion Date: December 31, 2024

Description of Work: See attached Exhibit "A", Scope of Services

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

EXHIBIT A
SUPPLEMENT #3 - SCOPE OF SERVICES
City of Des Moines
2022-2024 On Call Contract

Task 3 – Field House Playground Equipment Upgrade Project

INTRODUCTION

Under the City of Des Moines Field House Playground Equipment Upgrade Project, the City has requested the Consultant provide extra services which were not provided in the original Consultant's Agreement. The Consultant will provide professional engineering services as detailed herein.

Extra services include additional design support during construction.

Consultant's services will be limited to those expressly set forth herein. If the service is not specifically identified herein, it is expressly excluded. Consultant will have no other obligations, duties, or responsibilities associated with the project except as expressly provided in this Agreement.

Transferring Budget within Contract Maximum: The level of effort is specified in the scope of services. The budget may be transferred between discipline tasks at the discretion of the Consultant, provided that the total contracted amount is not exceeded. The Consultant will have the flexibility to manage budget within a given discipline on a subtask level.

Services provided by the Consultant will consist of:

GENERAL SCOPE OF SERVICES

This scope of service provides extra services requested by the City. The following major tasks will be included and supplemented to the original Scope of Services and completed by the Consultant:

(The task numbers below correspond to the original Scope of Services.)

- Task 1 – Project Management and Coordination (supplemented)
- Task 2 – Conceptual Design (completed)
- Task 3 – PS&E Preparation (completed)
- Task 4 – Construction Assistance (new)

Optional Services

With prior written approval by the City and written notice-to-proceed, work elements described in this scope of services as optional services (as directed) may be produced by the Consultant.

This Scope of Services is defined in the tasks below.

SCOPE OF SERVICES DEFINED

Task 1 – Project Management and Coordination

The assumed additional duration for the work defined in this supplemental scope of services is three (3) months. Consultant will provide additional project management services related to this project.

Assumptions:

- This contract duration shall be extended by 5 months

Deliverables:

- Progress report and invoices for an additional 5 months

Task 4 – Construction Assistance

4.1 Construction Assistance (CA)

The Consultant will provide design support during construction including field visits, review and response of RFIs and review of submittals. The Consultant will review Shop Drawings, Working Drawings, Installation Plans, and other contractor submittals for general conformance to the Contract Drawings and special provisions.

Assumptions:

- Labor allowances are estimates only. The level of effort estimated for the stated scope is based on stated assumptions. The effort for CA will be limited to the fee. Effort beyond this amount may be considered additional services.
- The Consultant will review materials submittals for conformance to project-specific design requirements
- The City is responsible for construction management, administration, and daily construction inspection services. The Consultant may provide a supporting role on these tasks as requested by the City, supported by budget and as defined herein.
- The Consultant will review and respond to up to five (5) RFIs averaging three (3) hours each for a total of 15 hours.
- The Consultant will review and respond to up to six (6) submittals averaging four (4) hours each for a total of 24 hours. This time assumes one (1) resubmittal per submittal on average.
- The Consultant will provide support for design changes and other professional services as requested by the City. This may include providing new or revised drawings, special provisions, quantity estimates, and other requested engineering services, for up to two (2) Change Orders.
- Consultant (up to 2 people) will perform up to four (4) site visits at five (5) hours each for a total of twenty (40) hours.

Deliverables:

- Electronic copy of the Consultant responses to RFIs in PDF format.
- Electronic copy of the Consultant responses to submittals, in PDF format.
- Electronic copy of Change Order documents in PDF format.

Additional (Optional) Services

The Consultant may provide additional services as directed by the City which are not identified in this Scope of Services. Additional services shall not commence without written authorization and approval from the City and a supplement to the contract.

Services Not Included in this Scope of Services

1. Survey
2. Geotechnical analysis
3. Public Engagement
4. Grading plans
5. MEF Documentation
6. Stormwater analysis and Technical Information Report
7. Water Quality Treatment and Flow Control Calculations
8. Utility design
9. Illumination design
10. Irrigation and planting design
11. Permit documents
12. SEPA Checklist
13. Construction phasing
14. Cultural Resources
15. Traffic control or pedestrian control plans
16. Grant assistance

Items to be furnished by the City

Information Provided by Others:

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys, and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Further, the Client agrees that the Consultant shall have no responsibility for any portion of the Project designed by other consultants engaged by the Client.

The City shall furnish the following:

1. All available "As-Built" information.
2. Updated underground utility information relative to the City owned utilities.
3. Any applicable preliminary design reports, geotechnical reports, environmental reports, and identified up and downstream problems.
4. Updated City of Des Moines General Provisions.

Design Criteria

As of the date this Agreement is signed, design file, reports, documents, and plans prepared as part of this Scope of Services, to the extent feasible, will be developed in accordance with the latest edition and amendments to the following documents:

1. Standard Specifications for Road, Bridge, and Municipal Construction, 2022 English Edition, published

- by WSDOT and the Washington State Chapter APWA
2. Standard Plans for Road, Bridge, and Municipal Construction, (M 21-10), published by WSDOT
 3. The Revised Draft Guidelines for Accessible Public Rights-of-Way (PROWAG), November 23, 2005 (2005 PROWAG), as determined by WSDOT
 4. City of Des Moines Standard Plans and Policies
 5. Department of Ecology (Ecology) "Stormwater Management Manual for Western Washington" may be used as guidance only.
 6. ASTM F1487-11 – Standard Consumer Safety Commission Handbook for Public Playground Equipment for Public Use.
 7. The Consumer Product Safety Commission Handbook for Public Playground Safety.
 8. "ADA Accessibility Guidelines for Play Areas" as published by the US Access Board.
 9. ASTM F1292 – Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment.
 10. ASTM F2223 – Standards on Playground Surfacing.
 11. ASTM F1951-08 – Accessibility of Surface Systems Under and Around Playground Equipment.
 12. ASTM F2075-04 – Standards for Engineered Wood Fiber (as applicable).

Changes in any design standards or requirements after services have begun may result in extra work, and require a supplement to the Agreement.



Project **PROMO Des Moines Field House Playground CM** Contract Start Date **2/1/2022** Last Update date **6/8/2023**
 Client **City of Des Moines** Contract End Date **9/30/2022** Perteet Project No. **20210230.03S2**
 PM **Brianne Ross** Contract Duration: **7 Months**

Task	Billing Rate	Principal	Sr. Associate	Sr. Engineer / Mgr	Technician III	Accountant	Total Hours	Labor Dollars
		\$350.00	\$245.00	\$225.00	\$130.00	\$125.00		
Task 1 - Project Management and Coordination		1.00	5.00			5.00	11.00	\$2,200.00
Total Task 1 - Project Management and Coordination		1.00	5.00	0.00	0.00	5.00	11.00	\$2,200.00
Task 4 - Construction Assistance								
4.1 Construction Assistance (CA)		2.00	44.00	4.00	4.00		54.00	\$12,900.00
Total Task 4 - Construction Assistance		2.00	44.00	4.00	4.00	0.00	54.00	\$12,900.00
Subconsultant - HBB								
Total Subconsultant - HBB		0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Total Hours		3.00	49.00	4.00	4.00	5.00	65.00	
Total Dollars		\$1,050.00	\$12,005.00	\$900.00	\$520.00	\$625.00		\$15,100.00

Expenses:	
Mileage - \$.655	315
Totals:	315

Subconsultant Fees:	Cost	Markup	Bill
Hough Beck & Baird, Inc.	8,309		8,309
Totals:	8,309		8,309

SUMMARY		
Labor		\$15,100.00
Expenses		\$315.00
Subconsultants		\$8,309.00
CONTRACT TOTAL		\$23,724.00

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Third Reading - City of Des Moines
City Council Protocol Manual Adoption

FOR AGENDA OF: June 23, 2023

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: June 14, 2023

1. Draft Resolution No. 23-031
2. City of Des Moines City Council Protocol Manual with June 1, 2023 and June 8, 2023 Council Amendments
3. City Council Rules Reference Document
4. Articles provided by Jurassic Parliament
5. Jurassic Parliament Edits to Manual

CLEARANCES:

- City Clerk BK
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance _____
- Human Resources _____
- Legal /s/ TG
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: Christal

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider the *City of Des Moines City Council Protocol Manual* to repeal and replace the *Des Moines City Council Rules of Procedure*. Pursuant to DMMC 4.12.030, two readings are required before the updated rules can be enacted. The first reading was conducted on June 1, 2023. A second reading was conducted on June 8, 2023.

Suggested Motion

Motion: "I move to pass Draft Resolution No. 23-031, adopting the City of Des Moines City Council Protocol Manual."

Background

At the June 23, 2022 City Council meeting, Deputy Mayor Buxton sought and received support from three Councilmembers to place a new item on a future agenda. Her request was for a discussion about how to approach the update of the City Council Rules of Procedure.

In July of 2022, an Ad Hoc Rules Committee was created by the Council for the purpose of reviewing the City Council's Rules of Procedure and proposing edits. The Committee, consisting of three Councilmembers, met several times and created a first draft document entitled "City Council Protocol Manual." This draft was forwarded to City staff in October to begin a staff review.

Over the next several months, City staff conducted an in-depth review of the newly drafted City Council Protocol Manual to include analysis of how the new protocols aligned with existing City Codes and policies, reviews of similarly situated agency rules, legal analysis and a practical implementation review of the potential impacts. As a result of this process, staff brought forward an amended version of the Protocol Manual with updates intended to clarify the rules, eliminate repetition, ensure conformity with existing Codes and RCW's, and to ensure the intent of the Council was met.

The Ad Hoc Rules Committee met publicly several more times in 2023 to create an updated draft. That draft was then sent to Ann Macfarlane of Jurassic Parliament for her review and comments. She provided her edits to the Committee and the Committee held a final meeting in May of 2023 to create a draft ready for the full Council to review (Attachment 1).

DMMC 4.12.030 provides that "[a]ny amendment or new rules shall be submitted in resolution form at a regular meeting and shall be placed on the Council agenda under the order of new business. A vote of the Council to adopt such a resolution shall occur at a subsequent regular meeting." Accordingly, a first reading was held on June 1, 2023. Several amendments were made by the Council and incorporated into the Draft for a second reading. A second reading was held on June 8, 2023 with additional amendments made and incorporated into the draft.

Discussion

The last update of the Council Rules was in November of 2019. From time to time, new issues arise and the Rules need to be updated. Traditionally, for minor alterations to the Rules, staff has been utilized to prepare the necessary amendments and drafts. In this instance, the Council decided to do a comprehensive review of the Rules, as well as to hire a consultant to assist with the work to provide technical expertise.

The Committee modeled the Council Protocol Manual after an existing manual used by another Washington city. The Manual is intended to take the place of the current City Council Rules of Procedure. At the outset of this process, the Committee identified a number of areas of emphasis for updated Council rules. These included:

- Roles and Responsibilities of Council, Staff, Committees, and Public
- Ethical Behavior
- Communication clarity and guidance
- Clarity for Council General Meetings
- Clarity about our form of government
- Detail regarding committees, assignments, qualifications, process
- Financial matters
- Enhanced resources (such as; mission statement, City documents, addenda, etc.)

It is the Committee's unanimous position that this Manual accomplishes the tasks that were identified at the outset of this project.

Alternatives

The alternative would be to not adopt the proposed Manual, or to amend the proposed Manual.

Financial Impact

None.

Recommendation

Staff recommends passing the Draft Resolution.

CITY COUNCIL'S DRAFT 6/13/2023

DRAFT RESOLUTION NO. 23-031

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, repealing the *Des Moines City Council Rules of Procedure* and adopting the *City of Des Moines City Council Protocol Manual*.

WHEREAS, DMMC 4.12.10 provides that "rules of procedure governing and regulating meetings of the City Council shall be adopted in resolution form, and shall have the force of law," and

WHEREAS, in June of 2022, the City Council created an Ad Hoc Rules Committee to review the Council Rules of Procedure and provide recommendations for updates and/or amendments, and

WHEREAS, the Committee members analyzed and reviewed a number of council rules and procedures from various cities in the region, and

WHEREAS, the Committee created a Protocol Manual that was reviewed by City staff who provided comments and edits to the Committee for consideration, and

WHEREAS, the Protocol Manual has been reviewed by a well-known parliamentarian who provided her expert opinion on the proposal, and whose edits have been incorporated into the Manual, and

WHEREAS, the Protocol Manual was submitted for consideration by the City Council in resolution form at the regular meeting held on June 1, 2023 as new business, and

WHEREAS, the resolution was considered again at the June 8, 2023 City Council meeting, and

WHEREAS, the resolution adopting the Protocol Manual was adopted by an affirmative vote of at least a majority of the whole membership of the City Council at the subsequent regular meeting held on June 23, 2023; now therefore,

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

Resolution No. ____
Page 2 of ____

Sec 1. The attached document entitled *City of Des Moines City Council Protocol Manual*, is hereby adopted as the official City Council rules of procedure governing and regulating meetings of the City Council substantially in the form as attached and is effective immediately upon adoption.

Sec 2. All prior versions of the *Des Moines City Council Rules of Procedure* are repealed.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2023 and signed in authentication thereof this ____ day of _____, 2023.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

6/14/23 8:53 AM

**CITY OF
DES MOINES
CITY COUNCIL PROTOCOL MANUAL**

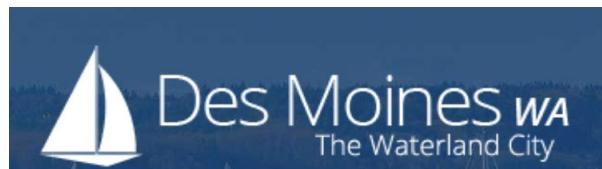


TABLE OF CONTENTS

OATH OF OFFICE	5
FOREWORD.....	6
CHAPTER 1.....	7
INTRODUCTION AND OVERVIEW.....	7
1.01 Council-Manager Form of Government	7
1.02 Purpose of City Council Protocol Manual.....	7
1.03 Association of Washington Cities and Municipal Research Services Center of Washington	7
1.04 Overview of Basic City Documents	7
1.05 Orientation of New Members.....	8
1.06 Medical and Religious Exemptions	8
CHAPTER 2.....	9
DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES	9
2.01 City Council Generally	9
2.02 Role of Councilmembers	9
2.03 Role of Mayor	10
2.04 Role of Deputy Mayor.....	10
2.05 Acting Mayor	10
2.06 Election of Officers	10
2.07 Appointment of City Manager.....	11
2.08 Council Board and Committee Service	11
2.09 Citizen Advisory Bodies.....	13
2.10 Incompatibility of Offices	13
CHAPTER 3.....	13
SUPPORT PROVIDED TO CITY COUNCIL.....	13
3.01 Staff.....	13
3.02 Electronic Devices.....	13
3.03 Mail and deliveries.....	13
CHAPTER 4.....	13
FINANCIAL MATTERS	13
4.01 Council Compensation	13
4.02 Business, Education, and Travel.....	14
4.03 Financial Disclosure	14
CHAPTER 5.....	14
COMMUNICATIONS.....	14
5.01 Overview	14
5.02 Councilmember Contact and Information.....	14
5.03 Correspondence from Councilmembers.....	15
5.04 Council Representation.....	16
5.05 State Public Disclosure Act	16
5.06 Open Public Meetings Act.....	16
5.07 Communication with the Public	16

CHAPTER 6	17
CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS	17
6.01 Conflicts of Interest.....	17
6.02 Appearance of Fairness Doctrine.....	17
6.03 Liability	19
CHAPTER 7	19
INTERACTION WITH CITY STAFF/OFFICIALS	19
7.01 Overview	19
7.02 City Manager Performance Evaluation.....	20
7.03 City Council/City Clerk Relationship.....	20
7.04 City Council/City Attorney Relationship.....	20
7.05 Non-Interference	20
7.06 Access to Information.....	21
7.07 Staff Roles	21
7.08 Councilmember Relationship with Staff.....	21
CHAPTER 8	21
CITY COUNCIL MEETINGS	21
8.01 Meeting Schedule.....	21
8.02 Public Notice of Meetings and Hearings	21
8.03 Special Meetings	22
8.04 Placing Items on the Agenda	23
8.05 Recording and Broadcast of Meetings	23
8.06 Order of Business – Regular Meetings	23
8.07 Order of Business – Study Sessions.....	29
8.08 Order of Business – General Procedures	30
8.09 Open Public Meetings Act.....	31
CHAPTER 9	32
PROTOCOL ADMINISTRATION	32
9.01 Biennial Review.....	32
9.02 Adherence to Protocol.....	32
9.03 City Attorney as Protocol Advisor	33
CHAPTER 10	33
LEAVING OFFICE/FILLING VACANCIES	33
10.01 Return of Materials and Equipment.....	33
10.02 Filling Council Vacancies	33
CHAPTER 11	35
PARLIAMENTARY PROCEDURES	35
11.01 Meeting Decorum and Order.....	35
11.02 Obtaining the Floor.....	35
11.03 Interruptions	36
11.04 Discussion Limit	36
11.05 Suspending the Rules	36

CHAPTER 12.....36

ADDITIONAL TRAINING AND RESOURCE MATERIALS.....36

12.01 Association of Washington Cities [(800) 562-8981]36

12.02 National League of Cities [(202) 626-3000].....36

12.03 International City/County Management Association [(202) 289-4262]36

12.04 Government Finance Officers Association [(312) 977-9700]37

12.05 Municipal Research & Services Center of Washington [(206) 625-1300]37

Foreword

In the course of serving as a public official, there are a myriad of issues with which you will become involved. This protocol manual attempts to centralize information on common issues related to local government and your role as a member of the Des Moines City Council.

The issues that are addressed in this publication are often complex and subjective. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney in accordance with the Revised Code of Washington (RCW).

The protocols included in this reference document have been formally adopted by the City Council. Provisions contained herein will be reviewed as needed.

CHAPTER 1 INTRODUCTION AND OVERVIEW

As a City Councilmember, you not only establish important and often critical policies for the community, you are also a Board Member of a public corporation having an annual budget that may exceed one hundred million dollars.

1.01 Council-Manager Form of Government

The City of Des Moines is a Council-Manager form of government. As described in the Municipal Code and Revised Code of Washington, certain responsibilities are vested in the City Council and the City Manager. This form of government establishes that a City Council's role, in this specific form of government is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines what public policy is, and gives direction to the City Manager to administer the affairs of the City government.

1.02 Purpose of City Council Protocol Manual

The City of Des Moines has prepared its own protocol manual to assist the City Council by documenting accepted practices and clarifying expectations. This Manual has been formally adopted by the City Council and is binding on all Councilmembers.

1.03 Association of Washington Cities and Municipal Research & Services Center of Washington

[The Code City Handbook, Report No. 37](#), published by the Municipal Research & Services Center (MRSC), provides a wealth of general information on the major functions of a Councilmember's job as a locally elected official. Another publication from MRSC that goes hand in hand with the handbook is, [Knowing the Territory](#). This report discusses basic powers; basic duties, liabilities, and immunities of officers; conflict of interest and appearance of fairness; prohibited uses of public funds, property, or credit; competitive bidding requirements; the Open Public Meetings Act; Open Government-Public Records-Freedom of Information; and immunities from tort liability. These two documents have been included as resources in creating this protocol manual.

1.04 Overview of Basic City Documents

This protocol manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction.

A. [Revised Code of Washington](#)

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Des Moines is an "optional code city," which means it operates under the general laws of the state. As an optional code city of the State of Washington, Des Moines is vested with all the powers of incorporated cities as set forth in the Revised Code of Washington (RCW), Constitution of the State of Washington, and Des Moines Municipal Code.

B. [Des Moines Municipal Code](#)

The municipal code contains local laws and regulations adopted by ordinances. Titles 2 and 4 of the code address the role of the City Council, describes the organization of City Council meetings and responsibilities and appointment of certain City staff positions and advisory boards and commissions. In addition to these administrative matters, the municipal code contains a variety of laws including, but not limited to, zoning standards, health and safety

issues, traffic regulations, building standards, and revenue and finance issues.

- C. [Vision/Mission Statement](#)
[Vision, Mission & Business Plan - City of Des Moines, WA \(desmoineswa.gov\)](#)

- D. [City Budget](#)

The budget is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations.

Please note: The City Manager is required, by state statute, to present a recommended budget to the City Council in October of the preceding year of the budget. The City Council must hold at least two public hearings on the budget before they can approve the budget with any adopted changes.

- E. [Annual Comprehensive Financial Report \(ACFR\)](#)

The annual financial report includes the financial statements of the City for a calendar year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial report includes statements for the various groups of funds and a consolidated group of statements for the City as a whole.

- F. [Comprehensive Plan](#)

A state-mandated comprehensive plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements such as employment and residential growth targets. The City's comprehensive plan, *Imagine Des Moines...* is reviewed on an ongoing basis, but may only be revised once a year, except as provided by State law.

- G. [Six-year Capital Improvement Program](#)

The Six year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and constructing capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of city services.

1.05 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the City Manager and City Clerk provide an orientation session for new members to meet with key staff within the first quarter of taking office.

Another training opportunity for new members is the Association of Washington Cities-sponsored newly elected officials' orientation. At any time, if there are facilities or programs about which you would like more information, arrangements will be made to increase your awareness of these operations.

1.06 Medical and Religious Exemptions

The City complies with all requirements of the Americans with Disabilities Act (ADA). Accordingly, exceptions to these Protocols may be granted in accordance with the ADA. A Councilmember who believes he or she needs a reasonable accommodation in order to perform the essential functions of his or her (role as a Councilmember) must submit a request for a reasonable accommodation to the City's Human Resources Department. This request will be processed in accordance with the City Personnel Manual.

A Councilmember, who holds a “sincerely held religious belief, practice or observance” that conflicts with the Protocol requirements, may request a reasonable accommodation. Upon notice of the request, the City will process in the same manner as a reasonable accommodation request as defined by the ADA.

CHAPTER 2 DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES

2.01 City Council Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety and general welfare of the citizenry. The City Council is the policy-making and law-making body of the City. State law and local ordinances grant the powers and responsibilities of the Council.

In carrying out their public role and in representing the positions of the Council body, Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure that the policy of the Council is appropriately executed.

- A. Council Non-Participation in Administration
[RCW 35A.13.120](#) specifically prohibits interference by Councilmembers in the City's administrative service, including the hiring, firing, and work of city staff, with the exception of the City Manager.
- B. Code of Conduct/Ethics Code DMMC 2.44
[Chapter 2.44 CODE OF ETHICS \(codepublishing.com\)](#)

2.02 Role of Councilmembers

Members of the Des Moines City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather is an effort to summarize the primary responsibilities of the Council.

Summary of Council Duties and Responsibilities as provided in, but not limited to, the Washington Administrative Code and Revised Code of Washington:

- A. Establish Policy:
 - 1. Adopt goals and objectives
 - 2. Establish priorities for public services
 - 3. Approve/amend the operating and capital budgets
 - 4. Approve contracts over \$50k
 - 5. Adopt resolutions
- B. Adopt City Ordinances
- C. Appoint City Manager:
 - 1. Evaluate performance of City Manager
- D. Boards and Commissions:
 - 1. Establish advisory boards and commissions
 - 2. Approve appointments to advisory bodies

3. Provide direction to advisory bodies

E. Provide Public Leadership:

1. Communicate the City's vision and goals to constituents
2. Represent the City's interest at regional, county, state, and federal levels through participation in regional boards and commissions, as appointed by Mayor or Council.
3. Call special elections as necessary
4. Constituent communication to City Manager

F. Decision-Making:

1. Participate in assigned committees
2. Study problems
3. Review alternatives
4. Determine best course of public policy

2.03 Role of Mayor

A. Presiding Officer:

The Mayor serves as the presiding officer and acts as chair at all meetings of the City Council. The Mayor may participate in all deliberations of the Council in the same manner as any other members and is expected to vote in all proceedings, unless a conflict of interest exists. The Mayor does not possess any power of veto.

B. Ceremonial Representative:

Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. The Mayor shall have no regular administrative or executive duties.

C. Proclamations:

The Mayor is vested with the authority to initiate and read and sign Council approved proclamations.

D. See also Section 5.04:

[Chapter 5.04 GENERAL PROVISIONS](#)

2.04 Role of Deputy Mayor

In case of the Mayor's absence or temporary disability, the Deputy Mayor shall act as Mayor during the continuance of the absence. When the Deputy Mayor acts as Mayor by participating in preparation of a council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Deputy Mayor shall have authority only to approve the Council meeting agenda or study session worksheet as to form, without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written.

2.05 Acting Mayor

When both the Mayor and Deputy Mayor are absent, the Council may choose from among its members a person to serve with the powers of the Deputy Mayor.

2.06 Election of Officers

Procedures for electing officers are as follows:

A. Biennial Election of Mayor and Deputy Mayor

Biennially, at the first meeting of the new Council, Councilmembers will choose a presiding

officer from their number who will have the title of Mayor. In addition to the powers conferred upon them as Mayor, they will continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting will select a Mayor from their number for the unexpired term. Following the election of the Mayor, if the Deputy Mayor is selected as the new Mayor, there will be an election for Deputy Mayor. The term of the Deputy Mayor will run concurrently with that of the Mayor.

1. Nominations

The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations are then closed. The election for Deputy Mayor shall be conducted by the newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Deputy Mayor shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Deputy Mayor may be waived by a vote of five Councilmembers.

B. Casting Ballots

Except when there is only one nominee, election will be by audible vote; each Councilmember declaring a vote into the record. The City Clerk will publicly announce and record the results of the election in the official minutes, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Once a nominee receives a majority vote of the members present, the nominee is declared elected to the position.

C. Unable to Agree

In the event that the Council is unable to agree on a Mayor by majority vote of the members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney.

In the event that the Council is unable to agree on a Deputy Mayor, the appointment of Deputy Mayor shall be filled in the same manner as described above.

The Acting Mayor and Acting Deputy Mayor shall continue in office and exercise such authority as is described in Chapter [35A.13 RCW](#) until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Deputy Mayor shall cease and terminate.

D. Resignation of Mayor or Deputy Mayor

If the Mayor or Deputy Mayor resign, the City Council will appoint a new Mayor or Deputy Mayor using the procedure outlined above, as soon as practical.

2.07 Appointment of City Manager

The City Council is responsible for appointing one position within the City organization, the City Manager. The City Manager serves at the pleasure of the Council.

2.08 Council Board and Committee Service

A. Committees of the Council:

Committees of the Council are comprised of a collaboration of Councilmembers and Staff, and are designed to review, discuss, and vet potential plans and decisions that may come before the Council body. These committees may make recommendations on proposed ordinances, resolutions, or motions within their area of expertise.

The procedures governing all committees of the Council shall be as follows:

1. The following standing committees shall consist of three members of the Council appointed by the Mayor in January following an election, or at such time as new standing committees are authorized; Environment, Municipal Facilities, Public Safety and Emergency Management, Transportation, and Economic Development.
2. In addition to standing advisory committees, special purpose or Ad Hoc committees and task forces may be appointed by the Mayor to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad-hoc committees will be dissolved upon completion of the intended task.
3. Minutes shall be kept of each City Council standing and special committee meeting, listing discussion topics, a summary of key points made, without attribution to individuals and any final recommendations.
4. Standing committees of the Council are open public meetings, shall be noticed to the public, and be recorded and available to the public for viewing.
5. During the appropriate portion of the regular City Council meeting, the Committee Chair shall report back to the Council regarding items of discussion, progress, or plans.
6. Councilmembers may be appointed or removed by the Mayor.

Councilmembers shall not serve on appointed City Advisory Bodies concurrent with their term of office as Councilmember.

However, at the discretion of the Mayor, Councilmembers may be appointed as liaison to one or more Council-established Citizen Advisory Bodies or other Community agencies/organizations. In their capacity as a Council liaison, a Councilmember shall:

1. Attend meetings on time and conduct themselves with respect, honoring the chair and members of the appointed or community body.
2. Participate only as requested by the Chair in answering questions or representing the will or opinion of the Council as a whole, and shall not interact as a member of the body by engaging with questions, discussion, or voting.
3. Report back to Staff and/or Council as appropriate with updates, progress and/or questions posed by community members. This should be done in a timely manner and may be done from the dais during Board and Committee Reports as appropriate.

B. Regional Boards and Committees:

Members of the City Council are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies.

1. Membership appointment to these groups shall be made, or authorized by the Mayor for a 2-year period. If more than one Councilmember desires to serve as a member of a particular outside group, the member will be appointed by the Mayor.
2. Where applicable, the Mayor will appoint an alternate to attend outside boards, councils, commissions, or committees. The main delegate will notify the alternate as soon as possible after they realize they will be unable to attend an upcoming meeting of the outside group.
3. Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion.

Personal positions, when given, will be identified and not represented as the position of the City.

4. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

2.09 Citizen Advisory Bodies

The Council policy regarding Citizen Advisory Bodies is found in DMMC Title 4:
[Title 4 COUNCILS AND APPOINTIVE COMMITTEES \(codepublishing.com\)](#)

2.10 Incompatibility of Offices

Councilmembers shall not simultaneously hold any other elected position, an incompatible public office or employment within the City government except as permitted under the provisions of [RCW 42.23](#), [35A.12](#) and [35A.13](#).

CHAPTER 3 SUPPORT PROVIDED TO CITY COUNCIL

3.01 Staff

The use of City staff to provide support for a Councilmember is limited to that which is authorized by the City Manager.

Councilmembers are responsible to keep their own calendars and make their own appointments.

3.02 Electronic Devices

A computer and phone will be provided to each Councilmember for the conducting of City business. The IT staff will ensure that all appropriate software is installed and will also provide an orientation in the use of computers and related software. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Personal media and programs cannot be stored on City computers. Councilmembers must adhere to all policies under the City of Des Moines IT Security Policies.

Throughout Councilmember terms, City equipment is subject to audit. Virus protection software must not be disabled at any time on City equipment and non-city programs or media found during audits will be removed. When individual Councilmembers have completed their term of office, IT staff will retrieve City computers, software, and phones.

3.03 Mail and Deliveries

Members of the City Council receive mail and other materials that are delivered through the use of mailboxes located at City Hall. Councilmembers are encouraged to check mailboxes often.

CHAPTER 4 FINANCIAL MATTERS

4.01 Council Compensation

The municipal code provides for payment of a stipend to members of the City Council. A seated City Council may not increase or decrease its own compensation. Councils may only pass an ordinance to adjust the compensation of a future City Council. Currently, Council salaries are set as provided in chapter 4.08 DMMC or [RCW 35.21.015](#).

4.02 Business, Education and Travel

When determined by the City Council to be in the best interests of the City, Councilmembers may attend conferences and workshops, take part in educational or leadership opportunities, and conduct City business which may require travel, tuition, fees, or registration costs. Councilmembers may be reimbursed for these expenses under the following guidelines:

- A. The Administration will keep account of Councilmember expenses.
- B. When the Councilmember makes arrangements or incurs eligible expenses as determined by the Council, the Councilmember shall provide receipts for reimbursement.

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the State Public Disclosure Commission in accordance with State law. When appointed to fill a vacancy on the Council, the appointee shall file a financial disclosure statement with the Commission, covering the preceding 12-month period, ~~within at least~~ two weeks ~~prior to appointment, of being appointed.~~ Councilmembers are required to file a financial disclosure statement with the Commission on an annual basis after January 1 and before April 15 of each year covering the previous calendar year. Councilmembers whose terms expire on December 31 shall file the statement for the year that ended on that December 31. Statements filed in any of the above cases will be available for public inspection.

Failure to timely file a financial disclosure statement with the State Public Disclosure Commission in accordance with the requirements of State law, or filing a false or incomplete financial disclosure statement, if done knowingly, is a Class 1 Misdemeanor. There are also civil penalties for violations.

CHAPTER 5 COMMUNICATIONS

5.01 Overview

Perhaps the most fundamental role of a Councilmember is communication. This is essential to engage with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents. In addition, connection with the staff provides policy direction and assists in understanding the implications of various policy alternatives.

Because the City Council performs as a body, based on the will of the majority as opposed to individuals, it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public must be advised.

5.02 Councilmember Contact and Information

A page on the City of Des Moines website will display information about each councilmember for community reference, which will include:

- A. A color photo
- B. A short biography/resume
- C. List of assignments or designations
- D. Phone number and email

5.03 Correspondence from Councilmembers

Councilmembers are committed to open communications in their capacity as elected officials. Individual Councilmembers use a variety of methods to communicate with the public, stakeholders, partners, and the media. Social media platforms offer a way to deliver public information and customer service to constituents and give community members another means to interact with their government.

The purpose of this policy is to establish standards for Council communication with the public, when Councilmembers are acting in their official capacity or commenting on City government matters, either through traditional media outlets or the use of social media platforms or personal accounts or pages.

The Council believes that the following standards will provide consistency in procedures and allow for use of more tools to communicate with the public.

- A. The content and tenor of all public communications shall model the same professional behavior displayed during Council meetings and community meetings, and reflect well on the individual Councilmember, the Council as a whole, and the community.
- B. The following disclaimers shall be included in whole or referenced with a link to the disclaimers for all communications initiated by Councilmembers in open forums:
 1. The views expressed represent the views of the author and may not reflect the views of the City of Des Moines or the Des Moines City Council.
 2. Responses to this communication by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion or other action taken must be held in an open public meeting if a quorum of the Council participates.
 3. Comments posted in response to a Councilmember-initiated communication may be subject to public disclosure under chapter [42.56 RCW](#), the Public Records Act.
- C. Media outlets such as newspapers, radio and television news coverage may be used as communications medium by individual Councilmembers provided that the communication clearly states that the views expressed do not represent those of the City Council or the City of Des Moines, but the views of the individual Councilmember.
- D. Communications initiated by Councilmembers. Guest editorials, letters to the editor and blog posts published by Councilmembers should be provided to the full Council at the same time they are delivered to the media outlet. Drafts of guest editorials, letters to the editor or blog posts which may be submitted on behalf of the Council as opposed to an individual Councilmember may not be circulated for comment to a quorum of the Council prior to publication as this may violate the Open Public Meetings Act.
- E. Use of Social Media. Posts to social media sites such as, blogs, Facebook, and Twitter may be used by individual Councilmembers to communicate with the public provided the following guidelines are used:
 1. Blog posts or other posts to social media sites should include, or reference a link which includes the disclaimers listed in Section 5.03.B.
 2. Social media sites are not to be used for the conduct of Council business other than to informally communicate with the public. Public notices, items of legal or fiscal significance that have not been released to the public, and discussion of quasi-judicial matters may not be included in Councilmembers social media posts. Councilmembers are encouraged to

maintain social media sites with settings that can restrict users' ability to comment in order to avoid inadvertent discussions of these items. Unsolicited public comments on quasi-judicial matters must be placed on the record by the Councilmember at the time the matter is before the Council for consideration.

3. In order to demonstrate openness and a willingness to listen to the entire community, Councilmember posts on social media sites should be made through a public-facing page or by marking individual posts as available to the public as a whole.
4. When commenting on a post or an article published by someone other than a Councilmember, a link to the standard disclaimers in Section 5.03.B should be included within the thread.

F. If a Councilmember makes a factual error in a public communication, it should be corrected as soon as the error is discovered. Blog posts may be corrected by amending a previous post with a note that a correction was made.

G. Councilmembers shall not take actions, in writing, speaking, or otherwise, outside the public meeting(s) that undermine the decisions of the body.

~~H. Councilmembers may occasionally be asked to prepare letters of recommendation for students or others seeking employment or appointment. In this case, Councilmembers may request City letterhead and their Council titles for such letters, upon approval from the Mayor. City letterhead and staff support cannot be utilized for personal or political purposes.~~

5.04 Council Representation

To promote a favorable image of the City and pursue resources or relationships that will benefit the community, the Mayor, or another Councilmember designated by the Council, may take the lead in representing the City of Des Moines to other partners and representatives including, but not limited to; businesses, other local governments, regional agencies and organizations, and state, federal and international governments.

- A. Councilmembers shall not conduct communication or business in this manner without the authorization of the Administration or the City Council.
- B. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Council.
- C. The Mayor, or another Councilmember designated by the City Council, shall be the spokesperson about actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

5.05 State Public Disclosure Act

The City Council is bound by State Public Records Act and City records policies. Please refer to Resolution No. 1185 [142.pdf \(civiclive.com\)](#)

5.06 Open Public Meetings Act

The City Council is bound the State Open Public Meetings Act. More information can be found at [Open Government Training | Washington State](#)

5.07 Communication with the public

- A. If a Councilmember receives communication from a member of the community conveying a concern, complaint, or administrative issue, the Councilmember shall not attempt to address it or resolve it individually but will refer that matter directly to the City Manager for their review and/or action. The individual Councilmember may request to be informed of the action or

response made to the complaint.

B. Written Communications:

Letters, correspondence, and memoranda received by the City, addressed to a Councilmember or the Council as a body, shall be provided to all City Councilmembers.

C. E-mail:

1. If a community member sends an e-mail to a Councilmember and requests that it be included in the record of a particular public hearing, the Councilmember will forward said e-mail to the City Clerk.
2. If a Councilmember wishes that an e-mail be distributed to a City staff member, the Councilmember will forward said e-mail to the City Manager.
3. E-mail communications that are intended to be shared among four or more Councilmembers, whether concurrently or serially must be considered in light of the Open Public Meetings Act. If the intended purpose of the e-mail is to have a discussion that should be held at an open meeting, the electronic discussion may not occur. Further, the use of e-mail communication to form a collective decision of the Council is illegal.
4. E-mail should be used cautiously when seeking legal advice or if discussing matters of pending litigation or other "confidential" City business. In general, e-mail is discoverable in litigation, even deleted e-mail is not necessarily removed from the system, and councilmembers may not delete official email in violation of the Open Public meetings Act. Confidential e-mail communications should not be shared with individuals other than the intended recipients, or the attorney-client privilege protecting the document from disclosure may be waived:
 - a. E-mail between Councilmembers, and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the City Clerk.
 - b. City email shall not be used for personal communication.

**CHAPTER 6
CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND
LIABILITY OF ELECTED OFFICIALS**

6.01 Conflicts of Interest

In the course of conducting City business, it is essential that Councilmembers understand and are able to identify if and where they may have conflicts of interest. If there is ever a question, Councilmembers should consult with the City Attorney before the meeting at which the issue may be considered.

City Councilmembers are bound by the Conflict of Interest provisions of chapter [2.44 DMDC](#) as well as chapter [42.23 RCW](#).

6.02 Appearance of Fairness Doctrine

Appearance of Fairness Doctrine and its Application.

- A. Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." [Zehring v. Bellevue, 99 Wn.2d 488](#)

[\(1983\)](#).

B. Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [RCW 42.36.010](#). Some examples of quasi-judicial actions which may come before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits. City staff is advised to notify the City Council upon receipt of an application or decision which will result in an action before the City Council that is quasi-judicial in nature.

C. Obligations of Councilmembers, Procedure.

1. Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

2. Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.
3. The Presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.
4. Notwithstanding the request of the Presiding Officer or other Councilmembers, the

Councilmember may participate in any such proceeding.

D. Specific Statutory Provisions.

1. Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. [RCW 42.36.040](#).
2. A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. [RCW 42.36.050](#).
3. During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. [RCW 42.36.060](#).

6.03 Liability

The City must always approach its responsibilities in a manner that reduces appropriate risk to all involved. Nevertheless, with such a wide variety of high profile services (i.e., police, parks, roads, land use), risk cannot be eliminated. To better manage insurance and risk, the City participates in risk- and loss-control activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in the member being personally liable for damages which would not be covered by the City's insurance.

[DMMC 2.24.030](#) identified the exclusions to insurance coverage as follows:

The obligations assumed under this chapter by the city and the city attorney shall not apply to:

- A. Any dishonest, fraudulent, criminal, or malicious act of any official or employee;
- B. Any act of an official or employee which is not performed on behalf of the city;
- C. Any act which is outside the scope of an official's or employee's service or employment with the city; or
- D. Any lawsuit brought by or on behalf of the city.

The determination of whether an official or employee is entitled to a defense by the City under shall be made by the City Attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment.

For more information, see [Chapter 2.24 DMMC](#).

**CHAPTER 7
INTERACTION WITH CITY STAFF/OFFICIALS**

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and

programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters.

7.02 City Manager Performance Evaluation

In accordance with [DMMC 2.04.050](#), all members of the City Council will be required to participate in a review of the City Manager.

Prior to the process, the City Attorney will distribute evaluation forms to all Councilmembers for review, completion, and return within 14 days of receipt. The forms will be collated into one document for review before the evaluation date.

The members of the Council will use the collated document to review the City Manager during Executive Session.

7.03 City Council/City Clerk Relationship

The City Clerk is appointed by the City Manager. The City Clerk shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council

7.04 City Council/City Attorney Relationship

The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City.

It is important to note that the City Attorney does not represent, or advise, individual members of Council, but rather the City Council as a whole.

7.05 Non-Interference

In accordance with [RCW 35A.13.120](#), the City Council is to work through the City Manager when dealing with administrative services of the City. In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence or criticize personnel matters or individual staff members, who are under the direction of the City Manager.

Any criticism of staff by Councilmembers shall be directed to the City Manager. It is inappropriate and unethical for Councilmembers to publicly criticize individual staff members.

Individual Councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities. Following this RCW is necessary in order to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal.

The City Council shall not be involved in, or influence, the purchase of any supplies beyond the requirements of the City procurement code/procedures.

If a Councilmember wishes to influence the actions, decisions, recommendations, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy

7.06 Access to Information

The City Manager is the information liaison between Council and City staff. Requests for information from Councilmembers are to be directed to the City Manager. The information requested will be copied to all members of Council so that each member may be equally informed.

There are limited restrictions when information cannot be provided. The City is legally bound to protect certain confidential personnel information. Likewise, certain aspects of police department affairs (i.e., access to restrict or confidential information related to crimes) may not be available to members of the City Council.

No Councilmember shall request or direct the City Manager or Department Directors to initiate any action or prepare any report, or initiate any project or study without the consent of a majority of the Council.

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

7.07 Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council. Staff is directed to reject any attempts of individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

7.08 Councilmember Relationship with Staff

Staff support and assistance may be provided to advisory boards, commissions, and task forces. Advisory bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager.

When Councilmembers are acting as Liaisons they shall not direct staff.

CHAPTER 8 CITY COUNCIL MEETINGS

The City Council's collective policy and law-making powers are put into action exclusively at the council meetings. It is here that the Council conducts its business. The opportunity for community members to be heard, the availability of local officials to the public, and the openness of council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Council business meetings are generally held the first, second, and fourth Thursdays of each month, convening at 6:00 p.m., in the Council Chambers at Des Moines City Hall, 21630 11th Ave S, Suite C, Des Moines WA, 98198. The first Thursday is intended to be reserved as a study session.

If Council Meetings are moved to alternate location or conducted remotely they will be noticed publicly at least 24 hours in advance in accordance with the State law.

8.02 Public Notice of Meetings and Hearings

Pursuant to [RCW 35.22.288](#), cities are charged with establishing a procedure for notifying the

public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Des Moines is as follows:

A. Open to the Public:

All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in [RCW 42.30.110](#) or [RCW 42.30.140](#).

B. Notices of Public Hearing:

Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council shall be given by public notice containing the time, place, date, subject, and body before whom the hearing is to be held, using the City's official notification process at least ten (10) days before the date set for the hearing.

C. Preliminary Agenda of Council Meeting:

The public shall be notified of the preliminary agenda for the forthcoming regular City Council meeting by posting a copy of the agenda in the following public places in the City at least 24 hours in advance of the meeting:

Des Moines City Hall
21630 11th Ave So
Des Moines, WA 98198
Website: The City's Official Website: desmoineswa.gov
Des Moines Libraries
Des Moines Marina
Redondo

8.03 Special Meetings

It is the intent of the Des Moines City Council that the procedures of this Council Rule 8.03 are enforceable to the same extent as [RCW 42.30.080](#), as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at [RCW 42.30.080](#). Procedures for setting a special meeting are as follows:

A. A special meeting may be called by the Mayor or any four members of the Council.

B. Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, duration of meeting, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.

C. The notice shall be posted on the City's website and Councilmembers will be notified via email of the special meeting. The notice must be delivered at least twenty-four (24) hours prior to the meeting.

D. When email notice is given to Councilmembers, the City Clerk shall provide confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has not acknowledged receipt of the email. The City Clerk shall document the date and time of such follow up telephone call.

E. The notices provided in this section may be dispensed within the circumstances provided by [RCW 42.30.080](#).

8.04 Placing Items on the Agenda

The Presiding Officer, three Councilmembers, or the City Manager may introduce a new item to the preliminary agenda.

The Presiding Officer shall have the option of postponing any item on the agenda until the next regular Council meeting, unless it was introduced by three Councilmembers.

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council.

After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency.

Emergency items may be added to an agenda in accordance with state law.

8.05 Recording and Broadcast of Meetings

The City Clerk, or designee, shall make and keep audio recordings, [and video when possible](#), of all standing committee and business meetings of the Des Moines City Council, except those meetings or portions of meetings conducted in Executive Session.

Recordings and related records of all City Council meetings, except as referenced above, shall be retained by the City in accordance with the Washington State Records Retention Schedule.

All public meetings of a quorum of the City Council not exempt from the Open Public Meetings Act held in the Des Moines City Hall at 21630 11th Avenue South should be video recorded and broadcast within the City.

8.06 Order of Business – Regular Meetings

The City Council, by adoption of this manual, establishes the general order of meetings. This section details the order of meeting components and gives direction for their conduct. The Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

The components of business and their order are as follows:

- A. Call to Order and Pledge of Allegiance
- B. Roll Call
- C. Correspondence not Previously Received by Council
- D. Comments from the Public
- E. Committee Chair Reports
- F. City Manager Report/Presentations/Briefings
- G. Consent Agenda
- H. Ceremonial Matters, Proclamations (reading)
- I. Public Hearings
- J. Unfinished Business
- K. New Business
- L. New Agenda Items for Consideration
- M. Councilmember Reports

- N. Presiding Officer's Report
- O. Executive Session (as required)
- P. Next Meeting Date
- [Q. Adjournment](#)
- [Q-R. Meeting Materials -](#)

Conduct of Business:

- A. Call to Order/Pledge

- B. Roll Call:
 - 1. (For procedure to excuse an absence see 8.09.E)

- C. Correspondence not previously received by Council.

D. Comments from the Public:

Public Comments are encouraged and appreciated. All Public Comment will be recorded and become part of the Public Record, which is available to the Public on the City website. Public comment is provided as an informational and educational tool for the Council. The information and advice received from citizens helps the City Council make the best possible decisions. Public comment is for the benefit of the Council, and is not provided as an opportunity to speak to, inform, or educate the community.

The following rules have been established in order to ensure that all individuals wishing to address the City Council are fairly heard:

- a. The following language will be added to the published agenda under Public Comment: "During this item, the Presiding Officer will invite public comment. Those testifying or providing public comment will be limited to three minutes. Citizens representing a group will be allowed up to five minutes to speak. No speaker may convey or donate their time for speaking time to another speaker.
- b. Persons wishing to address the Council, who are not specifically scheduled on the agenda shall first fill out a sign-in sheet, stating their name, City of residence, and public comment topic, and the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comment.
- c. Citizens who have signed in will be invited by the Presiding Officer to the podium. Speakers will first state their name and City of residence and be allowed three minutes to speak.
- d. Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated podium and addressed to the Council as a body, and not to individual members, the audience, or the cameras.
- e. No person other than the Council and the person having the floor will be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer.
- f. The Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude their remarks. All speakers are encourage to submit supplemental or detailed written remarks for Council consideration.
- g. Public comments with regard to subjects of a Public Hearing must be made during the Public Hearing portion of the meeting. If information pertaining to a public hearing is presented during the general comment period, the speaker will be ruled, "Out of Order" by the Presiding Officer and asked to save their comments for the Public Hearing.
- h. Any person or speaker who engages in behavior that disrupts the meeting so that it may not continue may be ordered to leave the meeting. The Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disrupting the meeting and to enforce these rules.

- i. At the pleasure of the Presiding Officer or by a motion and agreement of a Council majority, following a public comment, a matter may be placed on a future agenda, or be referred to the administration or a council committee for investigation and report. A vote of a Council majority may also overrule the decision of the Presiding Officer in this case.
- j. Residents are encouraged to supplement correspondence through written submittals. Written correspondence may be submitted to the Council at any time by email, citycouncil@desmoineswa.gov or mailing or otherwise delivering to the City Clerk, 21630 11th Ave So, Des Moines, WA 98198. A copy of all correspondence will be distributed to each Councilmember and will be made part of the public record, but will not be read aloud.

E. Committee Chair Reports:

This is a three-minute opportunity for Chairs of standing committees of the Council to update the Council on Board and committee activities, work plans, and other items of interest.

F. City Manager Report/Presentations/Briefings:

The City Manager's report is an opportunity for the City Manager to brief the Council on the progress or plans with regard to items, projects, issues, relationships, or events of significant interest.

G. Consent Agenda:

The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Agenda which are considered to be of a routine and non-controversial nature. The individual items on the consent agenda shall be approved, adopted, or enacted by one motion of the Council. Any item may be removed from the Consent Agenda on the request of a single Councilmember. It will be considered at its regular place in the agenda OR It will be considered immediately after the Consent Agenda.

No discussion shall take place regarding any item on the consent agenda beyond asking questions for simple clarification.

H. Ceremonial Matters, Proclamations, Recognitions:

1. Proclamations:

The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

I. Public Hearings – The procedures of a public hearing are as follows:

1. Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names City of residence, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).
2. The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they

may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting:

- a. All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and city of residence. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here.
 - b. It is not necessary to be a proponent or opponent in order to speak. If you consider yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent
 - c. No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting.
 - d. There will be no demonstrations during or at the conclusion of anyone's presentation
 - e. These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and that every individual who speaks can do so without ridicule or intimidation to ensure that no individual is embarrassed by exercising their right of free speech.
- 3.
- a. When Council conducts a hearing to which the Appearance of Fairness Doctrine applies (Rule 6.2, and Parliamentary Procedure 11.06B) the Presiding Officer will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 6.2. The suggested form of the announcement is as follows:
"All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists."
 - b. When Council conducts a "quasi-judicial" hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:
"The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:
"Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"
4. At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the Council standards.
 5. The Presiding Officer calls for proponents in quasi-judicial proceedings (and for speakers in non-quasi-judicial proceedings).
 6. The proponents now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).
 7. The Presiding Officer calls for additional proponents or speakers three times.

8. In non-quasi-judicial proceedings refer to Public Hearing Rule 10a, otherwise the Presiding Officer calls for opponents by announcing the following:
"At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."
9. Opponents speak.
10. The Presiding Officer calls for additional opponents three times.
11. The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
12. The Presiding Officer announces:
"At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."
13. The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.
14. The Presiding Officer closes the public hearing.
15. After a public hearing is closed, no member of the public shall be permitted to address the Council or the staff. In fairness to members of the public, the City Council shall be considered to be in deliberations from that point forward. Continuance of the item shall place it on the "unfinished business" portion of any forthcoming agenda. Additional public testimony either that evening or at a future meeting would be precluded until public hearing notification procedures required by the Des Moines Municipal Code are concluded.
16. The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.
17. The Presiding Officer inquires if there is any further discussion by the Councilmembers.
18. The Presiding Officer inquires if there are any final comments or recommendations from administration.
19. The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.
20. The Clerk shall conduct a roll call vote.
21. The Presiding Officer directs administration to prepare findings consistent with the action.

J. Unfinished Business.

K. New Business - The following are types of business conducted by the City Council:

1. Ordinances, Resolutions, Proclamations, Contracts:
All Ordinances, Resolutions, Proclamations and Contracts shall, before presentation to the Council, have been approved as to form and legality by the City Attorney, the applicable Department Head(s), and the City Manager.
2. Draft Preparation:
Ordinances and resolutions shall be prepared by the City Attorney and presented to the full Council for consideration. Prior to final passage of all ordinances, resolutions or

motions, such documents or proposals shall be designated as DRAFTS as follows:

- a. Proposed Drafts shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.
 - b. Council Drafts shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration.
3. Ordinances:
An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance as required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. If a Councilmember requests that the entire ordinance, certain sections, or the title be read, such requests shall be granted.
4. Resolutions:
An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution as required by law and in those instances where an expression of policy more formal than a motion is desired.
5. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.
6. Contracts:
Refer to Addendum B, [Resolution No. 1118](#), policies governing City Council participation in public contracts.
7. Motions:
A motion is a formal procedure for taking action. To make a motion, a Councilmember must first be recognized by the Mayor.
- L. New Agenda Items for Consideration:
This portion of the meeting allows a Councilmember to present an idea to their colleagues for consideration in placing the item on a future agenda:
1. A presenter should come to the dais prepared with research and answers to questions, and offer a specific, concise request.
 2. It is not a time for discussion, deliberation, presentation, or research – other than the minimum amount of information necessary to gain needed support.
 3. A minimum of three Councilmembers must agree in order for the item introduced to be placed on a future agenda.
- M. Councilmember Reports:
This is an opportunity for Councilmembers to comment on agenda items and update each other regarding community events, activities, or notable regional issues:
1. Reports shall be limited to four minutes, unless extended time is granted by the Presiding Officer. The Presiding Officer shall notify the Councilmember when the allotted time has expired.
Discussion or voting during this time will not be considered a part of their time limit.
- N. Presiding Officer's Report:
In addition to any special board or committee reports, the Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

O. Executive Session (as needed):

At the call of the presiding officer, or with a majority vote, the City Council may recess to Executive Session to privately discuss and consider matters of confidential concern to the well-being of the City. The purposes for which an Executive Session or Closed Session may be held are identified in [RCW 42.30.110](#) and [RCW 42.30.140](#).

The City Council may also hold an Executive Session to receive confidential advice from the City Attorney under the attorney-client privilege.

Before convening in Executive Session or Closed Session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the Executive Session/Closed Session will be concluded. An Executive Session/Closed Session may be extended to a stated later time by announcement of the Presiding Officer.

Participants in an executive session have a duty under the Open Public Meetings Act to keep information from the session confidential, Pursuant to Attorney General Opinion ([AGO 2017 No. 5](#)), disclosure of confidential information from an executive session by a municipal officer violates [RCW 42.23.070\(4\)](#) and accordingly may result in the sanction or censure of the violating party.

P. Next meeting date announced by Presiding Officer.

Q. Adjournment. No meeting shall be permitted to continue beyond 9:00 p.m. without approval of three-fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to 9:00 PM, the items not acted on shall be deferred to the next regular Council meeting as unfinished business, unless the Council, by a majority vote of members present, determines otherwise.

[R. Meeting Materials - Following each meeting, public comment and any materials included at the meeting, which were not in the original packet, will be posted on the City website with a notification.](#)

8.07 Order of Business - Study Sessions

The study session is the forum used by Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. The purpose of Study Sessions is to allow Councilmembers to do concentrated preliminary work with administration on single subjects of time consuming, complex matters (i.e., budget, complex legislation or reports, research, etc.)

Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. These conditions will allow the Councilmembers to communicate informally about these impending issues. The Presiding Officer retains the option of assuming the function of the Moderator in order to keep the discussion properly focused.

No final Council action on ordinances or resolutions may be taken during a Study Session.

A. In Preparation for a Study Session, the City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall contain the Discussion Item.

B. After the proposed Council Study Session worksheet has been approved by the Presiding

Officer, a copy of it along with any available supporting materials shall be prepared for Councilmembers, and the meeting will be noticed by close of business Friday prior to the Council Study Session, except in an emergency.

- C. During a Study Session, the Moderator may:
 - 1. Introduce and give background information
 - 2. Identify the discussion goal
 - 3. Act as facilitator to keep the discussion focused
 - 4. Alert the Presiding Officer when/if it is appropriate to call for a motion or other official direction of the Council

8.08 Order of Business – General Procedures

- A. Forms of Address:

The Mayor shall be addressed as "Mayor (surname)." The Deputy Mayor shall be addressed as "Deputy Mayor (surname)." Members of the Council shall be addressed as "Councilmember (surname)."
- B. Seating Arrangement of the Council:

Councilmembers shall occupy the respective seats in the Council Chamber assigned to them by the Mayor.
- C. Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions and other documents which have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Deputy Mayor may sign such documents.
- D. Quorum:

At all meetings of the Council, four Councilmembers who are present and eligible to vote shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of said adjournment is posted in accordance with RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.
- E. Attendance:

[RCW 35A.12.060](#) provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes.
- F. Remote Attendance:

A Councilmember may participate remotely in all or part of a Council meeting because of an unanticipated event that prevents a Councilmember from attending in person through no fault of their own. In order to receive compensation for a meeting, a formal recognition of remote attendance must be granted by the Mayor or Presiding Officer.

If the basis for the remote participation is due to the Councilmember attending to City business in another capacity, the Councilmember shall be considered physically present for the purposes of [DMMC 4.08.020](#).

In the event that the Mayor seeks to attend a meeting remotely, the Mayor shall seek prior approval from the Deputy Mayor. If approval is granted, the Deputy Mayor shall act as the Presiding Officer for the meeting.

When participating remotely:

1. A Councilmember must be able to be heard.
2. The Councilmember shall have reviewed all of the applicable material and participated in the relevant portion of the Council Meeting related to the topic of the vote. Any technical prohibitions or difficulties that prevent all parties present at the Council Meeting from adequately communicating, will negate any authorization previously given by the Mayor.
3. The remote participant shall notify the Presiding Officer if they are about to disconnect participation.
4. A remote appearance shall count toward a quorum of the Council for all purposes and shall entitle the Councilmember to vote.

G. Minutes:

The City Clerk or designee shall take minutes at all meetings of the City Council. The minutes shall be made available for public inspection.

H. Voting:

Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice or by raise of hand as requested by the Presiding Officer. A roll call vote shall be taken by the Clerk at the request of a Councilmember. The order of the roll call vote shall be determined by the Presiding Officer:

1. Vote requirements include:
 - a. Majority of the fixed membership of the Council (4 votes)
 - b. Two-thirds of the fixed membership of the Council (5 votes)
 - c. Minimum of a majority of members present and voting (if 4 or 5 members present and voting, this is 3. If 6 or 7 members present and voting, this is 4).
2. In case of a tie in votes on any proposal, the proposal shall be considered lost.
3. Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses themselves in accordance with [Rule 458.08\(e\)](#). If any unexcused Councilmember remains silent, they shall be listed in the record as "abstain."
4. Reconsideration of an item will be taken up by a majority vote of members present and voting. A member of the prevailing side must make a motion for reconsideration after the previous vote was taken, and it can be made no later than the next regular meeting after which the previous vote was taken.
5. The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the fixed membership of the Council (four votes)
6. The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least two-thirds of the fixed membership of the Council (five votes).
7. Only those ordinances, resolutions, or motions that receive an affirmative vote by the majority of members present and voting shall be passed or become effective unless other

voting requirements are provided by Washington State law, DMMC, or this Resolution as amended.

8. In order for an ordinance or resolution to become effective immediately, the City Council must declare that an emergency exists and approve the ordinance or resolution by the affirmative vote of two-thirds of the fixed membership of the Council (five votes). (See Chapter 8.G.10E).

8.09 Open Public Meetings Act

- A. The Des Moines City Council will comply with all state and federal law in the notice, conduct, recording, storage and dissemination of meetings and associated information.

- B. Actions:

No legal action can be taken by the Council except in a public meeting. At a *Special Meeting*, action can be taken only on those items appearing on the posted agenda, except for emergency items. At a Regular Meeting of the City Council, the Council is free to take action on non-agenda items, subject to applicable notice requirements in state statutes or local ordinances for the subject matter being considered.

CHAPTER 9 PROTOCOL ADMINISTRATION

9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual every two years, or as needed.

If needed, an Ad Hoc committee may be appointed by the Mayor for the purpose of review and advice to the Council.

9.02 Adherence to Protocol

- A. Each Councilmember shall have the duty and obligation to review this Protocol Manual and understand to be bound by its provisions.
- B. The Mayor will be primarily responsible to ensure that the City Council, staff, and members of the public adhere to the Council's adopted Protocol Manual.
- C. Knowing and/or willful failure to adhere to the provisions of this Protocol Manual may subject a Councilmember to enforcement and sanctions as follows:
 1. Upon determining that there is credible evidence that a Councilmember has, or may have, engaged in knowing and/or willful action or omission that constitutes failure to adhere to the provisions of this Protocol Manual, the Mayor or the Deputy Mayor, in the event that the Mayor is the Councilmember alleged to have engaged in such action or omission, may call upon the Council to determine whether such knowing and/or willful action or omission has occurred, and the sanctions, if any, to be imposed.
 2. Prior to conducting any hearing on an alleged failure to adhere to the provisions of this Protocol Manual, the Mayor or Deputy Mayor shall provide written notice to the Councilmember alleged to have engaged in such failure to adhere at least ten (10) calendar days prior to calling for such hearing. The written notice shall identify the specific provisions of this Protocol Manual with which the Councilmember is alleged to have failed to adhere and the facts supporting such allegation.
 3. Upon call by the Mayor or Deputy Mayor, a majority of the Council shall vote on whether to hold a hearing to determine the existence of an act or omission constituting a failure to adhere and the sanctions, if any, to be imposed. If such hearing is approved by the Council, the hearing shall be held at a time and place specified in the motion approving

such hearing.

4. At such hearing, the Council shall determine whether there is a preponderance of credible and substantial evidence indicating that a Councilmember has knowingly and/or willfully acted or failed to act in a manner constituting a failure to adhere to the provisions of this Protocol Manual. The Councilmember alleged to have failed to adhere to the provisions of this Protocol Manual shall have the right to present evidence and testimony. The finding of the existence of such knowing and/or willful failure to adhere shall be determined by motion approved by a majority of the Council.
5. Upon finding that a knowing and/or willful failure to adhere to the provisions of this Protocol Manual has occurred, the Council shall proceed to determine whether the sanctions, if any, should be imposed. Such breaches include, but are not limited to:
 - a. Failure to observe respectful rules of discussion
 - b. Creating disruption at the dais
 - c. Breaching confidentiality of executive session
 - d. Failing to observe ethics guidelines
 - e. Taking action outside the board meeting which undermines the body.
 - f. Appropriate sanctions include, but are not limited to the following:
 1. Verbal warning
 2. Written warning
 3. Public censure
 4. Removal of appointment to extra-territorial boards, committees, or commissions;
and
 5. Removal of appointment to Council boards or committees

9.03 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

CHAPTER 10 LEAVING OFFICE/FILLING VACANCIES

10.01 Return of Materials and Equipment

During their service on the City Council, members may have acquired or been provided equipment such as computers, cell phone or other items of significant value. These items are to be returned to the City at the conclusion of a member's term. If an item is lost or unable to be returned, the Councilmember will reimburse the City for the current value of the item.

10.02 Filling Council Vacancies

The purpose of this section is to provide guidance to the City Council when a Des Moines Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term.

A. References

[RCW 42.30.110 \(H\)](#) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective office.

[RCW 42.30.060](#) – Prohibition on Secret Ballots.

[RCW 42.12](#) – Vacant Position.

[RCW 35A.13.020](#) – Vacancies – Filling of Vacancies in Council/Manager Form of Government:

1. A Council position shall be officially declared vacant upon the occurrence of any of the

causes of vacancy set forth in [RCW 42.12.010](#), and [RCW 35A.13.020](#), including resignation, recall, forfeiture, written or public statement of intent to resign, or death of a Councilmember. The Councilmember who is vacating their position is not allowed to participate in the appointment process.

2. In order to fill the vacancy with the most qualified person available until an election is held, the City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule, so that the position is filled at the earliest opportunity:

- a. The City Clerk's Office shall prepare and distribute a public notice as required. This notice shall contain information, including but not limited to, time to be served in the vacant position, election information, salary information, Councilmember powers and duties, the deadline date and time for submitting applications, interview and appointment schedules, and such other information that the City Council deems appropriate.
 - b. The City Clerk's Office shall prepare an application form which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Des Moines offices and on the City's official website.
 - c. Applications and any attachments received by the deadline date and time will be distributed by the City Clerk's Office, to the Mayor and City Council.
 - d. The City Clerk's Office shall publish the required public notice(s) for the meeting scheduled for interviewing applicants for consideration to the vacant position. This meeting may be a regularly scheduled City Council meeting, or a special City Council meeting.
 - e. The City Clerk's Office shall notify applicants of the location, date and time of City Council interviews, and include instructions about how the interview process will be conducted.
3. Interview Process:
The Interview process will be determined by a vote of the majority of the Council.
4. Voting:
Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. However, all interviews, deliberations, nominations and votes taken by the Council shall be in open public session:
- a. The Mayor shall ask for nominations from the Councilmembers for the purpose of creating a group of candidates to consider. No second is needed.
 - b. Nominations are closed by a motion, second and majority vote of the Council.
 - c. Councilmembers may deliberate on such matters as criteria for selection and the nominated group of candidates.
 - d. The Mayor shall poll Councilmembers to ascertain that Councilmembers are prepared to vote.
 - e. The City Clerk shall proceed with a roll-call vote.
 - f. Elections will continue until a nominee receives a majority vote of the remaining Councilmembers.
 - g. At any time during the election process, the City Council may postpone elections until a date certain or regular meeting if a majority vote has not been received.
 - h. Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.
 - i. The Mayor shall declare the nominee receiving the majority vote as the new Councilmember and shall be sworn into office by the City Clerk at the earliest opportunity or no later than the next regularly scheduled City Council meeting.
 - j. If the City Council does not appoint a qualified person to fill the vacancy within 90 days of the declared vacancy, the Revised Code of Washington delegates appointment powers to King County.

**CHAPTER 11
PARLIAMENTARY PROCEDURES**

Rules of Order not specified by statute, Ordinance or Resolution shall be governed by the most recent edition of *Robert's Rules of Order Newly Revised*.

All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

11.01 Meeting Decorum and Order

- A. The presiding officer shall preserve decorum and decide all questions of order, subject to appeal by the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the chair or the rules of protocol.

- B. **Courtesy:** Members of the Council, in the discussion, comments or debate of any matter or issue, shall be courteous in the language and demeanor, and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall, at all times, confine their remarks to those facts which are germane and relevant as determined by the Presiding Officer, to the question or matter under discussion.

Interruption: No member of the Council shall interrupt or argue with any other member while such a member has the floor

- C. The City of Des Moines is committed to maintaining a drug and alcohol free workplace. Accordingly, members of the Council shall abide by Sections 6(1) and (6)(J)(I) of the City of Des Moines Personnel Manual while serving at the dais.

Any Councilmember may request the presiding officer to enforce the rules of protocol by using the motion "Point of Order." The Presiding Officer rules on whether the Point of Order is well-taken or not. Any Councilmember may appeal the Presiding Officer's ruling. The Council will decide whether to sustain or overrule the Presiding Officer's ruling by majority vote. The Presiding Officer may vote on the appeal. A tie vote sustains the Presiding Officer's decision.

- D. **Dress Code:** For Council Business meetings, Councilmembers shall adhere to a business casual attire and no hats allowed.

11.02 Obtaining the Floor

A Councilmember shall address or signal the presiding officer and gain recognition prior to making a motion or engaging in debate. Cross-exchange between Councilmembers and the public should be avoided. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the Council.

After a member has concluded comments and yielded the floor, if two or more members are trying to obtain the floor at the same time, the general rule is that the person who addresses or signals the chair first is entitled to be recognized. When a motion is open to debate, however, there are two instances in which the presiding officer should assign the floor to a person who may not have been the first to address the chair. These are:

- A. The Councilmember who made the motion currently under debate is entitled to be recognized in preference to other members if that individual is claiming the floor and has not already spoken on the question.

- B. No member is entitled to the floor a second time in the meeting on the same motion as long as another member who has not spoken on the motion desires the floor.

11.03 Interruptions

Once recognized, a Councilmember should not be interrupted while speaking, except when another member makes a point of order. If a Councilmember is called to order while speaking, the individual shall cease speaking until the question order is determined.

Upon being recognized by the presiding officer, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the presiding officer.

11.04 Discussion Limit

- A. Councilmembers should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak. No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council present.
- B. Questions and answers by the members of the Council are not considered as speaking to the motion.
- C. Each member of the Council shall speak for not more than five minutes per turn unless granted exception by a majority of the Council present.
- D. No member of the Council may give their allotted time to another member unless there is approval of the majority of the Council present.

11.05 Suspending the Rules

A majority vote of members present and voting may suspend any provision of these meeting rules not governed by state law or ordinance without debate. The Councilmember moving the motion will state, "I move that we suspend the rules to [giving the purpose]." The Council may not suspend rules on fundamental principles of parliamentary procedure or those affecting the rights of individual members.

CHAPTER 12 ADDITIONAL TRAINING AND RESOURCE MATERIALS

12.01 Association of Washington Cities [(800) 562-8981]

<https://wacities.org/> The Association is a voluntary, nonpartisan, nonprofit association comprised of all incorporated cities and towns in Washington.

12.02 National League of Cities [(202) 626-3000]

www.nlc.org A non-partisan organization serving municipal governments, the NLC works to establish unified policy positions, advocates those policies forcefully, and shares information that strengthens municipal government throughout the nation.

12.03 International City/County Management Association [(202) 289-4262]

<https://icma.org/> ICMA is a professional and educational association of local government administrators that serves to enhance the quality of local government through professional management and to support and assist professional local government administration. The Association's *Elected Officials Handbook* series can be of great value to Councilmembers. Publications are also available through ICMA concerning every basic city service.

12.04 Government Finance Officers Association [(312) 977-9700]

www.gfoa.org GFOA is a professional association of state and local finance officers. The Association administers a broad range of services and programs related to government financial management.

12.05 Municipal Research & Services Center of Washington [(206) 625-1300]

www.mrsc.org MRSC is a nonprofit, independent organization created in 1969 to continue programs established in 1934 under the Bureau of Governmental Research at the University of Washington. One of the principal services of MRSC is to respond to inquiries on virtually every facet of local government.

Attachment #3

Following is the current Rules of Procedure for the City of Des Moines. Notations have been inserted in order to create a reference tool for reviewing the draft Protocol Manual:

- Notations in **Red** refer to the sections of the draft Protocol Manual where the current Council Rule has been addressed or incorporated
- Additional notes have been provided for clarity – **in green**
- A few references may have changed during editing. If you have trouble finding a referenced rule, use the search feature in the draft document.
- Any errors or omissions are oversights and unintended.

DES MOINES CITY COUNCIL

RULES OF PROCEDURE



Adopted Pursuant to DMMC 4.12.010

Updated 7/89
Updated 7/90
Updated 10/90
Updated 11/90
Updated 8/91
Updated 10/91
Updated 12/91
Updated 4/92

Updated 2/94
Updated 3/94
Updated 8/94
Updated 6/95
Updated 9/00
Updated 5/03
Updated 9/03
Updated 8/04

Updated 4/05
Updated 5/06
Updated 1/11, Res. 1140
Updated 4/12, Res. 1189
Updated 2/17, Res. 1356
Updated 2/18, Res. 1379
Updated 11/19, Res. 1409

DES MOINES CITY COUNCIL RULES OF PROCEDURE

TABLE OF CONTENTS

	<u>Page No.</u>
<u>SECTION I</u>	
<u>COUNCIL MEETINGS</u>	
RULE 1. COUNCIL MEETING - LOCATION	1
RULE 2. COUNCIL MEETING - TIME	1
RULE 3. COUNCIL MEETINGS - OPEN TO THE PUBLIC	1
RULE 4. ELECTION OF OFFICERS	1
RULE 5. PRESIDING OFFICER	2
RULE 6. QUORUM	3
RULE 7. ATTENDANCE, EXCUSED ABSENCES	3
RULE 7.1. PARTICIPATION BY TELEPHONIC COMMUNICATION	3
RULE 8. SPECIAL COUNCIL MEETINGS	4
RULE 9. COUNCIL MEETING AGENDA	5
RULE 10. STUDY SESSIONS	5
RULE 11. CITY MANAGER	6
RULE 12. CLERK	6
<u>SECTION II</u>	
<u>DUTIES AND PRIVILEGES OF MEMBERS</u>	
RULE 13. FORMS OF ADDRESS	7
RULE 14. SEATING ARRANGEMENT	7
RULE 15. APPEARANCE OF FAIRNESS DOCTRINE	7
RULE 16. DISSENTS AND PROTESTS	9
RULE 17. ADMINISTRATIVE INTERFERENCE BY COUNCILMEMBERS	9

DES MOINES CITY COUNCIL RULES OF PROCEDURE

TABLE OF CONTENTS (CONTINUED)

SECTION III
COUNCIL PROCEDURES

	<u>Page No.</u>
RULE 18. RULES OF ORDER	10
RULE 19. MOTIONS	10
RULE 20. ORDER OF BUSINESS AND PUBLIC COMMENT RULES	10
RULE 21. ACTIONS FOR A PUBLIC HEARING	14
RULE 22. VOTING	17
RULE 23. COMMITTEES	18
RULE 24. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS	18
RULE 25. RESOLUTIONS	18
RULE 26. ORDINANCES	18
RULE 27. PERMISSION REQUIRED TO ADDRESS THE COUNCIL	19
RULE 28. RECONSIDERATION	19
RULE 29. LEGISLATIVE PROCESS, PREPARATION, INTRODUCTION AND FLOW OF ORDINANCES AND RESOLUTIONS AND MOTIONS	19
RULE 30. COUNCIL RELATIONS WITH BOARDS, COMMISSIONS AND COUNCIL CITIZEN ADVISORY BODIES	20
RULE 31. COMPLAINTS AND SUGGESTIONS TO COUNCIL	20
RULE 32. ADMINISTRATIVE COMPLAINTS MADE DIRECTLY TO INDIVIDUAL COUNCILMEMBERS	20
RULE 33. FILLING COUNCIL VACANCIES	20
RULE 34. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE -- PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION	21
RULE 35. AUDIO RECORDINGS OF MEETINGS	21

	<u>Page No.</u>
RULE 36. VIDEO RECORDING AND BROADCAST OF REGULAR MEETINGS	21
RULE 37. <i>“SPIRIT OF DES MOINES AWARD”</i> PROGRAM	21
REFERENCES TO DES MOINES MUNICIPAL CODE (DMMC) AND REVISED CODE OF WASHINGTON (RCW)	22
REFERENCES TO RESOLUTION NO. 1118 - POLICIES GOVERNING CITY COUNCIL PARTICIPATION IN PUBLIC CONTRACTS	27
APPENDIX "A" - <i>THE SPIRIT OF DES MOINES AWARDS PROGRAM POLICY</i>	

**SECTION I
COUNCIL MEETING - LOCATION**

RULE 1. (8.01) All meetings of the City Council shall be held at the location specified in DMMC 4.04.010. (Ord. 329 §1, 1973). *Virtual meetings are addressed in 8.01 as well*___

COUNCIL MEETING - TIME

RULE 2. (8.01) The regular meetings of the City Council shall be held at the times specified in DMMC 4.04.020. (Ord. 1039 §1, 1993).

COUNCIL MEETINGS - OPEN TO THE PUBLIC

RULE 3. (8.02) All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in RCW 42.30.110 or RCW 42.30.140. (Res. 525 §1, 1988).

ELECTION OF OFFICERS

RULE 4. Procedures for electing officers are as follows:

(a) (2.06.A) Biennially, at the first meeting of the new Council, the members thereof shall choose a Presiding Officer from their number who shall have the title of Mayor. In addition to the powers conferred upon him/her as Mayor, he/she shall continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting shall select a Mayor from their number for the unexpired term. Following the election of the Mayor, there shall be an election for Deputy Mayor. The term of the Deputy Mayor shall run concurrently with that of the Mayor.

(b) (2.06.A) The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations are then closed. The election for Deputy Mayor shall be conducted by the newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Deputy Mayor shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Deputy Mayor may be waived by the vote of five councilmembers.

(c) (2.06 B) Except when there is only one nominee, election shall be by written ballot. Each ballot shall contain the name of the Councilmember who cast it. Each ballot shall include the name of all Councilmembers nominated (unless they have withdrawn). Voting shall continue until a nominee receives a majority of the votes. The City Clerk shall publicly announce the results of the election by reading each ballot into the record, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Thereafter, the City Clerk shall record in the minutes of the meeting the manner in which each voting member of the Council cast his or her ballot. *Paper ballots eliminate*4

(d) **(2.06 C)** In the event the Council is unable to agree on a Mayor by majority vote of members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney. Ties shall be resolved in a contest by chance. The office of Acting Deputy Mayor shall be filled by the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, by the Councilmember with the next highest seniority. The Acting Mayor and Acting Deputy Mayor shall continue in office and exercise such authority as is described in Chapter 35A.13 RCW until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Deputy Mayor shall cease and terminate. (Res. 525 §1, 1988, amended by Res. 594 §1, 1989, amended by Res. 672, 1991, amended by Res. 754 §1, 1994, amended by Res. 1140, 2011, amended by Res. 1189, 2012, amended by Res. 1356, 2017.)

PRESIDING OFFICER

Proposed: More detail in description of Mayor, Deputy Mayor, City Manager and duties

RULE 5. **(2.03, 2.04, 2.05)** The Mayor shall preside at meetings of the Council, and be recognized as the head of the City for all ceremonial purposes. The Mayor shall have no regular administrative or executive duties. In case of the Mayor's absence or temporary disability the Deputy Mayor shall act as Mayor during the continuance of the absence. When the Deputy Mayor acts as Mayor by participating in preparation of a Council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Deputy Mayor shall have authority only to approve the Council meeting agenda or study session worksheet as to form without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written. In case of the absence or temporary disability of the Mayor and the Deputy Mayor, a Deputy Mayor selected by members of the Council shall act as Mayor during the continuance of the absences or disabilities. The Mayor, or Deputy Mayor, is referred to as "Presiding Officer" from time to time in these Rules of Procedure.

(a) **(8.06-Order of Business, 2.03, 5.04.C)** The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

(b) **(5.04)** To promote a favorable image of the City and pursue resources that will benefit the community, the Mayor, or another Councilmember designated by the City Council, may take the lead in representing the Des Moines City Council to those from outside the community who are interested in joint ventures and efforts to bring economic development and investments to the City, including other local governments, regional organizations, and federal, state, and international government representatives. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Co

(c) **(5.01, 5.03)** The Mayor, or another Councilmember designated by the City Council, is the spokesperson on actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

(Res. 525 §1, 1988, amended by Res. 961 §1, 2003, Res. 1140, 2011, amended by Res. 1356, 2017).

QUORUM

RULE 6. (8.05, 8.06.D – General Procedures) At all meetings of the Council, four Councilmembers who are present and eligible to vote shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of said adjournment is posted on the exterior Council Chamber doors per RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes. (Res. 525 §1, 1988).

ATTENDANCE, EXCUSED ABSENCES

RULE 7. (8.08.E & F) RCW 35A.12.060 provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes. (Res. 525 §1, 1988).

PARTICIPATION BY TELEPHONIC COMMUNICATION (8.08.F)

RULE 7.1. A Councilmember may participate telephonically in all or part of a Council meeting under the following conditions:

(1) Prior approval shall be given by the Mayor for good cause, whose approval shall not be unreasonably withheld.

(2) “Good Cause” is defined as:

(a) Medical reasons that prevent a Councilmember from attending the meeting in person.

(b) Family emergency.

(c) Unexpected travel.

(d) Additional unanticipated event that prevents a Councilmember from attending the meeting in person through no fault of the Councilmember.

(3) Telephonic participation for each Councilmember shall be limited to one (1) Council meetings in a calendar year.

(4) Telephonic participation shall be limited to one (1) Councilmember per meeting. Priority will be given to the first Councilmember to request prior approval and who

meets the requirements under this Rule.

(5) A Councilmember participating telephonically in the meeting must be able to hear and be heard.

(6) The Councilmember participating telephonically shall have reviewed all of the applicable material and participated in the relevant portion of the Council Meeting related to the topic to which the Councilmember is voting on. Any technical prohibitions or difficulties that prevent all parties present at the Council meeting from adequately communicating with one another will negate any authorization previously given by the Mayor.

(7) The Councilmember attending telephonically shall notify the Council if he or she is about to disconnect from the call.

(8) A Councilmember who is attending telephonically shall not be considered to be physically present at the meeting for the purposes of DMMC 4.08.020 unless the basis for the telephonic appearance is due to the Councilmember attending to City business in an official capacity. A telephonic appearance shall count toward a quorum of the Council for all purposes and shall also entitle the Councilmember to vote. A Councilmember voting telephonically may be polled separately to ensure their vote is tallied correctly.

(9) In the event the Mayor seeks to attend a meeting telephonically, the Mayor shall seek prior approval from the Deputy Mayor. If approval is granted, the Deputy Mayor shall act as the Presiding Officer for the meeting. (Res. 1356, 2017, amended by Res. 1409, 2019).

SPECIAL COUNCIL MEETINGS (8.03)

RULE 8. It is the intent of the Des Moines City Council that the procedures of this Council Rule 8 are enforceable to the same extent as RCW 42.30.080, as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at RCW 42.30.080. Procedures for setting a special meeting are as follows:

(a) A special meeting may be called by the Mayor or any four members of the Council.

(b) Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, duration of meeting, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.

(c) (1) The notice shall be delivered by mail, by electronic mail to an address designated by the receiver of the email, or personally to each Councilmember, the City Manager, and the business office of each local newspaper and radio and television station which has on file a written request for notice of special meetings. The notice must be delivered at least twenty-four (24) hours prior to the meeting.

(2) When email notice is given to Councilmembers, the City Clerk shall provide

confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has made a standing written advance request to the City Clerk for such follow up telephone call. The City Clerk shall document the date and time of such follow up telephone call.

(d) The notices provided in this section may be dispensed within the circumstances provided by RCW 42.30.080; that is:

- (1) As to any member who at, or prior to the time the meeting convenes files with the Clerk a written waiver of notice,
- (2) As to any member who was actually present at the meeting at the time it convenes, and
- (3) In the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. (Res. 525 §1, 1988, amended by Res. 788, 1995, amended by Res. 1011, 2006, amended by Res. 1140, 2011, amended by Res. 1189, 2012, amended by Res. 1356, 2017, amended by Res. 1379 §1, 2018).

COUNCIL MEETING AGENDA

(8.04, 8.06.L – Development of Agenda)

Also included clarity to include Mayor, City Manager and CMs roles as well as
New Business Item on agenda)

RULE 9. This rule specifies the method of preparation of a Council meeting agenda for meetings other than study sessions. The Presiding Officer, three (3) Councilmembers, or the City Manager may introduce a new item to the preliminary agenda. The Presiding Officer shall have the option of deleting any item, other than those items introduced by three (3) Councilmembers, from the preliminary agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda for a subsequent Council meeting. The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency. ~~Any Councilmember seeking to bring forward a new community event or project for consideration shall provide the details of the proposal to the City Clerk in written format, to include the estimated cost and staff time for the proposal. Once received by the City Clerk, the proposal can be placed on a preliminary agenda in accordance with the requirements of this Rule. (Res. 525 §1, 1988, amended by Res. 961 §2, 2003, amended by Res. 1140, 2011, amended by Res. 1409, 2019).~~ This last segment was a good idea, but did not achieve its goal.

S

RULE 10. (8.07 Order of Business – Study Session)

5

Regular Council meetings may be designated as Study Sessions by the Presiding Officer. Study Sessions will generally be held the first week of the month as needed. Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. Comments from the public, limited to the items of business on the Study Session agenda, may, at the discretion of the Presiding Officer, be allowed so long as the comments are in accordance with Council Rule 20(f). The purpose of Study Session discussions is to allow Councilmembers to be made aware of impending business and allow informal discussion of issues that might be acted on at a future meeting. These conditions will allow the Councilmembers to communicate informally about these impending issues. No final Council action shall be taken on ordinances and resolutions at Study Sessions. The City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall, for each item, contain the Discussion Item, the Discussion Item Moderator, and the Discussion Goal. After the proposed Council Study Session worksheet has been approved by the Presiding Officer, a copy of it along with any supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Council Study Session, except in an emergency.

During the Council Study Session the Discussion Item Moderator may: 1) introduce the subject and give background information; 2) identify the discussion goal; 3) act as facilitator to keep the discussion focused to the eventual discussion goal; 4) alert the Presiding Officer when it is appropriate to call for a motion or other official direction of the Council. The Presiding Officer retains the option of assuming the function of the Discussion Item Moderator in order to keep the discussion properly focused. (Res. 525 §1, 1988, amended by Res. 659, 1991, amended by Res. 754 §2, 1994, amended by Res. 961 §3, 2003, amended by Res. 1140, 2011, amended by Res. 1409, 2019).

CITY MANAGER (1.01, 2.01.A, 2.07, 3.01, Chapter 7, 8.04)

updated without “Asst City Manager”

RULE 11. The City Manager, as the chief executive officer and head of the administrative branch of City government or his/her designee, shall attend all meetings of the City Council, unless excused by the Presiding Officer or Council. The City Manager shall be responsible to the Council for the proper administration of all affairs of the City. The City Manager shall recommend for adoption by the Council such measures as he/she may deem necessary or expedient; prepare and submit to the Council such reports as may be required by that body or as the City Manager deems it advisable to submit; keep the Council fully advised as to the business of the City; and shall take part in the Council's discussion on all matters concerning the welfare of the City. In the event that both the City Manager and Assistant City Manager are unable to attend a Council meeting, the City Manager or Assistant City Manager shall appoint a key staff member to attend the meeting as the representative of City Administration. (Res. 525 §1, 1988, amended by Res. 1189, 2012).

CLERK (7.03)

RULE 12. The City Clerk shall be ex-officio Clerk of the Council and shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council. (Res. 525 §1, 1988, amended by Res. 949, 2003, amended by Res. 1140, 2011).

**SECTION II
DUTIES AND PRIVILEGES OF MEMBERS**

FORMS OF ADDRESS

RULE 13. (8.08.A) The Mayor shall be addressed as "Mayor (surname)" or "Your Honor." The Deputy Mayor shall be address as "Deputy Mayor (surname)." Members of the Council shall be addressed as "Councilmember (surname)." (Res. 525 §1, 1988, amended by Res. 1356, 2017).

SEATING ARRANGEMENT

RULE 14. (8.08.B) Councilmembers shall occupy the respective seats in the Council Chamber assigned to them by the Mayor. (Res. 525 §1, 1988).

APPEARANCE OF FAIRNESS DOCTRINE

(Addressed: 2.10)

Copied and pasted into 6.02

RULE 15. Appearance of Fairness Doctrine and its Application. (Res. 571 §1, 1989).

(a) Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." Zehring v. Bellevue, 99 Wn.2d 488 (1983).

(b) Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. RCW 42.36.010. Some examples of quasi-judicial actions which may come before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits. City staff is advised to notify the City Council upon receipt of an application or decision which will result in an action before the City Council that is quasi-judicial in nature.

(c) Obligations of Councilmembers, Procedure.

(1) Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict

of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

(2) Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

(3) The presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

(4) Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

(d) Specific Statutory Provisions.

(1) Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. RCW 42.36.040.

(2) A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. RCW 42.36.050.

(3) During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject.

This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. RCW 42.36.060. (Amended Res. 1140, 2011, amended by Res. 1409, 2019).

DISSENTS AND PROTESTS

(Addressed in: 5.03, 11.05)

RULE 16. Any Councilmember shall have the right to express dissent from or protest against any ordinance or resolution of the Council and have the reason therefore entered in the minutes. (Res. 525 §1, 1988).

ADMINISTRATIVE INTERFERENCE BY COUNCILMEMBERS

(1.01 and Chapter 2.01, 5.07.A, Chapter 7)

RULE 17. Neither the Council, nor any of its committees or members shall direct or request the appointment of any person to, or his/her removal from, any office by the City Manager or any of his/her subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch solely through the City Manager and neither the Council nor any committee or member thereof shall give any orders to any subordinate of the City Manager, either publicly or privately; provided, however, that nothing herein shall be construed to prohibit the Council, while in open session, from fully and freely discussing with the City Manager anything pertaining to appointments and removals of City officers and employees and City affairs. (RCW 35A,13.120) (Res. 525 §1, 1988, amended by Res. 1140, 2011, amended by Res. 1189, 2012).

SECTION III COUNCIL PROCEDURES

RULES OF ORDER

(8.06, 8.07, 8.08, Chapter 11)

RULE 18. Rules of order not specified by statute, ordinance, or resolution shall be governed by the most recent edition of Robert's Rules of Order.

(a) **(11.01)**Courtesy. Members of the Council, in the discussion, comments, or debate of any matter or issue, shall be courteous in their language and demeanor and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall at all times confine their remarks to those facts which are germane and relevant, as determined by the Presiding Officer, to the question or matter under discussion.

(b) **(11.01)**Interruption. No member of the Council shall interrupt or argue with any other member while such member has the floor.

(c) **(11.01)** The City of Des Moines is committed to maintaining a drug and alcohol free workplace. Accordingly, Members of the Council shall abide by Sections 6(I) and (6)(J)(I) of the City of Des Moines Personnel Manual as well.

(Res. 525 §1, 1988, amended by Res. 618, 1990, amended by Res. 1140, 2011, amended by Res. 1409, 2019).

**MOTIONS

RULE 19. (Chapter 11 intro) All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

(a) **(11.04)** Rule 19(a) – **Speaking to Motion.** No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council Members present at the time the motion is before the Council. After the motion is put and before the next item is read, a member shall be able to speak briefly to the previous motion. Questions and answers by members of the Council are not considered as speaking to the motion.

(b) **(11.04)** Rule 19(b) – **Time Limit.** Each member of the Council shall speak for no more than five (5) minutes unless granted an exemption by the majority of the Council.

(c) **(11.04)** Rule 19(c) – **Donation of Time.** No member of Council may give his allotted time to another member unless there is approval of the majority of the Council.

(Res. 525 §1, 1988, amended by Res. 1140, 2011, amended by Res. 1409, 2019).

ORDER OF BUSINESS AND PUBLIC COMMENT RULES (8.06)

We rearranged order a bit, additional segments for reports and recognitions,
clarity re “disruptions”

RULE 20. The business of all regular meetings of the Council shall be transacted as follows; provided, however that the Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

- (a) Call to order by the Presiding Officer.
- (b) Pledge of Allegiance.
- (c) Invocation (Presiding Officer's discretion).
- (d) Roll call (See Rule 7 for procedure to excuse an absence).
- (e) Correspondence not previously received by the Council.

(f) **(8.06.D)** Comments from the public (non-public hearing topics). Public comments are encouraged and appreciated. The information and advice received from citizens helps the City Council make the best possible decisions.

- (1) Procedure.

(A) Citizens are encouraged to supplement verbal comments through written submittals.

(B) All citizens desiring to address Council during the Public Comment period shall first fill out a sign-in sheet, stating their name, address, and public comment topic, and the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comments.

(2) Scope of Comments.

(A) Subjects not on the current agenda. Any member of the public may request time to address the Council after first stating their name and City of residence. The Presiding Officer may then allow the comments subject to such time limitations as referenced in Rule 20(f)(3)(A) or as the Presiding Officer deems necessary. Following such comments the Presiding Officer may place the matter on the current agenda or a future agenda, or refer the matter to administration or a Council committee for investigation and report.

(B) Subjects on the current agenda. Any member of the public who wishes to address the Council on an item on the current agenda shall make such request to the Presiding Officer at the time when comments from the public are requested. The Presiding Officer shall rule on the appropriateness of public comments as the agenda item is reached. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e.) proponents, opponents, adjacent owners, vested interests, etc.).

(C) Subjects of a Public Hearing. Comments made during the Public Comment period on a topic set for a public hearing by the City Council shall be out of order. To ensure a fair hearing to applicants or matters that are subject to a public hearing before the City Council, the Presiding Officer may rule public comments made outside the scope of a public hearing record to be out of order.

(D) Any ruling by the Presiding Officer relative to the preceding two subsections may be overruled by a vote of a majority of members present.

(3) Rules of Conduct. A minimum number of basic rules are established to ensure that all individuals wishing to address the City Council are fairly heard.

(A) Each person addressing the Council shall step up to the indicated speakers table, give his or her name and city of residence, and shall limit comments to three (3) minutes. Groups may be allotted five (5) minutes by the Presiding Officer.

(B) Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated speaking table and addressed to the Council as a body and not to individual members, the audience or the television cameras.

(C) The Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude his or her remarks. All speakers are encouraged to submit supplemental or detailed written remarks for Council

consideration.

(D) Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous, threatening, or personally abusive while addressing the Council, may be ordered to leave the meeting. The Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct and to enforce these rules.

(E) The Presiding Officer may rule “out of order” any comment made with respect to a quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can appear at the public hearing on the matter and present their comments.

(F) Any person whose comments have been ruled out of order by the Presiding Officer shall immediately cease and refrain from further improper comments. The refusal of an individual to desist from personal, inappropriate, slanderous or otherwise disruptive remarks after being ruled out of order by the Presiding Officer may subject the individual to removal from the Council Chambers.

(g) **(8.06.E, M)** Board and Committee reports and Councilmember Comments.

(1) Procedure. Councilmembers and the Presiding Officer may give reports regarding boards or committees to which they have been appointed or may comment on other subjects of importance and/or respond to citizen comments.

(2) Scope and Time Limits.

(A) The Presiding Officer may rule “out of order” any comments made during this portion of the meeting that do not pertain to the activities of the Councilmembers’ boards or committees or other subjects of importance.

(B) Board and committee reports and Councilmember comments shall be limited to four (4) minutes unless extended time is granted by the Presiding Officer for matters of significant importance. The Presiding Officer or designee shall notify the Councilmember when the allotted time has expired and the Councilmember shall promptly conclude his/her report.

(h) Presiding Officer's report. In addition to any special board or committee reports, the Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

~~(i) — Reserved~~

(j) Administration reports.

(k) Consent Calendar.

(1) The City Manager, in consultation with the Presiding Officer, shall place

matters on the Consent Calendar which have been: (a) previously discussed by the Council, or (b) based on the information delivered to members of the Council by administration that can be reviewed by a Councilmember without further explanation, or (c) are so routine or technical in nature that passage is likely, or (d) as directed by the City Council.

(2) The Clerk shall read the subject of each Consent Calendar item.

(3) The proper Council motion on the Consent Calendar is as follows: "I move adoption of the Consent Calendar." This motion shall be non-debatable and will have the effect of moving to adopt all items on the Consent Calendar. Since adoption of any item on the Consent Calendar implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent Calendar. Therefore, prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any Councilmember has a question, wishes to comment on an item or for an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the item withdrawn from the consent calendar shall be the next business in order following the conclusion of the consent calendar.

(l) Public Hearings **(8.06.I)** (see Rule 21 for procedural details).

(m) ~~Old~~ Unfinished Business.

(n) New Business.

(o) Executive Session (as required). Participants in an executive session have a duty under the Open Public Meetings Act to keep information from the session confidential. Pursuant to Attorney General Opinion (AGO 2017 No. 5), disclosure of confidential information from an executive session by a municipal officer violates RCW 42.23.070(4).

(p) Next meeting date announced by Presiding Officer.

(q) Adjournment. No meeting shall be permitted to continue beyond 10:00 PM without approval of three-fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to 10:00 PM, the items not acted on shall be deferred to the next regular Council meeting as old business, unless the Council, by a majority vote of members present, determines otherwise. (Res. 525 §1, 1988, amended by Res. 894 §1, 2000, amended by Res. 961 §4, 2003, amended by Res. 977, 2004, amended by Res. 1189, 2012, amended by Res. 1356, 2017, amended by Res. 1409, 2019).

ACTIONS FOR A PUBLIC HEARING (8.06.I copied in entirety)

RULE 21. The procedures for a public hearing are as follows:

(a) Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names and addresses, the agenda item, and whether they wish to speak as proponent,

opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).

(b) The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting.

(1) "All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and city of residence. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here."

(2) "It is not necessary to be a proponent or opponent in order to speak. If you consider yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent."

(3) "No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting."

(4) "There will be no demonstrations during or at the conclusion of anyone's presentation."

(5) "These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and to ensure that no individual is embarrassed by exercising their right of free speech."

(c) (1) When Council conducts a hearing to which the Appearance of Fairness Doctrine, (Rule 15) applies, the Presiding Officer, or in the case of a potential Rule 15 violation by that individual, the Deputy Mayor, will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 15. The suggested form of the announcement is as follows:

"All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may

inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists."

(2) When Council conducts a "quasi-judicial" hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:

The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:

"Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"

(d) At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the standards.

(e) The Presiding Officer calls for proponents in quasi-judicial proceedings and for speakers in non-quasi-judicial proceedings.

(f) The proponents or speakers now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).

(g) The Presiding Officer calls for additional proponents or speakers three times.

(h) In non-quasi-judicial proceedings refer to Rules 21(l), otherwise the Presiding Officer calls for opponents by announcing the following:

"At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."

(i) Opponents speak.

(j) The Presiding Officer calls for additional opponents three times.

(k) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.

(l) The Presiding Officer announces the following:

"At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."

(m) The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.

(n) The Presiding Officer closes the public hearing.

(o) The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.

(p) The Presiding Officer inquires if there is any further discussion by the Councilmembers.

(q) The Presiding Officer inquires if there are any final comments or recommendations from administration.

(r) The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.

(s) The Clerk shall conduct a roll call vote.

(t) The Presiding Officer directs administration to prepare findings consistent with the action.

(Res. 571 §2, 1989, amended by Res. 894 §2, 2000, amended by Res. 1140, 2011, amended by Res. 1356, 2017).

VOTING **(8.08.H)**

RULE 22. The votes during all meetings of the Council shall be transacted as follows:

(a) Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice, except that at the request of any Councilmember, a roll call vote shall be taken by the Clerk. The order of the roll call vote shall be determined by the Presiding Officer.

(b) In case of a tie in votes on any proposal, the proposal shall be considered lost.

(c) Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses himself or herself in accordance with Rule 15. If any unexcused Councilmember refuses to vote "aye" or "nay", their vote shall be counted as a "nay" vote.

(d) The passage of any ordinance, grant or revocation of franchise or license, any

resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the whole membership of the Council.

(e) The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least a majority plus one of the whole membership of the Council.

(f) The passage of any motion or resolution not subject to the provisions of RCW, DMMC, or this Resolution as amended, shall require the affirmative vote of at least a majority of the membership of the Council who are present and eligible to vote. (Amended by Res. 1140, 2011).

COMMITTEES (2.08, 2.09, 2.10)

detail added about Councilmember responsibility and conduct, regional appointments,

RULE 23. The procedures governing all committees of the Council shall be as follows:

(a) The following standing committees shall consist of three members of the Council appointed by the Mayor in January of each year or at such time as new standing committees are authorized: Environment, Municipal Facilities, Public Safety & Emergency Management, Transportation, and Economic Development.

(b) Council Committees for a particular purpose may be formed by motion of Council and members shall be appointed by the Mayor.

(c) Committees shall make a recommendation on proposed ordinances, resolutions and motions, within their area of responsibility before action is taken by the Council. Minutes shall be kept of each City Council standing and special committee meeting, listing discussion topics, comments made, and any final recommendations.

The Committee Chair shall present the recommendations of the committee to the City Council at a regular City Council meeting during the discussion of the item of business. (Res. 575 §1, 1989, amended by Res. 602, 1990, amended by Res. 633, 1990, amended by Res. 664, 1991 amended by Res. 685, 1992, amended by Res. 754 §3, 1994, amended by Res. 931 §1, 2002, amended by Res. 940 §1, 2002, amended by Res. 1140, 2011, amended by Res. 1379 §2, 2018).

ENACTED ORDINANCES, RESOLUTION AND MOTIONS

(8.06.K, 8.08.C & H, 11.01)

RULE 24. An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired. An enacted motion is a form of action taken by the Council to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law. (Res. 525 §1, 1988).

RESOLUTIONS (8.06.K, 8.08.C & H, 11.01)

RULE 25. A resolution may be put to its final passage on the same day on which it was introduced. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting. (Res. 525 §1, 1988).

ORDINANCES (8.06.J, 8.08.C & H, 11.01)

RULE 26. The procedure for ordinances is as follows:

(a) All ordinances shall have two separate readings. At each reading, if a Councilmember requests that the entire ordinance, certain sections, or the title be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

(b) The provision requiring two separate readings of an ordinance may be temporarily suspended at any meeting of the Council by a majority vote of all members present.

(c) If a Motion to pass an ordinance to a second reading fails, the ordinance shall be considered lost.

(Res. 525 S1, 1988, amended by Res. 1140, 2011, amended by Res. 1379 §3, 2018.)

PERMISSION REQUIRED TO ADDRESS THE COUNCIL

RULE 27. (8.06) Persons other than Councilmembers and administration shall be permitted to address the Council upon introduction by the Presiding Officer. (Res. 525 §1, 1988, amended by Res. 1140, 2011).

RECONSIDERATION

RULE 28. (8.08.H) Any action of the Council, including final action on applications for changes in land use status; but excluding a reconsideration of any action previously reconsidered, motions to adjourn, motions to suspend the rules, an affirmative vote to lay on the table or to take from the table, or a vote electing to office one who is present and does not decline; shall be subject to a motion to reconsider. Such motions can only be made by a member of the prevailing side on the original action. A motion to reconsider must be made no later than the next succeeding regular Council meeting. A motion to reconsider is debatable only if the action being reconsidered is debatable. Upon passage of a motion to reconsider, the subject matter is returned to the table anew at the next regular Council meeting for any action the Council deems advisable. (Res. 525 §1, 1988).

LEGISLATIVE PROCESS, PREPARATION, INTRODUCTION AND FLOW OF ORDINANCES AND RESOLUTIONS AND MOTIONS

RULE 29. (8.07.K) Ordinances and resolutions shall be prepared, introduced, and proceed in the manner described on the flow chart attached hereto as Exhibit "A", and by this reference incorporated herein. Prior to final passage of all ordinances, resolutions or motions, such documents or proposals shall be designated as DRAFTS as follows:

(a) PROPOSED DRAFTS shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.

(b) COUNCIL DRAFTS shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration. (Res. 525 §1, 1988).

COUNCIL RELATIONS WITH BOARDS, COMMISSIONS AND COUNCIL CITIZEN ADVISORY BODIES

RULE 30. (2.08, 2.09, 2.10, 7.08) All statutory boards and commissions and Council citizen advisory bodies shall provide the Council with copies of minutes of all meetings. Reports to the City Council shall be made during Administration Reports as needed to keep the Council apprised of the actions of the body. Not less than one time per year, the board, commission or citizen advisory body shall have a representative provide an update to the Council of the body's activities. (Res. 525 §1, 1988, amended by Res. 1409, 2019). **Proposed: More detail on expectations of CMs role, responsibility, reporting, etc.**

COMPLAINTS AND SUGGESTIONS TO COUNCIL

RULE 31. (5.07, 8.06.D) When citizen complaints or suggestions are brought before the City Council not on an agenda, the Presiding Officer shall first determine whether the issue is legislative or administrative in nature and then:

(a) If legislative, and a complaint about the letter or intent of legislative acts or suggestions for changes to such acts, and if the Council finds such complaint suggests a change to an ordinance or resolution of the City, the Council may refer the matter to a committee, Administration or the Council of the whole for study and recommendation.

(b) If administrative and a complaint regarding administrative staff performance, administrative execution of legislative policy or administrative policy within the authority of the City Manager, the Presiding Officer should then refer the complaint directly to the City Manager for his/her review if said complaint has not been so reviewed. The City Council may direct that the City Manager brief or report to the Council when his/her response is made. (Res. 525 §1, 1988).

ADMINISTRATIVE COMPLAINTS MADE DIRECTLY TO INDIVIDUAL COUNCILMEMBERS

RULE 32. (5.07) When administrative policy or administrative performance complaints are made directly to individual Councilmembers, the Councilmember may then refer the matter directly to the City Manager for his/her view and/or action. The individual Councilmember may request to be informed of the action or response made to the complaint. (Res. 525 §1, 1988).

FILLING COUNCIL VACANCIES

RULE 33. (Chapter 10) If a vacancy occurs in the office of Councilmember, the Council will follow the procedures outlined in RCW 35A.13.020. In order to fill the vacancy with the most qualified person available until an election is held, the Council will widely distribute and publish a notice of the vacancy, the procedure and any application form for applying. The Council will draw up an application form which contains relevant information to answer set questions posed by the Council. The application forms will be used in conjunction with an interview of each candidate to aid the Council's selection of the new Councilmember. (Res. 525 §1, 1988). **Proposed: More detail about notice, application, interview and voting process – would appreciate staff input.**

**PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE --
PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION**

Proposed: the following three combined, update wording eliminates
“tape.”

RULE 34. (8.05) No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, flood lights, or similar artificial illumination shall be made at City Council Meetings without the consent of the Presiding Officer or a majority of the Council. (Res. 525 §1, 1988).

AUDIO RECORDINGS OF MEETINGS

RULE 35. (8.05) All meetings of the City Council should be recorded by the City Clerk on an audio recording device. (Res. 657, 1991, amended by Res. 1140, 2011).

VIDEO RECORDING AND BROADCAST

RULE 36. (8.05) All public meetings of a quorum of the City Council not exempt from the Open Public Meetings Act held in the Des Moines City Hall at 21630 11th Avenue South should be video recorded and cablecast within the City. (Res. 772, 1994, amended by Res. 1140, 2011, amended by Res. 1189, 2012, amended by Res. 1356, 2017).

SPIRIT OF DES MOINES AWARD PROGRAM

not part of Protocol, include as special recognition (8.06.H)

RULE 37. It is the intent of the Des Moines City Council that a Spirit of Des Moines Awards Program be enacted by the Council to honor the commitment and dedication of its named recipients. Awards will be of two kinds; an annual award or lifetime achievement award. The awards shall be made in accordance with the Spirit of Des Moines Awards Policy and attached to these City Council Rules as Appendix A. (Res. 1140, 2011).

**REFERENCES TO DES MOINES MUNICIPAL CODE (DMMC) AND
REVISED CODE OF WASHINGTON (RCW)**

DMMC 4.04.010 Council Meetings - City Hall Location.

All meetings of the City Council shall be held at 21630 11th Avenue South, which is designated as the location of the City Hall, except that, when necessary, the City Council may hold meetings at other places.

DMMC 4.04.020 Council Meetings - Time.

(1) The regular meetings of the City Council are held every Thursday, with the meetings convening at 7:00 p.m.; except when the regular meeting date falls on a legal holiday the meeting is canceled and the City Council shall not meet.

(2) The Presiding Officer may cancel a regular meeting at the Presiding Officer's discretion as the business of the City Council requires; except the City Council shall meet at least once each month.

RCW 35A.12.050 and 12.060 Forfeiture of Office.

The office of a Mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of Mayor or in the council shall be filled as provided in chapter 42.12 RCW. An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of Mayor. A Councilmember shall forfeit his office if he fails to attend three consecutive regular meetings of the Council without being excused by the Council.

RCW 35A.13.020 Election of Councilmembers - Eligibility - Terms - Vacancies - Forfeiture of Office - Council Chair.

In council-manager code cities, eligibility for election to the Council, the manner of electing councilmembers, the numbering of council positions, the terms of councilmembers, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a Mayor pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060 and 35A.12.065 relating to the council of a code city organized under the Mayor-council plan, except, that in council-manager cities where all council positions are at-large positions, the City Council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one shall be the Council Chair and shall carry out the duties prescribed by RCW 35A.13.030.

RCW 42.30.080 Special Meetings.

A special meeting may be called at any time by the Presiding Officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body.

Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

RCW 42.30.090 Adjournments.

The governing body of a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.030.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

RCW 42.30.110 Executive Sessions.

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting.

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when the governing body elects to take final action hiring, setting the salary or an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency;

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public.

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

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

RCW 42.30.140 Chapter Controlling - Application. If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: *Provided*, that this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation or profession or to any disciplinary proceedings involving a member of such business, occupation or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or

(4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

RCW 42.36.010 Local Land Use Decisions.

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

RCW 42.36.040 Public Discussion by Candidate for Public Office.

Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17A.005 no public discussion by expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine.

RCW 42.36.050 Campaign Contributions.

A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

RCW 42.36.060 Quasi-judicial Proceedings - Ex Parte Communications Prohibited, Exceptions.

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- (1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and
- (2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

**REFERENCES TO RESOLUTION NO. 1118 POLICIES GOVERNING CITY
COUNCIL PARTICIPATION IN PUBLIC CONTRACTS**

1. Interlocal Agreements. Chapter 39.34 RCW requires the governing bodies of participating public agencies to take appropriate action by ordinance, resolution or otherwise before interlocal agreements may enter into force. All interlocal agreements should appear on the consent calendar, subject to removal in accordance with the City Council Rules of Procedure.

2. Franchise Agreements. Franchise agreements such as Comcast, PSE, water, sewer, and the like require City Council approval. Franchise agreements should be referred to an *Ad Hoc* Council Committee for the study and recommendation prior to presentation to the City Council for approval.

3. Public Works (small works roster).

(a) MRSC rosters. The City wishes to contract with the Municipal Research and Services Center of Washington (MRSC) to adopt for City use those state-wide electronic databases for small works roster and consulting services developed and maintained by MRSC and authorizes the City Manager to sign that contract. In addition, paper and/or electronic rosters may be kept on file by appropriate City departments.

(b) Small works rosters. The following small works roster procedures are established for use by the City pursuant to RCW 39.04.155:

(i) Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment, and sales and/or use taxes as applicable. Instead, the City may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

(ii) Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster.

(iii) Telephone or written quotations. The City shall obtain telephone, written, or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to a contractor who meets the mandatory bidder responsibility criteria in RCW 39.04.350(1) and may establish supplementary bidder criteria under RCW 39.04.350(2).

(A) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation.

(B) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five (5) contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. "Equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

If the estimated cost of the work is from One Hundred Fifty Thousand Dollars (\$150,000.00) to Three Hundred Thousand Dollars (\$300,000.00), the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

(1) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
(2) Mailing a notice to these contractors; or
(3) Sending a notice to these contractors by facsimile or email.

(C) At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

(D) A written record shall be made by the City representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(c) Limited public works process.

(i) If a work, construction, alteration, repair, or improvement project is estimated to cost less than Thirty-Five Thousand Dollars (\$35,000.00), the City may award such a contract using the limited public works process provided under RCW 39.04.155(3). For a limited public works project, the City will solicit electronic or written quotations from a minimum of three (3) contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request.

(ii) For limited public works projects, the City may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(iii) The City shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

(iv) Determining the lowest responsible bidder. The City Council shall

award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by Chapter 133, Laws of 2007 (SHB 2010) and who meets any supplementary bidder responsibility criteria established by the City.

(v) Award. The City Manager or his designee shall present all telephonic quotations/bids, and recommendation for award of the contract to the lowest responsible bidder to the City Council. However, for public works projects under Fifty Thousand Dollars(\$50,000.00), the City Manager shall have the authority to award public works contracts without City Council approval. For public works projects over Fifty Thousand Dollars (\$50,000.00), the City Council shall award all public works contracts.

(c) Consulting services rosters.

(i) Consulting services. Consulting services are professional services that have a primarily intellectual output or product and include architectural and engineering services as defined in RCW 39.80.020.

(ii) Publication. At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the consulting services roster or rosters and solicit statements of qualifications from firms providing consulting services. Such advertisements will include information on how to find the address and telephone number of a representative of the City who can provide further details as to the City's projected needs for consulting services. Firms or persons providing consulting services shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a consulting services roster.

(iii) Professional architectural and engineering services. The MRSC rosters will distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services and will announce generally to the public the City's projected requirements for any category or type of professional or other consulting services. The City reserves the right to publish an announcement on each occasion when professional services or other consulting services are required by the agency and to use paper and/or other electronic rosters that may be kept on file by appropriate City documents.

4. Public Works (Subject to Bid). Public work projects exceeding \$200,000 are subject to bid laws and shall be processed in accordance with the Revised Code of Washington. After opening of bids, results shall be submitted to the Council Committee of origin for study and recommendation prior to being presented to the City Council for approval and if there is no Council Committee of origin, shall be considered by the Council as a whole. Action taken by the City Council in awarding the bid and directing the City Manager to sign contracts should include authority granted to the City Manager to expend funds in the amount of the bid award plus ten percent.

5. Purchase of Supplies, Material, Equipment, and Non-Professional Services. For code cities of a population of 20,000 or greater there are no bidding requirements for purchases of supplies, material, equipment, or services which are not purchased in connection with a public work. For such purchases, the City Manager shall adopt written guidelines, subject to City Council approval, to ensure that purchases are made at the lowest possible price from a responsible vendor.

6. Architectural and Engineering Services. Chapter 39.80 RCW provides that in selecting architect and engineer consultants the City shall conduct discussions with one or more firms and shall select the firm deemed the most highly qualified to provide the services required for the proposed project. The Attorney General of the State of Washington has issued an opinion precluding cities from considering price when selecting architects and engineers, except for a final price negotiation after the most qualified architect or engineer has been selected. The following process shall govern awarding of contracts to architects or engineers:

- (a) The City Manager shall advertise the architectural and engineering requirements;
- (b) The City Manager shall thereafter enter into discussion with several firms and select the most qualified architect or engineer;
- (c) The City Manager shall then negotiate the scope of work and price with the architect or engineer selected; and
- (d) If the contract amount does not exceed \$50,000 and has been previously budgeted, the City Manager shall be authorized to sign a contract for such services without approval by the City Council or any committee thereof. If the contract amount exceeds \$50,000, the Contract should appear on the consent calendar, subject to removal in accordance with the City Council Rules of Procedure.
- (e) In case of a disaster, emergency, or immediate City need, including assistance on Capital Improvement Program projects and general engineering services previously approved by the Council, the City Manager shall be authorized to sign Task Order Assignments on multi-year "on-call" civil engineering services consultant contracts, which have been previously approved by the Council for services if the Task Order Assignment does not exceed \$50,000.
- (f) The City Manager shall, as part of the City Manager's monthly report, provide the City Council with a list of contracts with consultants that have been approved by the City Manager pursuant to this resolution.
- (g) The City Manager shall not allow task order assignments for a specific single project that cumulatively add up to an amount greater than \$50,000.00 without being approved by the City Council.

7. Leases of City Real Property. Leases of City real property are subject to review and approval by the City Council. The Mayor shall have discretion to submit any such lease to a standing or ad hoc committee for study and recommendation prior to being presented to the City Council for approval.

8. Contracts for General Professional Services. Contracts for general professional services, which do not involve architects or engineers, are not subject to the bid laws of the State of Washington. Examples of such services are computer consultants, financial consultants, management consultants, and the like. The process for awarding general professional services contracts shall be as follows:

- (a) The City Manager shall research the persons and firms that are available to such professional services, taking into consideration recommendations from any source.
- (b) The City Manager shall then negotiate a contract with the party selected, including scope of work and price.

(c) If the contract amount exceeds \$50,000, the contract should appear on the consent calendar, subject to removal in accordance with the *City Council Rules of Procedure*.

9. Administrative Contracts. Administrative contracts are contracts which do not fall into any other category described in this rule, and are for services previously budgeted by the City Council. Examples of administrative contracts are agreements with the Sexual Assault Center, VanGo, Senior Nutrition, D.A.W.N., and the like. The City Manager is authorized to execute administrative contracts, and the same shall not be subject to approval by the City Council or any committee thereof.

APPENDIX A

THE SPIRIT OF DES MOINES AWARDS PROGRAM POLICY

The spirit of any community is its citizens, community leaders, volunteers and donors. We are all bettered by the commitment and dedication they exhibit in keeping or enhancing those things that make the City of Des Moines special to us. We are remiss if we don't, from time to time, acknowledge those efforts. That is the impetus behind the Spirit of Des Moines Awards.

PURPOSE

The Spirit of Des Moines Award is given to publicly acknowledge the efforts and accomplishments of individuals' civic and community service to the betterment of the community of Des Moines, Washington – both over the course of a year, and over a lifetime.

ELIGIBILITY

Up to two individuals may be acknowledged in both the annual award, and lifetime award categories. Nominees for the award need not be Des Moines residents, but must have shown a consistent commitment and dedication to the betterment of Des Moines. Any person is eligible for the annual Spirit of Des Moines Award. Any person is eligible for the lifetime Spirit of Des Moines Award who has demonstrated at least two decades of civic and community service, or who has performed an extraordinary service to the community with long-lasting implications. An annual award recipient is eligible to be considered for future Spirit of Des Moines awards. A lifetime award recipient is ineligible to be considered for future Spirit of Des Moines awards.

NOMINATIONS

The community shall be solicited for nominees for the annual and lifetime Spirit of Des Moines Awards. Nominations shall be reviewed by a community-based review committee, and finalists will be chosen based on the eligibility criteria and any materials submitted to support the nomination. There will be at least two finalists for each position.

REVIEW COMMITTEE

A community-based review committee shall be established to review nominations from the community for the Spirit of Des Moines Awards. The review committee shall have no more than nine (9) members, and no fewer than five (5) members. The members of the review committee, who must be residents of Des Moines, shall be chosen from a cross-section of the Des Moines community – both geographically and in terms of the activities of the community. The Deputy Mayor and two other Des Moines City Councilmember shall serve on the committee, and the Deputy Mayor will be entrusted with choosing the remaining committee members. The Deputy Mayor shall chair the review committee. Meeting notes shall be taken by the review committee, and those notes shall be kept and maintained by the City of Des Moines.

REVIEW PROCESS

Nominations are solicited from the community in September of even numbered years. The review committee shall meet following receipt of nominations and finalists shall be chosen by the committee by January 1, or as soon thereafter as reasonably possible. Recipients shall be chosen by the Council from the group of finalists.

PUBLIC ACKNOWLEDGEMENT

The Spirit of Des Moines Awards shall be given out at a public meeting or event by the Mayor and the City Council upon the earliest date possible following the selection of the recipients. The physical awards reflect the connection of Des Moines, Washington to Puget Sound, and the official City of Des Moines theme of “the Waterland Community.”

CONTRIBUTIONS AND SPONSORSHIPS

Contributions and sponsorships may be solicited to offset the cost of presenting the Spirit of Des Moines Awards. Any funds collected in excess of the direct cost of presenting the awards shall be shared equally among Award recipients, and given as donations in their name to a local charity of their choosing.

ORGANIZATION AWARD

An honorary award may be given, at the recommendation of the review committee, to recognize the activities of an organization that has demonstrated a consistent commitment and dedication to the betterment of Des Moines.

(Res. 1140, 2011, amended by Res. 1409, 2019).

Criticizing a board decision in public



It is a basic principle of parliamentary procedure that the decision of the majority, voting at a properly called meeting, is the decision of the body as a whole. The members whose views did not prevail are bound to go along with the majority. This goes back deep in time, to the origins of our entire system of democratic governance.

It follows from this principle that the minority members of a body may not take action that would tend to undermine the decision. What does “undermine” mean? It means trying to prevent the decision from being carried out.

Robert's Rules of Order Newly Revised, 11th edition, says this: “An organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes” (p. 643). In another book, Robert gives this example: If a club has planned a course of lectures, club members who are unhappy about it may not talk against the course so as to interfere with the sale of tickets (*Parliamentary Law*, pp. 329-330).

They may not do so because their loyalty to the body transcends their individual views. In becoming part of a club, a group of people, they agree to submit their personal judgment to the will of the group. This is an unnatural thing to do! However, it is essential if any group is going to function.

Of course a board member is free, within certain limits, to try during meetings to persuade their colleagues to change the decision. If that doesn't work, and the member remains deeply opposed to the decision, the member may have to consider resigning.



Let's look at three different situations where this question may occur.

1. Criticizing a board decision in a private nonprofit

Private nonprofit boards will sometimes establish a policy that the board “speaks with one voice.” Members are encouraged to be as vocal as they like inside the meeting. Once the decision has been made, however, they are bound not to criticize it in public. For charitable nonprofit boards, this certainly make sense.

2. Criticizing a board decision in a membership organization

Jurassic Parliament believes that membership organizations such as professional associations may choose not to impose this restraint, depending on the nature of their members and their organization. If board members are allowed to say in public that they disagree with a decision, and to explain why, they are still obliged not to try to undermine the decision.

3. Criticizing a board decision in local government

Local governments and public bodies are different from private organizations. It seems obvious to us that under the First Amendment to the Constitution, elected officials and citizen volunteers have the right to speak out when they hold a different view from the body. At the same time, they may not try to undermine the body's decision.

We encountered an example some years ago when a city council majority took a position with regard to a local environmental issue. The minority members subsequently wrote a letter to the responsible state department stating that they felt that the council's position was wrong — they preferred a different position. This was improper, because the action was intended to influence the state department's decision. The minority members were in violation of their duty to the council and their duty to uphold democratic principles.

When there are strongly divided views in local government, the difference between “stating a view” and “undermining a decision” can be challenging. We encourage minority members of local government to do some soul-searching before criticizing a board action in public. Is the action merely a statement of personal views, or is it an attempt to undermine or counteract the board's decision? As Cornell Clayton of Washington State University said, “The willingness to engage in honest debate and lose on issues you care deeply about reaffirms your commitment to common citizenship.”

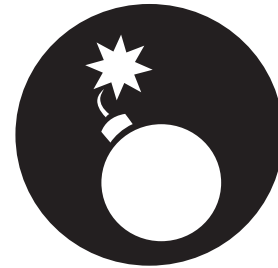
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Criticizing a board decision in public

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Lost the vote? Don't sabotage the council's action



We've had inquiries recently about elected officials who lost a vote, and then actively worked against the outcome. This amounts to trying to sabotage the council. It is wrong, wrong, wrong.

THE MAJORITY RULES

General Henry Martyn Robert, the original author of *Robert's Rules of Order*, expresses it this way:

The great lesson for democracies to learn is for the majority to give to the minority a full, free opportunity to present their side of the case, and then for the minority, having failed to win a majority to their views, gracefully to submit and to recognize the action as that of the entire organization, and cheerfully to assist in carrying it out, until they can secure its repeal.

—Quoted in *Robert's Rules of Order Newly Revised*, 12th edition, p. xlvii

This is a fundamental principle of our system of government. It is embedded in our common law heritage, and our entire society. Government and its administration cannot function optimally, cannot best serve the citizens, and cannot advance, if the very people who are elected to serve choose to pursue their own private views against the decision of the body they belong to. When elected officials “go rogue” and work against their organization's action, they are violating their fiduciary duties of loyalty and obedience. Even more, they are assaulting the foundation of our democracy.

For these reasons, we consistently tell officials: If you lost the vote, you have an obligation to accept the vote as the decision of your body. Your agreement to serve as a public official carries with it the duty to support the fundamental principle of our system of government. You may express your disagreement in public (see our article [Criticizing a board decision in public](#)). However, you should not take a single step to undermine the decision, because that would harm the organization which you have a duty to serve.



IS SOMEBODY TRYING TO SABOTAGE YOUR COUNCIL?

If you are dealing with such a situation, we recommend getting advice from your attorney about the law in your state. Review your bylaws and this quotation from *Robert's Rules of Order*:

An organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.

—*Robert's Rules of Order Newly Revised, 12th edition, 61:1*

Once you are armed with the law and the rules, discuss the matter with the independent-minded member in private (if the sunshine laws in your state allow two members to have a private conversation). They may need help understanding the issue. Explain what is wrong with their attempt at sabotage, and show the importance of allowing the body's action to stand. If that doesn't work, it may be necessary to bring it up at a public meeting of your council or board. And if public shaming fails to have any effect, you may have to sanction the member (see our article, [Sanctioning rogue board members](#)).

BEING ELECTED LIMITS ACTIONS YOU MAY TAKE

American individualism is a great thing, but when you accept election to a local governmental body, you give up some of your First Amendment rights and some of your freedom of action. You agree to put the welfare of the organization above your own interest. You agree to compromise. You agree to follow the rules your body has adopted. And you agree that the entire body chooses its course of action, not any one self-interested individual. It ain't easy! But it's the American way.

EXAMPLES OF ATTEMPTS TO SABOTAGE

Here are instances I have encountered of attempted sabotage:

- A planning commissioner publishes letters opposing the decisions of the commission and complaining about the members.
- A city council takes a position on the status of the wetlands in response to a request from the state department of ecology. Three minority members send a letter to the department saying that they disagree with the city's position.
- The school board has approved a large bond issue. A member who disagrees publishes an Op-Ed in the local newspaper urging citizens to vote against the bond.

Have you had to deal with attempted sabotage? [Let us know!](#)

Lost the vote? Don't sabotage the council's action

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DANGER WILL ROBINSON: ADVISING CITY COUNCILS ON ENFORCEMENT OF COUNCIL RULES OF DECORUM¹

“The city that silences a critic will injure itself as much as it injures the critic, for the gadfly’s task is to stir into life the massive beast of the city, to ‘rouse each and every one of you, to persuade and reproach you all day long.’”

Dowd v. City of Los Angeles, 2013 WL 4039043 (C.D Cal. 2013)(citing Plato, Five Dialogues, Hackett, 2dEd., Trans. GMA Grube, 35 (Apology)).

Brett C. Vinson, Weed Graafstra and Associates (Municipal Law)
110 Cedar Avenue, Shohomish WA 98290
brettv@snohomishlaw.com
253.258.9622

¹ The case law in this paper was last reviewed in 2017 and is being provided to Jurassic Parliament for its use and distribution. While the author believes the case law is still ‘good law’, further research and review is encouraged.

Brett has 20 years of experience serving the Cities of Kent, Bremerton, Puyallup, and Sumner. Prior to joining Weed Graafstra, he served 11 years as the Sumner City Attorney. Brett has extensive experience in advising municipal clients in all facets of municipal law, including risk management, land use and planning, public works, public records, code enforcement, open public meetings, real estate transactions, and employment. He has also worked as a municipal prosecutor and has managed various criminal prosecution departments and provided legal advice to police departments. Having worked for cities of various sizes, Brett has developed a talent for finding creative solutions to complex issues within the resources available. He is a graduate of Brigham Young University and Seattle University School of Law.

As City Attorneys we frequently face questions for which there is no clear answer. Situations are sometimes so fact specific that reliance on case law gives little comfort when providing off-the-cuff advice during a meeting. One such situation is managing comments from the public and councilmembers during council meetings.

AFTER REVIEW OF RECENT CASE LAW, REVIEW OF COUNCIL RULES REGARDING PUBLIC COMMENT IS STRONGLY ENCOURAGED TO REVISE RULES THAT SEEK TO RESTRICT/REGULATE NON-DISRUPTIVE SPEECH AND BEHAVIOR.

A. NO CONSTITUTIONAL RIGHT TO SPEAK AT A PUBLIC MEETING EXISTS BUT YOU HAVE GIVEN THE PUBLIC THAT OPPORTUNITY TO SPEAK – NO WHAT!

Fundamentally case law has consistently developed a clear principle that a citizen has *no Constitutional right* to speak at a public meeting. “The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.”² Accordingly, it is only when citizens are afforded an opportunity to speak, that their speech is subject to *limited* constitutional protection.³

If public comment is allowed, then the traditional public forum analysis must be reviewed to determine the extent and breadth of the authority to manage public comments during council meetings. The first step in the public forum analysis is to determine the nature of the forum at issue. The Supreme Court has created a set of categories under

² *Minn. State Bd. for Cmty. Colleges. v. Knight*, 465 U.S. 271, 283 (1984).

³ *City of Madison Joint School District v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 175-76 (1976).

which different levels of constitutional scrutiny are applied -- depending upon the context of the speech. Speech in a “traditional public forum” -- such as a street corner or a park -- is subject to expansive protections.⁴ On the other hand, the “non-public forum” is afforded very limited protections. These are areas -- such as military bases -- that have no historic tradition of speech, nor has the government taken steps to “open them up” for expressive activity.⁵

City councils are permitted to confine public comment to certain specified topics.⁶ It is not in anyone’s interest to allow unfettered “free speech” at public meetings because it can be disruptive and prevent the orderly conduct of the Council meeting. In addressing a First Amendment challenge to a mayor removing a citizen from a city commission meeting, the Eleventh Circuit provided:

[T]he mayor’s actions resulted not from disapproval of Jones’ message but from Jones’ disruptive conduct and failure to adhere to the agenda item under discussion. Jones began by admonishing the commission to act more prudently in its spending habits, particularly with respect to its spending on waste disposal. The commissioners’ general fiscal habits were not the topic of debate, however, and the mayor quickly directed Jones to speak only on the relevant issue. Jones’ retort--that his comments were germane and that it was the mayor’s “problem” if he failed to recognize this--was also irrelevant, and Jones was warned that any further outbursts would result in his removal. Jones responded, “I don’t think you’re big enough,” and was expelled.⁷

⁴ *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983).

⁵ See, e.g., *Int’l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 679 (1992) (airport terminal); *Greer v. Spock*, 424 U.S. 828 (1976) (military base); *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (exterior of a city bus).

⁶ “Plainly, public bodies may confine their meetings to specified subject matter....” *City of Madison*, 429 U.S. at 175 n.8; see also. *Jones v. Heyman*, 888 F.2d 1328, 1332 (11th Cir. 1989)

⁷ *Jones v. Heyman*, 888 F.2d 1328, 1332 (11th Cir. 1989)

In the Ninth Circuit, a citizen can be stopped for speaking out of order. In *Kindt v. Santa Monica Rent Control Bd.*⁸, a citizen brought § 1983 claims arising out of his conduct at a series of Rent Control Board meetings. The plaintiff alleged that he was not permitted to address all of the topics discussed, his comments were relegated to the end of the meetings, and on occasion, the citizen was ejected for being disruptive. He sued alleging a First Amendment violation. The Ninth Circuit rejected his claims, reasoning that there was not invidious regulation of speech and content was not a factor. The “need for civility and expedition in the carrying out of public business... meetings of a public body do not become free-for-alls simply because the body goes beyond what a member of the public believes (even correctly) to be the body’s proper purview.”⁹

In *White v. City of Norwalk*, the 9th Circuit held that the moderator at a public meeting that allows citizen input possesses authority to control the agenda and to conduct the business of government:

[A] City Council meeting is still just that, a governmental process with a governmental purpose. The Council has an agenda to be addressed and dealt with. Public forum or not, the usual First Amendment antipathy to content-oriented control of speech cannot be imported into the Council chambers intact. In the first place, in dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand. While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, it certainly may stop him if his speech becomes irrelevant or repetitious.¹⁰

In *White*, the Ninth Circuit affirmed the dismissal of claims arising out of plaintiffs’ ejections from council meetings after they had been deemed “out of order” for being repetitive and irrelevant. A city guideline that prohibited “loud, threatening,

⁸ 67 F.3d 266, 271 (9th Cir. 1995).

⁹ *Id.* at 272.

¹⁰ *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990)

personal or abusive language, or... any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting” was also upheld.¹¹ However, given the recent development in this area of the law, caution should be taken before removing an individual whose conduct or speech is not creating an actual disruption.

Recently, in *Norse v. City of Santa Cruz*, a citizen was ejected from a council meeting after he gave a “Nazi salute” in support of another disruptive member of the audience.¹² The mayor characterized the actions as a disturbance -- which offended and distracted the council -- and enforced the rules of order accordingly. The citizen countered that his free speech rights were limited as a consequence of his viewpoint. The district court agreed with the mayor, and affirmed dismissal of the citizen’s claims. It emphasized the case law affording discretion to council moderators and the need to conduct council business.

However, on appeal the 9th Circuit court of appeals reversed and held that rules of decorum are constitutional if they only permit a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting. In discussing the necessity that an actual disruption must occur prior to removal the Court stated: “Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption.”¹³ The Court held that there had not clearly been a disruption when a man “gave the Council a silent Nazi salute” and could not be the reaction of a Councilmember who felt offended or attacked.

This thread of actual disruption was further augmented again by the Ninth Circuit

¹¹ *White*, 900 F.2d at 1424.

¹² *Norse v. City of Santa Cruz*, 629 F.3d 966, 975, (9th Cir. 2010)

¹³ *Id.* at 976.

in *Benito Acosta v. City of Costa Mesa*¹⁴ where the Court provided additional insight into the parameters of council rules seeking to regulate public comment. In *Benito Acosta* the court held a council rules as unconstitutionally overbroad when it prohibited “personal, impertinent, profane, insolent, or slanderous remarks.” Benito Acosta, an activist appealed a U.S. District Court for the Central District of California dismissal of a First Amendment facial challenge to Costa Mesa, Cal., Mun. Code § 2-61 (making disorderly, insolent, or disruptive behavior at city council meetings a misdemeanor), and further appealed a partial summary judgment to defendants city and police officers on a Fourth Amendment claim. A jury returned a defense verdict on remaining claims.

On appeal, the Court held that the applicable rule of decorum was facially invalid because it prohibited "insolent" conduct that could fall well below the level of behavior that actually disturbed or impeded a meeting. However, the Court determined that the rule was constitutionally applied because the jury implicitly found the Benito Acosta actually disrupted the meeting. As the facts read like a good novel, I have provided a detailed recitation of the facts surrounding Acosta's eventual arrest from the Court's decision.

In December 2005, the Mayor proposed that the City enter into an agreement with Immigration and Customs Enforcement ("ICE") to have its police officers designated immigration agents with the authority to enforce federal immigration laws in the City. The proposal was placed on the City Council's December 6, 2005, agenda and passed by a vote of three to two. Members of the public were permitted to comment on the ICE agreement.

Acosta, a U.S. citizen of Mexican descent is a founding member of an

¹⁴ *Benito Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir 2013)

organization that represents the rights of undocumented and immigrant workers and their families and believed an agreement with ICE would undermine public safety because it would deter undocumented workers from reporting crimes against them for fear of deportation. He attended the December 6th council meeting to express his opposition to the proposal. Toward the end of his comments he called the Mayor a "racist pig," at which point the Mayor told Acosta to stop. Acosta repeated his slur, which prompted the Mayor to cut Acosta's speaking time short by calling for a recess. Acosta then responded by calling the Mayor a "fucking racist pig." The Council subsequently passed the proposal.

Due to significant media attention and a large number of demonstrations the City Council decided to consider the ICE agreement again at the next council meeting. During the public comment portion of the meeting a total of twenty-five speakers addressed the City Council, fifteen in favor of the agreement and ten against and the council chambers was filled to capacity.

Early into his remarks, Acosta turned away from the council and toward the audience to ask members who agreed with his viewpoint to stand similar to a previous speaker in favor of the agreement had asked. The Mayor interrupted him, saying, "No, we're not going to do that." In defiance of that order, still facing the audience, Acosta nonetheless said, "Do it," three times. Approximately twenty to thirty people stood up in response to his urging and some began clapping. The Mayor then abruptly recessed the meeting and indicated the council would return in a few minutes.

Acosta was then approached by an officer and he was asked to step down from the podium and leave the chambers and as you could imagine, Acosta did not

immediately comply. The officers then had to forcibly remove him from the chambers and take him outside of City Hall. Once outside, however, the officers encountered a large crowd and Acosta increased his efforts to resist the officers. When the officers attempted to move Acosta back into the City Hall and away from the volatile crowd of demonstrators outside City Hall (some of whom threw objects at the police), Acosta wrapped his legs and arms around a pole in an attempt to prevent the officers from moving him. The officers separated him from the pole and began moving him toward the City Hall. Acosta continued to resist, causing himself and an officer to fall to the ground.

The Costa Mesa rule relied upon by the Mayor in support of his actions provided:

Rule 2-16 Propriety of conduct while addressing the council.

(a) The presiding officer at a meeting may in his or her discretion bar from further audience before the council, or have removed from the council chambers, any person who commits disorderly, insolent, or disruptive behavior, including but not limited to, the actions set forth in (b) below.

(b) It shall be unlawful for any person while addressing the council at a council meeting to violate any of the following rules after being called to order and warned to desist from [**16] such conduct:

(1) No person shall make any personal, impertinent, profane, insolent, or slanderous remarks.

(2) No person shall yell at the council in a loud, disturbing voice.

(3) No person shall speak without being recognized by the presiding officer.

(4) No person shall continue to speak after being told by the presiding officer that his allotted time for addressing the council has expired.

(5) Every person shall comply with and obey the lawful orders or directives of the presiding officer.

(6) No person shall, by disorderly, insolent, or disturbing action,

speech, or otherwise, substantially delay, interrupt, or disturb the proceedings of the council.

Costa Mesa, Cal., Mun. Code § 2-61 (2012) (emphasis added)

In analyzing this rule upheld it's prior ruling in *Norse* and stated that “[a]n ordinance that governs the decorum of a city council meeting is "not facially overbroad [if it] only permit[s] a presiding officer to eject an attendee for actually disturbing or impeding a meeting.”¹⁵ The Acosta court also upheld its prior holding that in *Norse Norwalk* that actually disturbing or impeding a meeting means and actual disruption of the meeting; and that a municipality cannot merely define disturbance in any way it chooses such as simply defining that any violation of the council rules of decorum constitutes a disturbance.

Finally, the Acosta court further emphasized its ruling in *Norwalk*, that a speaker may create a disturbance and be stopped if his speech becomes” irrelevant or repetitious," even in a limited public forum however, a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing. The Court considered two jury instruction indicating that actual disruption is measured by an effect on the audience and that profanity without more is not an actual disruption:

“Whether a given instance of alleged misconduct substantially impairs the effective conduct of a meeting depends on the actual impact of the conduct on the course of the meeting. A speaker may not be removed from a meeting solely because of the use of profanity unless the use of profanity actually disturbs or impedes

¹⁵ *Norse v. City of Santa Cruz*, 629 F.3d 966, 976, (9th Cir. 2010)

the meeting.¹⁶

Therefore, in light of this ruling, council rules governing public comment should be carefully reviewed and be narrowly tailored to ensure that the rules only prohibit actual disruptive conduct. In review of the cases, however, extreme caution should be taken if a speaker's comments are becoming repetitive or "irrelevant" (that would play out nicely – the Mayor thought your comments were irrelevant so he cut your time short) but those comments are being made within the allowed time frame for public comment, it could be possible that a court could deem that not an "actual disruption".

B. THE GOOD OLD U.S. SUPREME COURT'S PORNOGRAPHY STANDARD OF 'WE CAN'T DEFINE IT BUT WE KNOW IT WHEN WE SEE IT' AS APPLIED TO AN "ACTUAL DISRUPTION".

The 9th Circuit clearly has set the standard that to survive constitutional facial validity scrutiny rules of decorum must be drafted in such a manner as to only allow a person to be ejected when that person is actually disturbing a meeting. A review of the relevant case law does not readily equate to a precise legal standard or definition of what constitutes an "actual disruption.

However, an attempt to synthesize the case law was made by a 9th circuit district court in *Dowd v. City of Los Angeles*.¹⁷ The primary issue in question in *Dowd* was a challenge to the City of Los Angeles' lottery permit system for assigning vendors and street performers space along the tourist heavy Venice Beach Boardwalk. LA for several years had attempted to regulate activity along the boardwalk and sought to enforce regulations requiring permits. Dowd and other plaintiffs were street performers and

¹⁶ *Acosta*, 718 F.3d at 810

¹⁷ *Dowd v. City of Los Angeles*, 2013 WL 4039043 (C.D. Cal. 2013)

artists who made their living singing, dancing, etc. and selling various items or accepting donations. During the course of discussions about existing and proposed ordinances regulating activity along the boardwalk, Dowd and others frequently spoke at council meetings. Frequently, comments contained the use of profanity.

Dowd and others frequently spoke at council meetings and would direct their comments specifically at certain councilmembers and the council president. In one instance the council president was called “pathetic and hopeless” and that she is “not doing a very good job and you need to get together and loser her. During one comment, a plaintiff known as Zuma Dogg challenged the City Attorney’s use of outside legal counsel and spending millions and millions and that the permit regulations take money away from him by stating;” [the city attorney] can spend millions and millions and millions and millions of dollars [and] outside counsel can drag it out and I only want a fraction. As Matt Dowd would say that is fucked up.” In another instance, Dogg was allowed without interruption to sing a rendition of a Whitney Houston song to express his love for a certain councilmember, but is ejected when he says, “as Matt Dowd would say that is fucked up.” Occasionally, Dowd or Zuma Dogg were removed from a meeting when they were perceived to not be on topic. There was to be a Christmas Parade that was to be funded by the City and that would benefit a specific councilmembers district. Dogg started his public comment by saying “ My public comment is that I want to discuss the legality of this when you’ve got a criminal taking the money.” Dowd came to the podium and had a discussion with a councilmember about the relevance of Dogg’s and Dowd’s comments to the agenda item of the Christmas parade. Dowd kept saying that he wanted to speak about Councilmember Alarcon’s performance as a

councilmember. The debating councilmember kept insisting the topic was the Christmas Parade and Dowd kept insisting he wanted to speak about Alacron's performance and his alleged criminal activities and Dowd was quickly removed by the Sergeant of Arms. Other incidents that involved removal of Dowd or Zuma Dogg were similar in nature.

The Court in *Dowd*, attempted to synthesize the prior ruling related to an actual disruptions. The Dowd court cited to *Norwalk* for the proposition that an actual disruption need not resemble a breach of the peace or fighting words,¹⁸ and that "a speaker may disrupt a council meeting by speaking too long, by being unduly repetitions, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner."¹⁹ The Dowd court noted a potential conflicting result where in *Kindt v. Santa Monica Rent Control Bd.*, and *Norse*. In *Kindt*, 67 F.3d 266 (9th Cir 1995), the court held that it was permissible to remove a man who had previously disrupted proceeding of the same meeting when his frequent partner in disruptive behavior made an obscene gesture which the board believed threatened to start the disruption all over again.²⁰ However, in *Norse* the court held that there had not clearly been a disruption when Norse gave a silent Nazi salute and was then ejected and arrested, rejecting the City's definition of disturbance as any violation of its decorum rules.

The *Dowd* court applied the principles discussed above to the incidents when Dowd or Dogg were removed. The Court held that while the evidence demonstrated significant tolerance of citizen speech on the part of the members of the City Council and the frequent comments by Dowd and Dogg, it did not mitigate for the relatively few

¹⁸ *Norwalk*, 900 F.2d at 1425.

¹⁹ *Id.* at 1426

²⁰ *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir 1995)

instances that Dowd and Dogg were unconstitutionally removed. The court held that in relation to the incidents identified that an actual disruption did not occur beyond the mere breach of the Rules of Decorum. Specifically, personal attacks and profanity did not rise to the level of an actual disruption. In fact, the Council appeared to deem the use of profanity as an actual disruption per se.

C. CONCLUSION:

It is clear that council rules can regulate public comment. However, council rules that are overbroad, that include the prohibition of the use of profanity, or prohibit personal attacks without the qualification of actually disrupting the meeting will likely be held unconstitutional. Additionally, when enforcing the rules of decorum, an actual disruption of the business of the council is necessary prior to removing the speaker.

The First Amendment is not the last word



In this country today, the First Amendment to the United States Constitution is the foundation of our civil liberty. The freedoms that it lists are crucial to our society. When we read accounts of how these freedoms, in other nations, can be abridged, limited or ignored, we react with horror. And yet it is also important to acknowledge that in the matter of free speech, the First Amendment is not the last word.

“Congress shall make no law...abridging the freedom of speech...”

These 10 words have been interpreted to allow words and actions of an extraordinary breadth and variety. And sometimes, in our public meetings, people engage in hateful, vicious, personal and wide-ranging attacks on institutions and individuals, waving the banner of free speech. They sometimes take actions, defended as free speech, which physically disrupt the meeting.

We would like to offer a framework for consideration of free speech at public meetings, in the hope that it will be helpful to elected officials and local governments struggling with these issues. Our examples are from Washington State. Refer to your state law for the specifics that apply to your situation.

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1. It is important to distinguish between legal concerns and parliamentary procedure. I am not an attorney and this article does not constitute legal advice. These thoughts are offered from the point of view of parliamentary procedure, which is a part of the common law with its own special history and perspective. Taking the parliamentary view into consideration, you will want to be guided by your attorney.
2. A governing body has the right to establish rules for the conduct of its business. This principle is enshrined in Washington state law (see, e.g., [RCW 35A.12.120](#)), in *Robert's Rules of Order*, and in common parliamentary law as affirmed by the courts.
3. We recommend that every council, commission, or other public body establish its own rules of procedure. From our perspective, it makes sense to adopt *Robert's Rules of Order*, and then add your own special additional rules that meet the requirements of your particular situation.
4. Including a time limit on remarks is essential if a body is to conduct its business effectively.
5. A governing body may prohibit offensive speech, personal attacks, insult, etc. by its own members.
6. A member who breaks this rule may be reprimanded, censured, or asked to leave the meeting. Such punishment can be inflicted only by the body itself, not by the chair acting alone. Including such consequences in the rules of procedure, though it may not seem necessary when you adopt them, can prove very helpful if your situation changes.
7. In Washington State, the public has the right to attend meetings, but does not have the right under the state constitution or by statute to speak at them. However, most public bodies have created this right by consistently giving the public an opportunity to speak.
8. In its rules, the body may authorize the chair to make a brief response to a speaker. The chair may state that the body will take the views into consideration during its discussion and may offer to provide information or a response later. (Of course, if you say this, be sure to follow up!)
9. However, the right to speak and ask questions does not, in and of itself, include the right to an answer. It is important for the chair not to get involved in a back-and-forth exchange with members of the public. We all have a natural impulse to defend ourselves when attacked, but remaining calm and moving on the next item of business may be the most prudent and appropriate response.
10. This also prevents the unfortunate situation wherein the chair makes statements that are then interpreted as the position of the whole body, when perhaps they have not been adopted by the body, leading to further wrangling and recrimination.
11. In creating its rules, a council may impose restrictions pertaining to the way in which public comment is offered. It is fine to impose time limits. If state law allows, you may require that remarks be germane (relevant) to the subject at hand, or confine public comment to specified topics. All such restrictions must be viewpoint-neutral.

12. Members of the public may not disrupt the meeting. However, the courts have found that words alone do not constitute disruption. The body may request that speakers be courteous and refrain from profanity, personal attacks, and so on, but it cannot require them to do so.
13. In Washington State, if members of the public who are present actually disrupt the meeting, or physical violence is threatened, they can be ordered to leave, the meeting room may be cleared, or the body itself can adjourn the meeting and reconvene in a different place, without the presence of the public but with the presence of the media. ([RCW 42.30.050.](#)) We advise caution in considering whether to order someone to leave. Consult your attorney and be sure that your actions are defensible under the First Amendment.

It is clear from current research into how the human brain functions that when people get loud, offensive, and insulting, a group is not able to do its work. When the amygdala sends out signals of fear and rage, the prefrontal cortex, the part of the brain that is capable of reflecting on and making decisions about complex issues, stops functioning. This means that angry emotions and disruptive actions can have the effect of hijacking a meeting.

► **HONOR THE FIRST AMENDMENT, ESTABLISH RULES, BE PREPARED TO ACT**

Sometimes that's what protesters want. It means, though, that those same protesters are stealing from the public. They are preventing our officials from doing the work that they were elected or appointed to do. We encourage you to be proactive and definite. Honor the First Amendment, establish rules that will protect your group to the best of your legal ability, and be prepared to act when disruption threatens. To do otherwise is to run the risk of wasting your time and the public's resources.

Thank you for your interest in running effective meetings using Robert's Rules of Order. Visit our website, www.jurassicparliament.com, for much more information on how to do this. Or contact us at info@jurassicparliament.com or 206-542-8422. We look forward to hearing from you!

The First Amendment is not the last word

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P.O. Box 77553, Seattle, WA 98177
TEL 206.542.8422 | EMAIL info@jurassicparliament.com
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CITY OF
DES MOINES
CITY COUNCIL PROTOCOL MANUAL

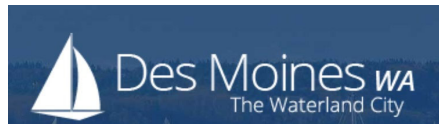


TABLE OF CONTENTS

OATH OF OFFICE 5

FOREWORD..... 6

CHAPTER 1.....7

INTRODUCTION AND OVERVIEW.....7

1.01 Council-Manager Form of Government 7

1.02 Purpose of City Council Protocol Manual 7

1.03 Association of Washington Cities and Municipal Research Services Center of Washington 7

1.04 Overview of Basic City Documents 7

1.05 Orientation of New Members..... 8

1.06 Medical and Religious Exemptions 8

CHAPTER 2..... 9

DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES 9

2.01 City Council Generally 9

2.02 Role of Councilmembers 9

2.03 Role of Mayor 10

2.04 Role of Deputy Mayor 10

2.05 Acting Mayor 10

2.06 Election of Officers 10

2.07 Appointment of City Manager 11

2.08 Council Board and Committee Service 11

2.09 Citizen Advisory Bodies 12

2.10 Incompatibility of Offices 13

CHAPTER 3.....13

SUPPORT PROVIDED TO CITY COUNCIL.....13

3.01 Staff 13

3.02 Electronic Devices 13

3.03 Mail and deliveries 13

CHAPTER 413

FINANCIAL MATTERS13

4.01 Council Compensation 13

4.02 Business, Education, and Travel 13

4.03 Financial Disclosure 14

CHAPTER 5 14

COMMUNICATIONS.....14

5.01 Overview 14

5.02 Councilmember Contact and Information 14

5.03 Correspondence from Councilmembers 14

5.04 Council Representation 16

5.05 State Public Disclosure Act 16

5.06 Open Public Meetings Act 16

5.07 Communication with the Public 16

CHAPTER 6	17
CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS	17
6.01 Conflicts of Interest.....	17
6.02 Appearance of Fairness Doctrine.....	17
6.03 Liability.....	19
CHAPTER 7	19
INTERACTION WITH CITY STAFF/OFFICIALS	19
7.01 Overview.....	19
7.02 City Manager Performance Evaluation.....	19
7.03 City Council/City Clerk Relationship.....	20
7.04 City Council/City Attorney Relationship.....	20
7.05 Non-Interference.....	20
7.06 Access to Information.....	20
7.07 Staff Roles.....	21
7.08 Councilmember Relationship with Staff.....	21
CHAPTER 8	21
CITY COUNCIL MEETINGS	21
8.01 Meeting Schedule.....	21
8.02 Public Notice of Meetings and Hearings.....	21
8.03 Special Meetings.....	22
8.04 Placing Items on the Agenda.....	22
8.05 Recording and Broadcast of Meetings.....	23
8.06 Order of Business – Regular Meetings.....	23
8.07 Order of Business – Study Sessions.....	29
8.08 Order of Business – General Procedures.....	29
8.09 Open Public Meetings Act.....	31
CHAPTER 9	31
PROTOCOL ADMINISTRATION	31
9.01 Biennial Review.....	31
9.02 Adherence to Protocol.....	32
9.03 City Attorney as Protocol Advisor.....	33
9.04 Accommodations.....	33
CHAPTER 10	33
LEAVING OFFICE/FILLING VACANCIES	33
10.01 Return of Materials and Equipment.....	33
10.02 Filling Council Vacancies.....	33
CHAPTER 11	35
PARLIAMENTARY PROCEDURES	35
11.01 Meeting Decorum and Order.....	35
11.02 Obtaining the Floor.....	35
11.03 Interruptions.....	36
11.04 Discussion Limit.....	36
11.05 Right of Protest.....	36

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CHAPTER 12.....	36
ADDITIONAL TRAINING AND RESOURCE MATERIALS	36
12.01 Association of Washington Cities [(800) 562-8981]	36
12.02 National League of Cities [(202) 626-3000].....	36
12.03 International City/County Management Association [(202) 289-4262]	36
12.04 Government Finance Officers Association [(312) 977-9700]	36
12.05 Municipal Research & Services Center of Washington [(206) 625-1300]	37

Foreword

In the course of serving as a public official, there are a myriad of issues with which you will become involved. This protocol manual attempts to centralize information on common issues related to local government and your role as a member of the Des Moines City Council.

The issues that are addressed in this publication are often complex and subjective. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney in accordance with the Revised Code of Washington (RCW).

The protocols included in this reference document have been formally adopted by the City Council. Provisions contained herein will be reviewed as needed.

CHAPTER 1 INTRODUCTION AND OVERVIEW

As a City Councilmember, you not only establish important and often critical policies for the community, you are also a Board Member of a public corporation having an annual budget that may exceed one hundred million dollars.

1.01 Council-Manager Form of Government

The City of Des Moines is a Council-Manager form of government. As described in the Municipal Code and Revised Code of Washington, certain responsibilities are vested in the City Council and the City Manager. This form of government establishes that a City Council's role, in this specific form of government is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines what public policy is, and gives direction to the City Manager to administer the affairs of the city government.

1.02 Purpose of City Council Protocol Manual

The City of Des Moines has prepared its own protocol manual to assist the City Council by documenting accepted practices and clarifying expectations. This Manual has been formally adopted by the City Council and is binding on all Councilmembers.

1.03 Association of Washington Cities and Municipal Research & Services Center of Washington

[The Code City Handbook, Report No. 37](#), published by the Municipal Research & Services Center (MRSC), provides a wealth of general information on the major functions of a Councilmember's job as a locally elected official. Another publication from MRSC that goes hand in hand with the handbook is, [Knowing the Territory](#). This report discusses basic powers; basic duties, liabilities, and immunities of officers; conflict of interest and appearance of fairness; prohibited uses of public funds, property, or credit; competitive bidding requirements; the Open Public Meetings Act; Open Government-Public Records-Freedom of Information; and immunities from tort liability. These two documents have been included as resources in creating this protocol manual.

1.04 Overview of Basic City Documents

This protocol manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction.

A. [Revised Code of Washington](#)

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Des Moines is an "optional code city," which means it operates under the general laws of the state. As an optional code city of the State of Washington, Des Moines is vested with all the powers of incorporated cities as set forth in the Revised Code of Washington (RCW), Constitution of the State of Washington, and Des Moines Municipal Code.

B. [Des Moines Municipal Code](#)

The municipal code contains local laws and regulations adopted by ordinances. Titles 2 and 4 of the code address the role of the City Council, describes the organization of City Council meetings and responsibilities and appointment of certain City staff positions and advisory boards and commissions. In addition to these administrative matters, the municipal code contains a variety of laws including, but not limited to, zoning standards, health and safety

issues, traffic regulations, building standards, and revenue and finance issues.

- C. [Vision/Mission Statement](#)
[Vision, Mission & Business Plan - City of Des Moines, WA \(desmoineswa.gov\)](#)

- D. [City Budget](#)
The budget is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations.

Please note: The City Manager is required, by state statute, to present a recommended budget to the City Council in October of the preceding year of the budget. The City Council must hold at least two public hearings on the budget before they can approve the budget with any adopted changes.

- E. [Annual Comprehensive Financial Report \(ACFR\)](#)
The annual financial report includes the financial statements of the City for a calendar year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial report includes statements for the various groups of funds and a consolidated group of statements for the City as a whole.

- F. [Comprehensive Plan](#)
A state-mandated comprehensive plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements such as employment and residential growth targets. The City's comprehensive plan, *Imagine Des Moines...* is reviewed on an ongoing basis, but may only be revised once a year, except as provided by State law.

- G. [Six-year Capital Improvement Program](#)
The Six year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and constructing capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of city services.

1.05 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the City Manager and City Clerk provide an orientation session for new members to meet with key staff within the first quarter of taking office.

Another training opportunity for new members is the Association of Washington Cities-sponsored newly elected officials' orientation. At any time, if there are facilities or programs about which you would like more information, arrangements will be made to increase your awareness of these operations.

1.06 Medical and Religious Exemptions

The City complies with all requirements of the Americans with Disabilities Act (ADA). Accordingly, exceptions to these Protocols may be granted in accordance with the ADA. A Councilmember who believes he or she needs a reasonable accommodation in order to perform the essential functions of his or her (role as a Councilmember) must submit a request for a reasonable

accommodation to the City's Human Resources Department. This request will be processed in accordance with the City Personnel Manual.

A Councilmember, who holds a "sincerely held religious belief, practice or observance" that conflicts with the Protocol requirements, may request a reasonable accommodation. Upon notice of the request, the City will process in the same manner as a reasonable accommodation request as defined by the ADA.

CHAPTER 2

DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES

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2.01 City Council Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety and general welfare of the citizenry. The City Council is the policy-making and law-making body of the City. State law and local ordinances grant the powers and responsibilities of the Council.

In carrying out their public role and in representing the positions of the Council body, Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure that the policy of the Council is appropriately executed.

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- A. Council Non-Participation in Administration
RCW 35A.13.120 specifically prohibits interference by Councilmembers in the City's administrative service, including the hiring, firing, and work of city staff, with the exception of the City Manager.
- B. Code of Conduct/Ethics Code DMMC 2.44
Chapter 2.44 CODE OF ETHICS (codepublishing.com)

2.02 Role of Councilmembers

Members of the Des Moines City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather is an effort to summarize the primary responsibilities of the Council.

Summary of Council Duties and Responsibilities as provided in, but not limited to, the Washington Administrative Code and Revised Code of Washington:

- A. Establish Policy:
 - 1. Adopt goals and objectives
 - 2. Establish priorities for public services
 - 3. Approve/amend the operating and capital budgets
 - 4. Approve contracts over \$50k
 - 5. Adopt resolutions
- B. Adopt City Ordinances
- C. Appoint City Manager:
 - 1. Evaluate performance of City Manager
- D. Boards and Commissions:
 - 1. Establish advisory boards and commissions
 - 2. Approve appointments to advisory bodies

3. Provide direction to advisory bodies

E. Provide Public Leadership:

1. Communicate the City's vision and goals to constituents
2. Represent the City's interest at regional, county, state, and federal levels through participation in regional boards and commissions, as appointed by Mayor or Council.
3. Call special elections as necessary
4. Constituent communication to City Manager

F. Decision-Making:

1. Participate in assigned committees
2. Study problems
3. Review alternatives
4. Determine best course of public policy

2.03 Role of Mayor

A. Presiding Officer:

The Mayor serves as the presiding officer and acts as chair at all meetings of the City Council. The Mayor may participate in all deliberations of the Council in the same manner as any other members and is expected to vote in all proceedings, unless a conflict of interest exists. The Mayor does not possess any power of veto.

B. Ceremonial Representative:

Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. The Mayor shall have no regular administrative or executive duties.

C. Proclamations:

The Mayor is vested with the authority to initiate and read and sign Council approved proclamations.

D. See also Section 5.04:

[Chapter 5.04 GENERAL PROVISIONS](#)

2.04 Role of Deputy Mayor

In case of the Mayor's absence or temporary disability, the Deputy Mayor shall act as Mayor during the continuance of the absence. When the Deputy Mayor acts as Mayor by participating in preparation of a council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Deputy Mayor shall have authority only to approve the Council meeting agenda or study session worksheet as to form, without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written.

2.05 Acting Mayor

When both the Mayor and Deputy Mayor are absent, the Council may choose from among its members a person to serve with the powers of the Deputy Mayor.

2.06 Election of Officers

Procedures for electing officers are as follows:

A. Biennial Election of Mayor and Deputy Mayor

Biennially, at the first meeting of the new Council, Councilmembers will choose a presiding

officer from their number who will have the title of Mayor. In addition to the powers conferred upon them as Mayor, they will continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting will select a Mayor from their number for the unexpired term. Following the election of the Mayor, if the Deputy Mayor is selected as the new Mayor, there will be an election for Deputy Mayor. The term of the Deputy Mayor will run concurrently with that of the Mayor.

1. Nominations

The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations are then closed. The election for Deputy Mayor shall be conducted by the newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Deputy Mayor shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Deputy Mayor may be waived by a vote of five Councilmembers.

B. Casting Ballots

Except when there is only one nominee, election will be by audible vote; each Councilmember declaring a vote into the record. The City Clerk will publicly announce and record the results of the election in the official minutes, stating the name of each voting Councilmember and the manner in which the Councilmember voted. ~~Once a nominee receives a majority vote of the members present, the nominee is declared elected to the position.~~

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C. Unable to Agree

In the event that the Council is unable to agree on a Mayor by majority vote of the members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney.

In the event that the Council is unable to agree on a Deputy Mayor, the appointment of Deputy Mayor shall be filled in the same manner as described above.

The Acting Mayor and Acting Deputy Mayor shall continue in office and exercise such authority as is described in Chapter [35A.13 RCW](#) until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Deputy Mayor shall cease and terminate.

D. Resignation of Mayor or Deputy Mayor

If the Mayor or Deputy Mayor resign, the City Council will appoint a new Mayor or Deputy Mayor using the procedure outlined above, as soon as practical.

2.07 Appointment of City Manager

The City Council is responsible for appointing one position within the City organization, the City Manager. The City Manager serves at the pleasure of the Council.

2.08 Council Board and Committee Service

A. Committees of the Council:

Committees of the Council are comprised of a collaboration of Councilmembers and Staff, and are designed to review, discuss, and vet potential plans and decisions that may come before the Council body. These committees may make recommendations on proposed ordinances, resolutions, or motions within their area of expertise.

The procedures governing all committees of the Council shall be as follows:

1. The following standing committees shall consist of three members of the Council appointed by the Mayor in January following an election, or at such time as new standing committees are authorized; Environment, Municipal Facilities, Public Safety and Emergency Management, Transportation, and Economic Development.
2. In addition to standing advisory committees, special purpose or Ad Hoc committees and task forces may be appointed by the Mayor to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad-hoc committees will be dissolved upon completion of the intended task.
3. Minutes shall be kept of each City Council standing and special committee meeting, listing discussion topics, comments made, and any final recommendations.
4. Standing committees of the Council are open public meetings, shall be noticed to the public, and be recorded and available to the public for viewing.
5. During the appropriate portion of the regular City Council meeting, the Committee Chair shall report back to the Council regarding items of discussion, progress, or plans.
6. Councilmembers may be appointed or removed by the Mayor.

Commented [AM(P2)]: This phrase is problematic to me. Does it mean that specific comments are included by name? We strongly recommend against that, as does Robert's Rules. If you would like the key points made to be included, you could say "a summary of key points made, without attribution to individuals." I will send a sample of such minutes.

Councilmembers shall not serve on appointed City Advisory Bodies concurrent with their term of office as Councilmember.

However, at the discretion of the Mayor, Councilmembers may be appointed as liaison to one or more Council-established Citizen Advisory Bodies or other Community agencies/organizations. In their capacity as a Council liaison, a Councilmember shall:

1. Attend meetings on time and conduct themselves with respect, honoring the chair and members of the appointed or community body.
2. Participate only as requested by the Chair in answering questions or representing the will or opinion of the Council as a whole, and shall not interact as a member of the body by engaging with questions, discussion, or voting.
3. Report back to Staff and/or Council as appropriate with updates, progress and/or questions posed by community members. This should be done in a timely manner and may be done from the dais during Board and Committee Reports as appropriate.

Commented [AM(P3)]: This is very good!

B. Regional Boards and Committees:

Members of the City Council are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies.

1. Membership appointment to these groups shall be made, or authorized by the Mayor for a 2-year period. If more than one Councilmember desires to serve as a member of a particular outside group, the member will be appointed by the Mayor.
2. Where applicable, the Mayor will appoint an alternate to attend outside boards, councils, commissions, or committees. The main delegate will notify the alternate as soon as possible after they realize they will be unable to attend an upcoming meeting of the outside group.
3. Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City.

4. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

2.09 Citizen Advisory Bodies

The Council policy regarding Citizen Advisory Bodies is found in DMMC Title 4: [Title 4 COUNCILS AND APPOINTIVE COMMITTEES \(codepublishing.com\)](#)

2.10 Incompatibility of Offices

Councilmembers shall not simultaneously hold any other elected position, an incompatible public office or employment within the City government except as permitted under the provisions of [RCW 42.23](#), [35A.12](#) and [35A.13](#).

**CHAPTER 3
SUPPORT PROVIDED TO CITY COUNCIL**

3.01 Staff

The use of City staff to provide support for a Councilmember is limited to that which is authorized by the City Manager.

Councilmembers are responsible to keep their own calendars and make their own appointments.

3.02 Electronic Devices

A computer and phone will be provided to each Councilmember for the conducting of City business. The IT staff will ensure that all appropriate software is installed and will also provide an orientation in the use of computers and related software. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Personal media and programs cannot be stored on City computers. Councilmembers must adhere to all policies under the City of Des Moines IT Security Policies.

Throughout Councilmember terms, City equipment is subject to audit. Virus protection software must not be disabled at any time on City equipment and non-city programs or media found during audits will be removed. When individual Councilmembers have completed their term of office, IT staff will retrieve City computers, software, and phones.

3.03 Mail and Deliveries

Members of the City Council receive mail and other materials that are delivered through the use of mailboxes located at City Hall. Councilmembers are encouraged to check mailboxes often.

**CHAPTER 4
FINANCIAL MATTERS**

4.01 Council Compensation

The municipal code provides for payment of a stipend to members of the City Council. A seated City Council may not increase or decrease its own compensation. Councils may only pass an ordinance to adjust the compensation of a future City Council. Currently, Council salaries are set as provided in chapter 4.08 DMMC [or RCW 35.21.015](#).

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4.02 Business, Education and Travel

When determined by the City Council to be in the best interests of the City, Councilmembers may attend conferences and workshops, take part in educational or leadership opportunities, and conduct City business which may require travel, tuition, fees, or registration costs. Councilmembers may be reimbursed for these expenses under the following guidelines:

- A. The Administration will keep account of Councilmember expenses.
- B. When the Councilmember makes arrangements or incurs eligible expenses as determined by the Council, the Councilmember shall provide receipts for reimbursement.

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the State Public Disclosure Commission in accordance with State law. When appointed to fill a vacancy on the Council, the appointee shall file a financial disclosure statement with the Commission, covering the preceding 12-month period, within two weeks of being appointed. Councilmembers are required to file a financial disclosure statement with the Commission on an annual basis after January 1 and before April 15 of each year covering the previous calendar year. Councilmembers whose terms expire on December 31 shall file the statement for the year that ended on that December 31. Statements filed in any of the above cases will be available for public inspection.

Failure to file or filing a false or incomplete financial disclosure statement, if done knowingly, is a Class 1 Misdemeanor. There are also civil penalties for violations.

**CHAPTER 5
COMMUNICATIONS**

5.01 Overview

Perhaps the most fundamental role of a Councilmember is communication. This is essential to engage with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents. In addition, connection with the staff provides policy direction and assists in understanding the implications of various policy alternatives.

Because the City Council performs as a body, based on the will of the majority as opposed to individuals, it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public must be advised.

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5.02 Councilmember Contact and Information

A page on the City of Des Moines website will display information about each councilmember for community reference, which will include:

- A. A color photo
- B. A short biography/resume
- C. List of assignments or designations
- D. Phone number and email

5.03 Correspondence from Councilmembers

Councilmembers are committed to open communications in their capacity as elected officials. Individual Councilmembers use a variety of methods to communicate with the public, stakeholders, partners, and the media. Social media platforms offer a way to deliver public information and customer service to constituents and give community members another means to interact with their government.

The purpose of this policy is to establish standards for Council communication with the public, when Councilmembers are acting in their official capacity or commenting on City government matters, either through traditional media outlets or the use of social media platforms or personal accounts or pages.

The Council believes that the following standards will provide consistency in procedures and allow for use of more tools to communicate with the public.

- A. The content and tenor of all public communications shall model the same professional behavior displayed during Council meetings and community meetings, and reflect well on the individual Councilmember, the Council as a whole, and the community.
- B. The following disclaimers shall be included in whole or referenced with a link to the disclaimers for all communications initiated by Councilmembers in open forums:
 1. The views expressed represent the views of the author and may not reflect the views of the City of Des Moines or the Des Moines City Council.
 2. Responses to this communication by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion or other action taken must be held in an open public meeting if a quorum of the Council participates.
 3. Comments posted in response to a Councilmember-initiated communication may be subject to public disclosure under chapter [42.56 RCW](#), the Public Records Act.
- C. Media outlets such as newspapers, radio and television news coverage may be used as communications medium by individual Councilmembers provided that the communication clearly states that the views expressed do not represent those of the City Council or the City of Des Moines, but the views of the individual Councilmember.
- D. Communications initiated by Councilmembers. Guest editorials, letters to the editor and blog posts published by Councilmembers should be provided to the full Council at the same time they are delivered to the media outlet. Drafts of guest editorials, letters to the editor or blog posts which may be submitted on behalf of the Council as opposed to an individual Councilmember may not be circulated for comment to a quorum of the Council prior to publication as this may violate the Open Public Meetings Act.
- E. Use of Social Media. Posts to social media sites such as, blogs, Facebook, and Twitter may be used by individual Councilmembers to communicate with the public provided the following guidelines are used:
 1. Blog posts or other posts to social media sites should include, or reference a link which includes the disclaimers listed in Section 5.03.B.
 2. Social media sites are not to be used for the conduct of Council business other than to informally communicate with the public. Public notices, items of legal or fiscal significance that have not been released to the public, and discussion of quasi-judicial matters may not be included in Councilmembers social media posts. Councilmembers are encouraged to maintain social media sites with settings that can restrict users' ability to comment in order to avoid inadvertent discussions of these items. Unsolicited public comments on quasi-judicial matters must be placed on the record by the Councilmember at the time the matter is before the Council for consideration.
 3. In order to demonstrate openness and a willingness to listen to the entire community, Councilmember posts on social media sites should be made through a public-facing page or by marking individual posts as available to the public as a whole.
 4. When commenting on a post or an article published by someone other than a Councilmember, a link to the standard disclaimers in Section 5.03.B should be included within the thread.

F. If a Councilmember makes a factual error in a public communication, it should be corrected as soon as the error is discovered. Blog posts may be corrected by amending a previous post with a note that a correction was made.

G. Councilmembers shall not take actions, in writing, speaking, or otherwise, outside the public meeting(s) that undermine the decisions of the body.

H. Councilmembers may occasionally be asked to prepare letters of recommendation for students or others seeking employment or appointment. In this case, Councilmembers may request City letterhead and their Council titles for such letters, upon approval from the Mayor. City letterhead and staff support cannot be utilized for personal or political purposes.

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5.04 Council Representation

To promote a favorable image of the City and pursue resources or relationships that will benefit the community, the Mayor, or another Councilmember designated by the Council, may take the lead in representing the City of Des Moines to other partners and representatives including, but not limited to; businesses, other local governments, regional agencies and organizations, and state, federal and international governments.

- A. Councilmembers shall not conduct communication or business in this manner without the authorization of the Administration or the City Council.
- B. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Council.
- C. The Mayor, or another Councilmember designated by the City Council, shall be the spokesperson about actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

5.05 State Public Disclosure Act

The City Council is bound by State Public Records Act and City records policies. Please refer to Resolution No. 1185 [142.pdf \(civiclive.com\)](#)

5.06 Open Public Meetings Act

The City Council is bound the State Open Public Meetings Act. More information can be found at [Open Government Training | Washington State](#)

5.07 Communication with the public

- A. If a Councilmember receives communication from a member of the community [conveying a concern, complaint, or administrative issue](#), the Councilmember shall not attempt to address it or resolve it individually but will refer that matter directly to the City Manager for their review and/or action. The individual Councilmember may request to be informed of the action or response made to the complaint.
- B. Written Communications:
Letters, correspondence, and memoranda received by the City, addressed to a Councilmember or the Council as a body, shall be provided to all City Councilmembers.
- C. E-mail:
 - 1. If a community member sends an e-mail to a Councilmember and requests that it be included in the record of a particular public hearing, the Councilmember will forward said e-mail to the City Clerk.

2. If a Councilmember wishes that an e-mail be distributed to a City staff member, the Councilmember will forward said e-mail to the City Manager.
3. E-mail communications that are intended to be shared among four or more Councilmembers, whether concurrently or serially must be considered in light of the Open Public Meetings Act. If the intended purpose of the e-mail is to have a discussion that should be held at an open meeting, the electronic discussion may not occur. Further, the use of e-mail communication to form a collective decision of the Council is illegal.
4. E-mail should be used cautiously when seeking legal advice or if discussing matters of pending litigation or other "confidential" City business. In general, e-mail is discoverable in litigation, even deleted e-mail is not necessarily removed from the system, and councilmembers may not delete official email in violation of the Open Public meetings Act. Confidential e-mail communications should not be shared with individuals other than the intended recipients, or the attorney-client privilege protecting the document from disclosure may be waived:
 - a. E-mail between Councilmembers, and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the City Clerk.
 - b. City email shall not be used for personal communication.

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CHAPTER 6 CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS

6.01 Conflicts of Interest

In the course of conducting City business, it is essential that Councilmembers understand and are able to identify if and where they may have conflicts of interest. If there is ever a question, Councilmembers should consult with the City Attorney before the meeting at which the issue may be considered.

Deleted: consultation with the City Attorney is advised.

City Councilmembers are bound by the Conflict of Interest provisions of chapter [2.44 DMMC](#) as well as chapter [42.23 RCW](#).

6.02 Appearance of Fairness Doctrine

Appearance of Fairness Doctrine and its Application.

- A. Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." [Zehring v. Bellevue, 99 Wn.2d 488 \(1983\)](#).
- B. Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [RCW 42.36.010](#). Some examples of quasi-judicial actions which may come

before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits. City staff is advised to notify the City Council upon receipt of an application or decision which will result in an action before the City Council that is quasi-judicial in nature.

Commented [AM(P6)]: This is a great list!

C. Obligations of Councilmembers, Procedure.

1. Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

2. Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.
3. The Presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.
4. Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

D. Specific Statutory Provisions.

1. Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. [RCW 42.36.040](#).
2. A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. [RCW 42.36.050](#).
3. During the pendency of any quasi-judicial proceeding, no Councilmember may

engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. [RCW 42.36.060](#).

6.03 Liability

The City must always approach its responsibilities in a manner that reduces appropriate risk to all involved. Nevertheless, with such a wide variety of high profile services (i.e., police, parks, roads, land use), risk cannot be eliminated. To better manage insurance and risk, the City participates in risk- and loss-control activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in the member being personally liable for damages which would not be covered by the City's insurance.

[DMMC 2.24.030](#) identified the exclusions to insurance coverage as follows:

The obligations assumed under this chapter by the city and the city attorney shall not apply to:

- A. Any dishonest, fraudulent, criminal, or malicious act of any official or employee;
- B. Any act of an official or employee which is not performed on behalf of the city;
- C. Any act which is outside the scope of an official's or employee's service or employment with the city; or
- D. Any lawsuit brought by or on behalf of the city.

The determination of whether an official or employee is entitled to a defense by the City under shall be made by the City Attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment.

For more information, see [Chapter 2.24 DMMC](#).

CHAPTER 7 INTERACTION WITH CITY STAFF/OFFICIALS

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters.

7.02 City Manager Performance Evaluation

In accordance with [DMMC 2.04.050](#), all members of the City Council will be required to participate in a review of the City Manager.

Prior to the process, the City Attorney will distribute evaluation forms to all Councilmembers for review, completion, and return within 14 days of receipt. The forms will be collated into one document for review before the evaluation date.

The members of the Council will use the collated document to review the City Manager during Executive Session.

7.03 City Council/City Clerk Relationship

The City Clerk is appointed by the City Manager. The City Clerk shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council

7.04 City Council/City Attorney Relationship

The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City.

It is important to note that the City Attorney does not represent, or advise, individual members of Council, but rather the City Council as a whole.

7.05 Non-Interference

In accordance with [RCW 35A.13.120](#), the City Council is to work through the City Manager when dealing with administrative services of the City. In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence or criticize personnel matters or individual staff members, who are under the direction of the City Manager.

Commented [AM(P7)]: This is a great section!

Any criticism of staff by Councilmembers shall be directed to the City Manager. It is inappropriate and unethical for Councilmembers to publicly criticize individual staff members.

Deleted: Public

Deleted: criticism of staff by Councilmembers is inappropriate and unethical

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Individual Councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities. Following this RCW is necessary in order to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal.

The City Council shall not be involved in, or influence, the purchase of any supplies beyond the requirements of the City procurement code/procedures.

If a Councilmember wishes to influence the actions, decisions, recommendations, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy

7.06 Access to Information

The City Manager is the information liaison between Council and City staff. Requests for information from Councilmembers are to be directed to the City Manager. The information requested will be copied to all members of Council so that each member may be equally informed.

There are limited restrictions when information cannot be provided. The City is legally bound to protect certain confidential personnel information. Likewise, certain aspects of police department

affairs (i.e., access to restrict or confidential information related to crimes) may not be available to members of the City Council.

No Councilmember shall request or direct the City Manager or Department Directors to initiate any action or prepare any report, or initiate any project or study without the consent of a majority of the Council.

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

7.07 Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council. Staff is directed to reject any attempts of individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

7.08 Councilmember Relationship with Staff

Staff support and assistance may be provided to advisory boards, commissions, and task forces. Advisory bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager.

When Councilmembers are acting as Liaisons they shall not direct staff.

Commented [AM(P9)]: Very good.

CHAPTER 8 CITY COUNCIL MEETINGS

The City Council's collective policy and law-making powers are put into action exclusively at the council meetings. It is here that the Council conducts its business. The opportunity for community members to be heard, the availability of local officials to the public, and the openness of council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Council business meetings are generally held the first, second, and fourth Thursdays of each month, convening at 6:00 p.m., in the Council Chambers at Des Moines City Hall, 21630 11th Ave S, Suite C, Des Moines WA, 98198. The first Thursday is intended to be reserved as a study session.

If Council Meetings are moved to alternate location or conducted remotely they will be noticed publicly at least 24 hours in advance in accordance with the State law.

8.02 Public Notice of Meetings and Hearings

Pursuant to [RCW 35.22.288](#), cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Des Moines is as follows:

A. Open to the Public:

All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in [RCW 42.30.110](#) or [RCW 42.30.140](#).

B. Notices of Public Hearing:

Except where a specific means of notifying the public of a public hearing is otherwise provided

by law or ordinance, notice of upcoming public hearings before the City Council shall be given by public notice containing the time, place, date, subject, and body before whom the hearing is to be held, using the City's official notification process at least ten (10) days before the date set for the hearing.

C. Preliminary Agenda of Council Meeting:

The public shall be notified of the preliminary agenda for the forthcoming regular City Council meeting by posting a copy of the agenda in the following public places in the City at least 24 hours in advance of the meeting:

Des Moines City Hall
21630 11th Ave So
Des Moines, WA 98198
Website: The City's Official Website: desmoineswa.gov
Des Moines Libraries
Des Moines Marina
Redondo

8.03 Special Meetings

It is the intent of the Des Moines City Council that the procedures of this Council Rule 8.03 are enforceable to the same extent as [RCW 42.30.080](#), as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at [RCW 42.30.080](#). Procedures for setting a special meeting are as follows:

- A. A special meeting may be called by the Mayor or any four members of the Council.
- B. Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, duration of meeting, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.
- C. The notice shall be posted on the City's website and Councilmembers will be notified via email of the special meeting. The notice must be delivered at least twenty-four (24) hours prior to the meeting.
- D. When email notice is given to Councilmembers, the City Clerk shall provide confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has not acknowledged receipt of the email. The City Clerk shall document the date and time of such follow up telephone call.
- E. The notices provided in this section may be dispensed within the circumstances provided by [RCW 42.30.080](#).

8.04 Placing Items on the Agenda

The Presiding Officer, three Councilmembers, or the City Manager may introduce a new item to the preliminary agenda.

The Presiding Officer shall have the option of postponing any item on the agenda until the next regular Council meeting, unless it was introduced by three Councilmembers.

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council.

After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency.

Emergency items may be added to an agenda in accordance with state law.

8.05 Recording and Broadcast of Meetings

The City Clerk, or designee, shall make and keep audio recordings of all standing committee and business meetings of the Des Moines City Council, except those meetings or portions of meetings conducted in Executive Session.

Recordings and related records of all City Council meetings, except as referenced above, shall be retained by the City in accordance with the Washington State Records Retention Schedule.

All public meetings of a quorum of the City Council not exempt from the Open Public Meetings Act held in the Des Moines City Hall at 21630 11th Avenue South should be video recorded and broadcast within the City.

8.06 Order of Business – Regular Meetings

The City Council, by adoption of this manual, establishes the general order of meetings. This section details the order of meeting components and gives direction for their conduct. The Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

The components of business and their order are as follows:

- A. Call to Order and Pledge of Allegiance
- B. Roll Call
- C. Correspondence not Previously Received by Council
- D. Comments from the Public
- E. Committee Chair Reports
- F. City Manager Report/Presentations/Briefings
- G. Consent Agenda
- H. Ceremonial Matters, Proclamations (reading)
- I. Public Hearings
- J. Unfinished Business
- K. New Business
- L. New Agenda Items for Consideration
- M. Councilmember Reports
- N. Presiding Officer's Report
- O. Executive Session (as required)
- P. Next Meeting Date
- Q. Adjournment

- Conduct of Business:
- A. Call to Order/Pledge

Deleted: No photos, audio or video recordings shall be made at City Council Meetings, Special Meetings, or during appointed committees, boards, or commissions of the Council, without the consent of the Presiding Officer or a majority of the Council. ¶

B. Roll Call:

1. (For procedure to excuse an absence see 8.09.E)

C. Correspondence not previously received by Council.

D. Comments from the Public:

Public Comments are encouraged and appreciated. All Public Comment will be recorded and become part of the Public Record, which is available to the Public on the City website. Public comment is provided as an informational and educational tool for the Council. The information and advice received from citizens helps the City Council make the best possible decisions. Public comment is for the benefit of the Council and is not provided as an opportunity to speak to, inform, or educate the community.

The following rules have been established in order to ensure that all individuals wishing to address the City Council are fairly heard:

1. The following language will be added to the published agenda under Public Comment: "During this item, the Presiding Officer will invite public comment. Those testifying or providing public comment will be limited to three minutes. Citizens representing a group will be allowed up to five minutes to speak. No speaker may convey or donate their time for speaking time to another speaker.
2. Persons wishing to address the Council, who are not specifically scheduled on the agenda shall first fill out a sign-in sheet, stating their name, City of residence, and public comment topic, and the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comment.
3. Citizens who have signed in will be invited by the Presiding Officer to the podium. Speakers will first state their name and City of residence and be allowed three minutes to speak.
4. Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated podium and addressed to the Council as a body, and not to individual members, the audience, or the cameras.
5. No person other than the Council and the person having the floor will be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer.
6. The Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude their remarks. All speakers are encouraged to submit supplemental or detailed written remarks for Council consideration.
7. Public comments with regard to subjects of a Public Hearing must be made during the Public Hearing portion of the meeting. If information pertaining to a public hearing is presented during the general comment period, the speaker will be ruled, "Out of Order" by the Presiding Officer and asked to save their comments for the Public Hearing.
8. Any person or speaker who engages in behavior that disrupts the meeting so that it may not continue may be ordered to leave the meeting. The Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disrupting the meeting and to enforce these rules.
9. At the pleasure of the Presiding Officer or by a motion and agreement of a Council majority, following a public comment, a matter may be placed on a future agenda, or be referred to the administration or a council committee for investigation and report. A vote of a Council majority may also overrule the decision of the Presiding Officer in this case.
10. Residents are encouraged to supplement correspondence through written submittals. Written correspondence may be submitted to the Council at any time by email, citycouncil@desmoineswa.gov or mailing or otherwise delivering to the City Clerk,

Commented [AM(P10)]: I like this!

Commented [AM(P11)]: The current language has the possibility of engaging the city in a First Amendment lawsuit if enforced. The courts have found that while cities may limit the time, place, and manner of public comment, all such limitations must be viewpoint neutral. I will send you some information on this. Residents can be abusive, offensive, and even obscene, but unless the meeting can't go on, you may not remove them. Unfortunate but true.

Deleted: becomes a disruption to the meeting by making personal, impertinent, or slanderous remarks, or who becomes boisterous, threatening, or personally abusive while addressing the Council.

Deleted: disorderly conduct

Deleted: the current agenda or

Commented [AM(P12)]: I'm not in favor of allowing items to be added to a current meeting.

Deleted: Citizens

21630 11th Ave So, Des Moines, WA 98198. A copy of all correspondence will be distributed to each Councilmember and will be made part of the public record, but will not be read aloud.

Commented [AM(P13)]: Thank goodness!

E. Committee Chair Reports:

This is a three-minute opportunity for Chairs of standing committees of the Council to update the Council on Board and committee activities, work plans, and other items of interest.

F. City Manager Report/Presentations/Briefings:

The City Manager's report is an opportunity for the City Manager to brief the Council on the progress or plans with regard to items, projects, issues, relationships, or events of significant interest.

G. Consent Agenda:

The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Agenda which are considered to be of a routine and non-controversial nature. The individual items on the consent agenda shall be approved, adopted, or enacted by one motion of the Council. Any item may be removed from the Consent Agenda on the request of a single Councilmember. It will be considered at its regular place in the agenda OR It will be considered immediately after the Consent Agenda.

Commented [AM(P14)]: This is common practice, and a necessary rule in our opinion. Note that members of the public do not have the right to request that an item be removed from the Consent Agenda, only Councilmembers

No discussion shall take place regarding any item on the consent agenda beyond asking questions for simple clarification.

H. Ceremonial Matters, Proclamations, Recognitions:

1. Proclamations:

The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

I. Public Hearings – The procedures of a public hearing are as follows:

1. Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names and addresses, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).

Commented [AM(P15)]: Later on you refer to "city of residence" during a public hearing. The mentions should be consistent: either address is required, or city of residence.

2. The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting:

1. All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and city of residence. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here.

2. It is not necessary to be a proponent or opponent in order to speak. If you consider

- yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent
3. No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting.
 4. There will be no demonstrations during or at the conclusion of anyone's presentation
 5. These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and to ensure that no individual is embarrassed by exercising their right of free speech.
- 3.
1. When Council conducts a hearing to which the Appearance of Fairness Doctrine applies (Rule 6.2, and Parliamentary Procedure 11.06B) the Presiding Officer will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 6.2. The suggested form of the announcement is as follows:
 "All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists."
 - b. When Council conducts a "quasi-judicial" hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:
 "The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:
 "Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"
4. At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the Council standards.
 5. The Presiding Officer calls for proponents in quasi-judicial proceedings (and for speakers in non-quasi-judicial proceedings).
 6. The proponents now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).
 7. The Presiding Officer calls for additional proponents or speakers three times.
 8. In non-quasi-judicial proceedings refer to Public Hearing Rule 10a, otherwise the Presiding Officer calls for opponents by announcing the following:
 "At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."
 9. Opponents speak.

Commented [AM(P16): Same First Amendment issue as above. However, you can remove someone who speaks out of turn, or fails to observe the time limits. Best to give three warnings before doing so (but I don't think "three warnings" needs to be included in this document).

Commented [AM(P17): You can have this rule, and it's a good one, but again, have to be careful about enforcing it.

Commented [AM(P18): I'm confused - what does this mean?

10. The Presiding Officer calls for additional opponents three times.
11. The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
12. The Presiding Officer announces:
"At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."
13. The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.
14. The Presiding Officer closes the public hearing.
15. After a public hearing is closed, no member of the public shall be permitted to address the Council or the staff. In fairness to members of the public, the City Council shall be considered to be in deliberations from that point forward. Continuance of the item shall place it on the "unfinished business" portion of any forthcoming agenda. Additional public testimony either that evening or at a future meeting would be precluded until public hearing notification procedures required by the Des Moines Municipal Code are concluded.
16. The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.
17. The Presiding Officer inquires if there is any further discussion by the Councilmembers.
18. The Presiding Officer inquires if there are any final comments or recommendations from administration.
19. The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.
20. The Clerk shall conduct a roll call vote.
21. The Presiding Officer directs administration to prepare findings consistent with the action.

J. Unfinished Business.

K. New Business - The following are types of business conducted by the City Council:

1. Ordinances, Resolutions, Proclamations, Contracts:
All Ordinances, Resolutions, Proclamations and Contracts shall, before presentation to the Council, have been approved as to form and legality by the City Attorney, the applicable Department Head(s), and the City Manager.
2. Draft Preparation:
Ordinances and resolutions shall be prepared by the City Attorney and presented to the full Council for consideration. Prior to final passage of all ordinances, resolutions or motions, such documents or proposals shall be designated as DRAFTS as follows:
 1. Proposed Drafts shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.
 2. Council Drafts shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration.
3. Ordinances:
An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be

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taken by ordinance as required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. If a Councilmember requests that the entire ordinance, certain sections, or the title be read, such requests shall be granted.

4. Resolutions:

An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution as required by law and in those instances where an expression of policy more formal than a motion is desired.

5. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

6. Contracts:

Refer to Addendum B, [Resolution No. 1118](#), policies governing City Council participation in public contracts.

L. **New Agenda Items for Consideration:**

This portion of the meeting allows a Councilmember to present an idea to their colleagues for consideration in placing the item on a future agenda:

1. A presenter should come to the dais prepared with research and answers to questions, and offer a specific, concise request.
2. It is not a time for discussion, deliberation, presentation, or research – other than the minimum amount of information necessary to gain needed support.
3. A minimum of three Councilmembers must agree in order for the item introduced to be placed on a future agenda.

M. Councilmember Reports:

This is an opportunity for Councilmembers to comment on agenda items and update each other regarding community events, activities, or notable regional issues:

1. Reports shall be limited to four minutes, unless extended time is granted by the Presiding Officer. The Presiding Officer shall notify the Councilmember when the allotted time has expired.

No motions, discussion, or voting will take place during Council Member Reports.

N. Presiding Officer's Report:

In addition to any special board or committee reports, the Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

O. Executive Session (as needed):

At the call of the presiding officer, or with a majority vote, the City Council may recess to Executive Session to privately discuss and consider matters of confidential concern to the well-being of the City. The purposes for which an Executive Session or Closed Session may be held are identified in [RCW 42.30.110](#) and [RCW 42.30.140](#).

The City Council may also hold an Executive Session to receive confidential advice from the City Attorney under the attorney-client privilege.

Before convening in Executive Session or Closed Session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the Executive Session/Closed Session will be concluded. An Executive Session/Closed Session may be extended to a stated later time by announcement of the Presiding Officer.

Participants in an executive session have a duty under the Open Public Meetings Act to keep

Commented [AM(P19): Do you want to define "motion" as well?

Commented [AM(P20): Haven't seen this before. Excellent!

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Deleted: <#>Discussion or voting during this time will not be considered a part of their time limit.¶

information from the session confidential, Pursuant to Attorney General Opinion ([AGO 2017 No. 5](#)), disclosure of confidential information from an executive session by a municipal officer violates [RCW 42.23.070\(4\)](#) and accordingly may result in the sanction or censure of the violating party.

- P. Next meeting date announced by Presiding Officer.
- Q. Adjournment. No meeting shall be permitted to continue beyond 9:00 p.m. without approval of three-fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to 9:00 PM, the items not acted on shall be deferred to the next regular Council meeting as unfinished business, unless the Council, by a majority vote of members present, determines otherwise.

8.07 Order of Business - Study Sessions

The study session is the forum used by Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. The purpose of Study Sessions is to allow Councilmembers to do concentrated preliminary work with administration on single subjects of time consuming, complex matters (i.e., budget, complex legislation or reports, research, etc.)

Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. These conditions will allow the Councilmembers to communicate informally about these impending issues. The Presiding Officer retains the option of assuming the function of the Discussion Item Moderator in order to keep the discussion properly focused.

No final Council action on ordinances or resolutions may be taken during a Study Session.

- A. In Preparation for a Study Session, the City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall contain the Discussion Item.
- B. After the proposed Council Study Session worksheet has been approved by the Presiding Officer, a copy of it along with any available supporting materials shall be prepared for Councilmembers, and the meeting will be noticed by close of business Friday prior to the Council Study Session, except in an emergency.
- C. During a Study Session, the Moderator may:
 - 1. Introduce and give background information
 - 2. Identify the discussion goal
 - 3. Act as facilitator to keep the discussion focused
 - 4. Alert the Presiding Officer when/if it is appropriate to call for a motion or other official direction of the Council

8.08 Order of Business – General Procedures

- A. Forms of Address:

The Mayor shall be addressed as "Mayor (surname)." The Deputy Mayor shall be addressed as "Deputy Mayor (surname)." Members of the Council shall be addressed as "Councilmember (surname)."
- B. Seating Arrangement of the Council:

Councilmembers shall occupy the respective seats in the Council Chamber assigned to them

Commented [AM(P22): This is a little confusing. Do you want to say something like "A Discussion Item Moderator, or the Presiding Officer at their discretion, will lead the discussion."

by the Mayor.

Commented [AM(P23)]: I'm curious - do you ever get pushback on this? Some cities have elaborate protocols about who gets to sit where.

C. Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions and other documents which have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Deputy Mayor may sign such documents.

D. Quorum:

At all meetings of the Council, four Councilmembers who are present and eligible to vote shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of said adjournment is posted in accordance with RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

E. Attendance:

[RCW 35A.12.060](#) provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes.

F. Remote Attendance:

A Councilmember may participate remotely in all or part of a Council meeting because of an unanticipated event that prevents a Councilmember from attending in person through no fault of their own. In order to receive compensation for a meeting, a formal recognition of remote attendance must be granted by the Mayor or Presiding Officer.

If the basis for the remote participation is due to the Councilmember attending to City business in another capacity, the Councilmember shall be considered physically present for the purposes of [DMMC 4.08.020](#).

In the event that the Mayor seeks to attend a meeting remotely, the Mayor shall seek prior approval from the Deputy Mayor. If approval is granted, the Deputy Mayor shall act as the Presiding Officer for the meeting.

When participating remotely:

1. A Councilmember must be able to be heard.
2. The Councilmember shall have reviewed all of the applicable material and participated in the relevant portion of the Council Meeting related to the topic of the vote. Any technical prohibitions or difficulties that prevent all parties present at the Council Meeting from adequately communicating, will negate any authorization previously given by the Mayor.
3. The remote participant shall notify the Presiding Officer if they are about to disconnect participation.
4. A remote appearance shall count toward a quorum of the Council for all purposes and shall entitle the Councilmember to vote.

G. Minutes:
The City Clerk or designee shall take minutes at all meetings of the City Council. The minutes shall be made available for public inspection.

H. Voting:
Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice or by raise of hand as requested by the Presiding Officer. A roll call vote shall be taken by the Clerk at the request of a Councilmember. ~~The order of the roll call vote shall be determined by the Presiding Officer.~~

1. In case of a tie in votes on any proposal, the proposal shall be considered lost.
2. Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses themselves in accordance with Rule 15. If any unexcused Councilmember ~~remains silent, they shall be listed in the record as "abstain."~~
3. Reconsideration of an item will be considered by a majority vote of the Council. A member of the prevailing side must make a motion for reconsideration after the previous vote was taken, and can be made no later than the next regular meeting after which the previous vote was taken.
4. The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the whole membership of the Council ~~(four votes)~~.
5. The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least a majority plus one of the whole membership of the Council.
6. Only those ordinances, resolutions, or motions that receive an affirmative vote by the majority of the present and voting members of the City Council who also constitute a quorum shall be passed or become effective unless other voting requirements are provided by Washington State law, DMMC, or this Resolution as amended.
7. In order for an ordinance or resolution to become effective immediately, the City Council must declare that an emergency exists and approve the ordinance or resolution by the affirmative vote of three-fourths of the members of the City Council. (See Chapter 8.G.10E).
8. The passage of any motion or resolution not subject to the provisions of RCW, DMMC, or this Resolution as amended, shall require the affirmative vote of at least a majority of the membership of the Council who are present and eligible to vote. [\(Amended by Res. 1140, 2011\)](#).

8.09 Open Public Meetings Act

A. The Des Moines City Council will comply with all state and federal law in the notice, conduct, recording, storage and dissemination of meetings and associated information.

B. Actions:
No legal action can be taken by the Council except in a public meeting. At a *Special Meeting*, action can be taken only on those items appearing on the posted agenda, except for emergency items. At a Regular Meeting of the City Council, the Council is free to take action on non-agenda items, subject to applicable notice requirements in state statutes or local ordinances for the subject matter being considered.

CHAPTER 9 PROTOCOL ADMINISTRATION

Commented [AM(P24): You have several different voting requirements here. We think it's best to simplify, so that everyone knows what is needed. Phrases used are Majority vote of the Council, majority of the whole membership of the council, majority plus one of the whole membership of the council, affirmative vote of three-fourths of the members of the City Council, a majority of the membership of the Council who are present and eligible to vote. Later on you use "majority of the quorum" which is an error. I would be happy to edit this section further if desired.

Commented [AM(P25): Does this discretion of the mayor cause problems? Robert's Rules says it's in alphabetical order, with the chair voting last.

Deleted: abstains "aye" or "nay", their vote shall be counted as a "nay" vote.

Commented [AM(P26): Under Robert's Rules, to abstain is to do nothing. It is not a form of voting. Jurassic Parliament believes that it is problematic to say that an abstention will be counted as a "nay" vote (or as an "aye" vote, which some cities do). We prefer the Robert's Rules position that it is not a vote at all.

Commented [AM(P27): "Prevailing side" is the correct formulation. A minority can prevail if the vote requires a two-thirds vote, and fewer than that number cast their vote.

Deleted: majority

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9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual every two years, or as needed.

If needed, an Ad Hoc committee may be appointed by the Mayor for the purpose of review and advice to the Council.

9.02 Adherence to Protocol

- A. Each Councilmember shall have the duty and obligation to review this Protocol Manual and understand to be bound by its provisions.

- B. The Mayor will be primarily responsible to ensure that the City Council, staff, and members of the public adhere to the Council's adopted Protocol Manual.

- C. Knowing and/or willful failure to adhere to the provisions of this Protocol Manual may subject a Councilmember to enforcement and sanctions as follows:
 - 1. Upon determining that there is credible evidence that a Councilmember has, or may have, engaged in knowing and/or willful action or omission that constitutes failure to adhere to the provisions of this Protocol Manual, the Mayor or the Deputy Mayor, in the event that the Mayor is the Councilmember alleged to have engaged in such action or omission, may call upon the Council to determine whether such knowing and/or willful action or omission has occurred, and the sanctions, if any, to be imposed.
 - 2. Prior to conducting any hearing on an alleged failure to adhere to the provisions of this Protocol Manual, the Mayor or Deputy Mayor shall provide written notice to the Councilmember alleged to have engaged in such failure to adhere at least ten (10) calendar days prior to calling for such hearing. The written notice shall identify the specific provisions of this Protocol Manual with which the Councilmember is alleged to have failed to adhere and the facts supporting such allegation.
 - 3. Upon call by the Mayor or Deputy Mayor, a majority of the Council shall vote on whether to hold a hearing to determine the existence of an act or omission constituting a failure to adhere and the sanctions, if any, to be imposed. If such hearing is approved by the Council, the hearing shall be held at a time and place specified in the motion approving such hearing.
 - 4. At such hearing, the Council shall determine whether there is a preponderance of credible and substantial evidence indicating that a Councilmember has knowingly and/or willfully acted or failed to act in a manner constituting a failure to adhere to the provisions of this Protocol Manual. The Councilmember alleged to have failed to adhere to the provisions of this Protocol Manual shall have the right to present evidence and testimony. The finding of the existence of such knowing and/or willful failure to adhere shall be determined by motion approved by a majority of the Council.
 - 5. Upon finding that a knowing and/or willful failure to adhere to the provisions of this Protocol Manual has occurred, the Council shall proceed to determine whether the sanctions, if any, should be imposed. Such breaches include, but are not limited to:
 - a. Failure to observe respectful rules of discussion
 - b. Creating disruption at the dais
 - c. Breaching confidentiality of executive session
 - d. Failing to observe ethics guidelines
 - e. Taking action outside the board meeting which undermines the body.
 - f. Appropriate sanctions include, but are not limited to the following:
 - 1. Verbal warning
 - 2. Written warning
 - 3. Public censure

Commented [AM(P28): As above, best to standardize what is required. I am not suggesting language because you will decide what you prefer. At a minimum, remove "of the quorum."

Deleted: of a quorum

4. Removal of appointment to extra-territorial boards, committees, or commissions; and
5. Removal of appointment to Council boards or committees

9.03 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

Commented [AM(P29)]: Very good! It's the Mayor who makes the final interpretation, subject to appeal.

9.04 Accommodations

**CHAPTER 10
LEAVING OFFICE/FILLING VACANCIES**

10.01 Return of Materials and Equipment

During their service on the City Council, members may have acquired or been provided equipment such as computers, cell phone or other items of significant value. These items are to be returned to the City at the conclusion of a member's term. If an item is lost or unable to be returned, the Councilmember will reimburse the City for the current value of the item.

10.02 Filling Council Vacancies

The purpose of this section is to provide guidance to the City Council when a Des Moines Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term.

A. References

[RCW 42.30.110 \(H\)](#) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective office.

[RCW 42.30.060](#) – Prohibition on Secret Ballots.

[RCW 42.12](#) – Vacant Position.

[RCW 35A.13.020](#) – Vacancies – Filling of Vacancies in Council/Manager Form of Government:

1. A Council position shall be officially declared vacant upon the occurrence of any of the causes of vacancy set forth in [RCW 42.12.010](#), and [RCW 35A.13.020](#), including resignation, recall, forfeiture, written or public statement of intent to resign, or death of a Councilmember. The Councilmember who is vacating their position is not allowed to participate in the appointment process.
2. In order to fill the vacancy with the most qualified person available until an election is held, the City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule, so that the position is filled at the earliest opportunity.

- a. The City Clerk's Office shall prepare and distribute a public notice as required. This notice shall contain information, including but not limited to, time to be served in the vacant position, election information, salary information, Councilmember powers and duties, the deadline date and time for submitting applications, interview and appointment schedules, and such other information that the City Council deems appropriate.
 - b. The City Clerk's Office shall prepare an application form which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Des Moines offices and on the City's official website.
 - c. Applications and any attachments received by the deadline date and time will be distributed by the City Clerk's Office, to the Mayor and City Council.
 - d. The City Clerk's Office shall publish the required public notice(s) for the meeting scheduled for interviewing applicants for consideration to the vacant position. This meeting may be a regularly scheduled City Council meeting, or a special City Council meeting.
 - e. The City Clerk's Office shall notify applicants of the location, date and time of City Council interviews, and include instructions about how the interview process will be conducted.
3. Interview Process:
The interview process will be determined by a vote of the majority of the Council.
4. Voting:
Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. However, all interviews, deliberations, nominations and votes taken by the Council shall be in open public session:
- a. The Mayor shall ask for nominations from the Councilmembers for the purpose of creating a group of candidates to consider. No second is needed.
 - b. Nominations are closed by a motion, second and majority vote of the Council.
 - c. Councilmembers may deliberate on such matters as criteria for selection and the nominated group of candidates.
 - d. The Mayor shall poll Councilmembers to ascertain that Councilmembers are prepared to vote.
 - e. The City Clerk shall proceed with a roll-call vote.
 - f. Elections will continue until a nominee receives a majority vote of the remaining Councilmembers.
 - g. At any time during the election process, the City Council may postpone elections until a date certain or regular meeting if a majority vote has not been received.
 - h. Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.
 - i. The Mayor shall declare the nominee receiving the majority vote as the new Councilmember and shall be sworn into office by the City Clerk at the earliest opportunity or no later than the next regularly scheduled City Council meeting.
 - j. If the City Council does not appoint a qualified person to fill the vacancy within 90 days of the declared vacancy, the Revised Code of Washington delegates appointment powers to King County.

**CHAPTER 11
PARLIAMENTARY PROCEDURES**

Rules of Order not specified by statute, Ordinance or Resolution shall be governed by the most recent edition of *Robert's Rules of Order, Newly Revised*.

All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

11.01 Meeting Decorum and Order

- A. The presiding officer shall preserve decorum and decide all questions of order, subject to appeal by the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the chair or the rules of protocol.
- B. Courtesy: Members of the Council, in the discussion, comments or debate of any matter or issue, shall be courteous in the language and demeanor, and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall, at all times, confine their remarks to those facts which are germane and relevant as determined by the Presiding Officer, to the question or matter under discussion.

Interruption: No member of the Council shall interrupt or argue with any other member while such a member has the floor.

- C. The City of Des Moines is committed to maintaining a drug and alcohol free workplace. Accordingly, members of the Council shall abide by Sections 6(1) and (6)(J)(I) of the City of Des Moines Personnel Manual while serving at the dais.

Any Councilmember may request the presiding officer to enforce the rules of protocol by using the motion, "Point of Order." ~~The Presiding Officer rules on whether the Point of Order is well-taken or not. Any Councilmember may appeal the Presiding Officer's ruling. The Council will decide whether to sustain or overrule the Presiding Officer's ruling by majority vote. The Presiding Officer may vote on the appeal. A tie vote sustains the Presiding Officer's decision.~~

- D. Dress Code: For Council Business meetings, Councilmembers shall adhere to a business casual attire and no hats allowed.

11.02 Obtaining the Floor

A Councilmember shall address or signal the presiding officer and gain recognition prior to making a motion or engaging in debate. Cross-exchange between Councilmembers and the public should be avoided. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the Council.

After a member has concluded comments and yielded the floor, if two or more members are trying to obtain the floor at the same time, the general rule is that the person who addresses or signals the chair first is entitled to be recognized. When a motion is open to debate, however, there are two instances in which the presiding officer should assign the floor to a person who may not have been the first to address the chair. These are:

- A. The Councilmember who made the motion currently under debate is entitled to be recognized in preference to other members if that individual is claiming the floor and has not already spoken on the question.
- B. ~~No~~ member is entitled to the floor a second time in the meeting on the same motion as long as another member who has not spoken on the motion desires the floor.

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Commented [AM(P30)]: Jurassic Parliament LOVES this rule! Do you carry it out in practice at your meetings?

11.03 Interruptions

Once recognized, a Councilmember should not be interrupted while speaking, except when another member makes to make a point of order. If a Councilmember is called to order while speaking, the individual shall cease speaking until the question order is determined.

Commented [AM(P31)]: I'm not a fan of "personal privilege." Robert's Rules says that you don't have to be recognized to make this motion, but that you should not interrupt a speaker unless unavoidable.
Deleted: or personal privilege.

Upon being recognized by the presiding officer, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the presiding officer.

11.04 Discussion Limit

- A. Councilmembers should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak. No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council present.
- B. Questions and answers by the members of the Council are not considered as speaking to the motion.
- C. Each member of the Council shall speak for not more than five minutes per turn unless granted exception by a majority of the Council present.
- D. No member of the Council may give their allotted time to another member unless there is approval of the majority of the Council present.

11.05 Right of Protest

A Councilmember is never required to state reasons for a dissenting vote; provided, however, that any member of the City Council shall have the right to state the reasons for their dissent from, or protest against, any action of the Council. Such statement shall be noted in the minutes along with the record of the vote in the following format: "Councilmember XX verbally stated their reasons for voting in the minority on this matter." No other statement is proper or will be allowed to be recorded in the minutes of the meeting.

Commented [AM(P32)]: I'm not a fan of this, but I am glad, at least, that the CONTENT of the protest is not included in the minutes. That's a good rule. From a Robert's Rules perspective, members are supposed to state their views during debate. They are not allowed to comment afterwards. (However, your rules supersede Robert's Rules.)

11.06 Suspending the rules

A majority vote of members present and voting may suspend any provision of these meeting rules not governed by state law or ordinance without debate. The Councilmember moving the motion will state, "I move that we suspend the rules to...[giving the purpose]." The Council may not suspend rules on fundamental principles of parliamentary procedure or those affecting the rights of individual members.

Commented [AM(P33)]: You may not wish to include this provision. However, since there is often confusion when people do move to suspend the rules, including this motion will ensure clarity on the process.
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**CHAPTER 12
ADDITIONAL TRAINING AND RESOURCE MATERIALS**

- 12.01 Association of Washington Cities** [(800) 562-8981]
<https://wacities.org/> The Association is a voluntary, nonpartisan, nonprofit association comprised of all incorporated cities and towns in Washington.
- 12.02 National League of Cities** [(202) 626-3000]
www.nlc.org A non-partisan organization serving municipal governments, the NLC works to establish unified policy positions, advocates those policies forcefully, and shares information that strengthens municipal government throughout the nation.
- 12.03 International City/County Management Association** [(202) 289-4262]
<https://icma.org/> ICMA is a professional and educational association of local government administrators that serves to enhance the quality of local government through professional

management and to support and assist professional local government administration. The Association's *Elected Officials Handbook* series can be of great value to Councilmembers. Publications are also available through ICMA concerning every basic city service.

12.04 Government Finance Officers Association [(312) 977-9700]

www.gfoa.org GFOA is a professional association of state and local finance officers. The Association administers a broad range of services and programs related to government financial management.

12.05 Municipal Research & Services Center of Washington [(206) 625-1300]

www.mrsc.org MRSC is a nonprofit, independent organization created in 1969 to continue programs established in 1934 under the Bureau of Governmental Research at the University of Washington. One of the principal services of MRSC is to respond to inquiries on virtually every facet of local government.

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