

# **TRANSPORTATION BENEFIT DISTRICT AGENDA**

## **Special Board Meeting**

Thursday, December 18, 2008 – 6:30 p.m.  
City of Des Moines City Hall  
21630 11<sup>th</sup> Avenue South  
Des Moines, WA

### CALL TRANSPORTATION BENEFIT DISTRICT MEETING TO ORDER

### ROLL CALL

### BOARD ORGANIZATION

Selection of Chair and Vice-Chair

### COMMENTS FROM THE PUBLIC

### NEW BOARD BUSINESS

1. Transportation Benefit District (TBD): Implementation Steps
2. Draft Ordinance No. 08-277 Authorizing a Vehicle License Fee

### NEXT MEETING DATE

Thursday, January 15, 2009 Regular Board Meeting 7:00 PM.

### ADJOURNMENT 7:25 p.m.

As allowed by law, the Board may add and take action on items not listed on the agenda.



**Draft Ordinance No. 08-277 Authorizing a \$20.00 Vehicle License Fee**

**Discussion**

- Information regarding the proposed implementation steps of the Board is provided as New Business Item No. 1.
  - Budget will be created to receive TBD revenues and to transfer funds to City Funds for TBD approved projects.
  - Development of TBD projects and related expenditures that meet the requirements of State statute will be brought before the Board in January and February 2009 for approval.
  - Recommendations and discussions of TBD operational policies and budget will be brought before the Board between January and March 2009 for adoption.
  - Throughout 2009, TBD project expenditures will be tracked and monitored, fund transfers will be made as needed, and information will be collected for the required annual report.
  
- Adoption of Draft Ordinance No. 08-277 will authorize collection of a \$20.00 Vehicle License Fee.

**Suggested Motion:**

“I move to adopt Draft Ordinance No. 08-277, authorizing an annual vehicle fee in the amount of \$20.00, consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, as set forth in RCW 82.80.140 and Chapters 36.73 and 46.16 RCW.”

**Attachments**

- Attachment 1: Draft Ordinance No. 08-277 Authorizing a vehicle License Fee
- Attachment 2: City of Des Moines Ordinance No. 1447
- Attachment 3: City of Des Moines November 6<sup>th</sup>, 2008 Agenda Item



DRAFT ORDINANCE NO. 08-277

AN ORDINANCE OF THE DES MOINES TRANSPORTATION BENEFIT DISTRICT BOARD authorizing a vehicle license fee.

WHEREAS, chapter 36.73 RCW and RCW 35.21.255 authorize the City Council to establish a Transportation Benefit District within the City's jurisdiction for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district, that are consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels, and

WHEREAS, the City Council of the City of Des Moines found it to be in the best interests of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's transportation infrastructure consistent with chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future, and

WHEREAS, in Ordinance No. 1417, the City Council of the City of Des Moines established a Transportation Benefit District as authorized by RCW 35.21.225 and subject to the provisions of RCW 36.73, and

WHEREAS, the Transportation Benefit District includes the entire City of Des Moines as the boundaries currently exist, and

WHEREAS, pursuant to RCW 36.73.020(3), the members of the City Council, acting *ex officio* and independently, constitute the governing body of the Transportation Benefit District, and

WHEREAS, RCW 36.73.065 authorizes a Transportation Benefit District to impose, by majority vote of the district's governing board, up to twenty dollars of the vehicle fee authorized in RCW 82.80.140, and

WHEREAS, the Governing Board of the City of Des Moines Transportation Benefit District finds it in the best interests of the District to establish an annual vehicle fee in the amount

of twenty dollars (\$20.00) for the purposes of ongoing transportation improvements that preserve and maintain the transportation infrastructure of the City of Des Moines, consistent with chapter 36.73 RCW; now therefore,

**THE DES MOINES TRANSPORTATION BENEFIT DISTRICT BOARD ORDAINS AS  
FOLLOWS:**

**Sec. 1. Establishment of annual vehicle fee.** An annual vehicle fee in the amount of twenty dollars (\$20.00) is established, consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, as set forth in RCW 82.80.140 and chapters 36.73 and 46.16 RCW.

**Sec. 2. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Sec. 3. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the Des Moines Transportation Benefit District Board this \_\_\_\_\_ day of \_\_\_\_\_, 2008 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
C H A I R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

ORDINANCE NO. 1447

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a Transportation Benefit District, specifying the boundaries for the Transportation Benefit District, specifying the maintenance and preservation of existing transportation improvements, and authorizing the Transportation Benefit District Board to establish an annual vehicle license fee.

WHEREAS, the City Council of the City of Des Moines has the responsibility under the Constitution of the State of Washington for the improvement, maintenance, and protection of public ways within the corporate limits of the City pursuant to RCW 35A.11.020 and chapter 35A.47 RCW, and

WHEREAS, the improvement, maintenance, and protection of public ways requires maintaining and preserving existing transportation improvements to avoid catastrophic failure of the improvements which would require significant additional funds to reconstruct, and

WHEREAS, the number one priority in the "Washington Transportation Plan for 2007-2026" adopted by the Washington Transportation Commission is to preserve and extend prior investments in existing transportation facilities and the services they provide to people and commerce, and

WHEREAS, the "Washington Transportation Plan for 2007-2026" identifies in Section II that there is no more fundamental transportation investment than existing system preservation - keeping the physical infrastructure in safe and efficient operating condition, and

WHEREAS, the investment principles from the Puget Sound Regional Council "Destination 2030 Metropolitan Transportation Plan for the Central Puget Sound Region" states that the first priority should be to maintain, preserve, make safe, and optimize existing transportation infrastructure and services and Regional Transportation Policy 8.3 identifies the importance of maintaining and preserving the existing urban and rural transportation systems in a safe and usable state, and

WHEREAS, the City has limited transportation funding to pay for necessary transportation preservation and maintenance, and

WHEREAS, the funding dedicated for the preservation and maintenance of the City's transportation infrastructure has been dramatically reduced due to the 2003 loss of King County Local Vehicle License fees (28% revenue reduction) and the ongoing annual decrease in Gas Tax revenues (0.8% annual reduction for past seven years), and

WHEREAS, while dedicated revenues have decreased, the ongoing annual costs to preserve and maintain the City's transportation infrastructure continue to rise leaving the City unable to continue to adequately preserve and maintain the City's transportation infrastructure, and

WHEREAS, chapter 36.73 RCW provides for the establishment of Transportation Benefit Districts and for the levying of

additional revenue sources for transportation improvements within the district that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels, and

WHEREAS, RCW 35.21.225 authorizes the City Council to establish a Transportation Benefit District subject to the provisions of chapter 36.73 RCW, and

WHEREAS, the City desires to form a Transportation Benefit District which includes the entire City of Des Moines as the boundaries currently exist, and

WHEREAS, prior to establishing a Transportation Benefit District, the City Council shall conduct a public hearing upon proper notice, which shall describe the functions and purposes of the proposed Transportation Benefit District, and

WHEREAS, the City provided notice of and conducted the public hearing on the proposed establishment of a Transportation Benefit District in accordance with RCW 36.73.050, and

WHEREAS, the City Council of the City of Des Moines finds it to be in the best interests of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's transportation infrastructure consistent with chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future, and

WHEREAS, the City Council of the City of Des Moines shall establish a governing body for the Transportation Benefit District comprised of the City Council acting in an *ex officio* and independent capacity; now therefore,

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

Sec. 1. Purpose. The purpose of this Ordinance is to establish a Transportation Benefit District pursuant to RCW 35.21.225 and chapter 36.73 RCW, as the City Council finds it is in the public interest to provide adequate levels of funding for the purposes of ongoing transportation improvements that preserve and maintain the transportation infrastructure of the City of Des Moines, consistent with chapter 36.73 RCW.

Sec. 2. Creation of new City code chapter providing for formation of a Transportation Benefit District. The City of Des Moines adopts a new chapter to the Des Moines Municipal Code, 12.35 entitled "Transportation Benefit District", which is set forth as follows:

(1) Establishing Transportation Benefit District. There is created a Transportation Benefit District with geographical boundaries comprised of the corporate limits of the

City as they currently exist or as they may exist following future annexations.

(2) **Governing board.**

(a) The governing board of the Transportation Benefit District shall be the Des Moines City Council acting in an ex officio and independent capacity, which shall have the authority to exercise the statutory powers set forth in chapter 36.73 RCW.

(b) The treasurer of the Transportation Benefit District shall be the City Finance Director.

(c) The Board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).

(d) The Board shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

(3) **Transportation improvements funded.** The funds generated by the Transportation Benefit District shall be used for transportation improvements that preserve and maintain the transportation infrastructure of the City, consistent with the requirements of chapter 36.73 RCW, and shall be used primarily for improvements to preserve and maintain the City's previous investments in the transportation infrastructure; reduce the risk of transportation facility failure, improve safety, continue the cost-effectiveness of the City's infrastructure investments, and continue the optimal performance of the transportation system.

(4) **Establishment of vehicle license fee revenue source.** The Board shall have the authority to establish an annual vehicle license fee in the amount of twenty dollars (\$20), consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, set forth in RCW 82.80.140 and chapters 36.73 and 46.16 RCW.

(5) **Dissolution of district.** The Benefit District shall be dissolved when all indebtedness of the district has been retired and when all of the district's anticipated responsibilities have been satisfied.

**Sec. 3. Severability - Construction.**

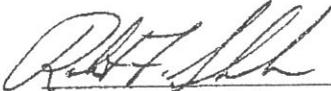
(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

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

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Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 20th day of November, 2008 and signed in authentication thereof this 20th day of November, 2008.

  
MAYOR

APPROVED AS TO FORM:

  
City Attorney

ATTEST:

  
City Clerk

Published: December 10, 2008

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1447, Adopted November 20, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance establishes a Transportation Benefit District, specifies the boundaries for the Transportation Benefit District, specifies the maintenance and preservation of existing transportation improvements, and authorizes the Transportation Benefit District Board to establish an annual vehicle license fee.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab  
City Clerk

Published: December 10, 2008

**A G E N D A I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Establishment of a  
Transportation Benefit District

FOR AGENDA OF: November 6, 2008

ATTACHMENTS:

1. Draft Ordinance 08-228
2. Association of Washington Cities  
Fact Sheet
3. Vehicles Subject to ESHB 1858
4. Fund 101 (City Streets) Summary

DEPT OF ORIGIN: Planning, Building &  
Public Works

DATE SUBMITTED: November 4, 2008

CLEARANCES:

- Planning, Building & Public Works *MS*
- Legal *PS*
- Finance *PK*

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

**PURPOSE AND RECOMMENDATION**

The purpose of this agenda item is to provide the Council with information and a draft ordinance to allow consideration of a Transportation Benefit District (TBD). The purpose of this report is to seek City Council approval of an ordinance creating the TBD.

It is recommended that the Council discuss Draft Ordinance No. 08-228 at the study session of November 8, 2008 and pass Draft Ordinance No. 08-228 in its current or amended form to a second reading for enactment on the consent calendar of November 20, 2008.

**SUGGESTED MOTION:**

"I move to pass Draft Ordinance No. 08-228 forming a Transportation Benefit District to a second reading for enactment on the next available consent calendar."

**BACKGROUND**

In 1987, the Legislature created Transportation Benefit Districts ("TBD") as an option for local governments to fund transportation improvements. A TBD is a quasi-municipal corporation and independent taxing district created for the sole purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district boundaries. The

members of the Council act as the governing body of the TBD if the TBD boundaries are established as the City's limits. Attachment 2 is a fact sheet from Association of Washington Cities (AWC) on the Transportation Benefit District Legislation in Effect – FAQ. Since 2005 the Legislature has expanded the TBD authority to allow additional uses and revenue authority, including allowing cities to collect a \$20.00 vehicle license fee per vehicle if allowed by the Council (Attachment 1). Lake Forest Park has recently adopted a TBD ordinance, and other local agencies are considering this as an option.

Attachment 3 is list of vehicles that are subject to the vehicle license fee. It includes passenger and commercial motor vehicles including motor homes, travel trailers, motorcycles and trailers over 2000 pounds scale weight. Excluded are off road vehicles, snowmobiles, federal, state, county and City vehicles, private schools and small trailers. AWC has estimated that Des Moines has 23,396 vehicles that may be subject to this fee for additional annual revenue of \$467,920. Washington Department of Licensing requires 6 months notice to begin collecting these fees on behalf of the TBD so 2009 TBD collections may be reduced by about 40% depending on how license renewals are spread throughout the year.

### DISCUSSION

Funds generated by the TBD could be allocated to support general preservation and maintenance of the transportation system infrastructure. This could include filling pot holes, bridge repairs, or upkeep of traffic control devices such as signs, traffic signals and street markings. The funds could also be allocated to providing capital improvement projects for the transportation system, such as roadway widening projects.

If the decision is made to have the funds generated by the TBD go towards preservation and maintenance, there will still need to be some general fund support of the street fund (Fund 101) to meet necessary levels of maintenance based on historic levels of operating budget funding, growing maintenance needs and lower levels of capital investment. Attachment 4 provides an estimate of non-general fund revenue sources for Fund 101 for the year 2010. As a reminder, one of the proposed budget balancing strategies for 2009 is to transfer 100% of the fuel tax revenue to fund 101 (Street Maintenance). Historically, about 25% of the fuel tax revenue has been transferred from Fund 101 to Fund 102 (Arterial Streets) for capital projects such as pavement overlays.

### ALTERNATIVES

The Council has three alternatives:

- (1) The Council may decline to act on Draft Ordinance 08-228
- (2) The Council may amend Draft Ordinance 08-228 to provide for a smaller and/or delayed assessment.
- (3) The Council may pass the Suggested Motion passing the Ordinance to a second reading on the next available calendar.

CITY ATTORNEY'S FIRST DRAFT 10/31/2008

DRAFT ORDINANCE NO. 08-228

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a transportation benefit district, specifying the boundaries for the transportation benefit district, and specifying the maintenance and preservation of existing transportation improvements, and authorizing a vehicle license fee.

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**WHEREAS**, the improvement, maintenance, and protection of public ways requires maintaining and preserving existing transportation improvements to avoid catastrophic failure of the improvements which would require significant additional funds to reconstruct, and

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**WHEREAS**, while dedicated revenues have decreased, the ongoing annual costs to preserve and maintain the City's transportation infrastructure continue to rise leaving the City unable to continue to adequately preserve and maintain the City's transportation infrastructure, and

**WHEREAS**, chapter 36.73 RCW provides for the establishment of transportation benefit districts and for the levying of additional revenue sources for transportation improvements within the district that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels, and

**WHEREAS**, RCW 35.21.225 authorizes the City Council to establish a transportation benefit district subject to the provisions of chapter 36.73 RCW, and

**WHEREAS**, the City desires to form a Transportation Benefit District which includes the entire City of Des Moines as the boundaries currently exist, and

**WHEREAS**, prior to establishing a Transportation Benefit District, the City Council shall conduct a public hearing upon proper notice, which shall describe the functions and purposes of the proposed Transportation Benefit District, and

**WHEREAS**, the City provided notice of and conducted the public hearing on the proposed establishment of a Transportation Benefit District in accordance with RCW 36.73.050, and

**WHEREAS**, the City Council of the City of Des Moines finds it to be in the best interests of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's transportation infrastructure consistent with chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future, and

**WHEREAS**, the City Council of the City of Des Moines shall establish a governing body for the Transportation Benefit District comprised of the City Council acting in an *ex officio* and independent capacity; now therefore,

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

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(b) The treasurer of the Transportation Benefit District shall be the City Finance Director.

(c) The Board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).

(d) The Board shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

(3) **Transportation improvements funded.** The funds generated by the Transportation Benefit District shall be used for transportation improvements that preserve and maintain the transportation infrastructure of the City, consistent with the requirements of chapter 36.73 RCW, and shall be used primarily for improvements to preserve and maintain the City's previous investments in the transportation infrastructure, reduce the risk of transportation facility failure, improve safety, continue the cost-effectiveness of the City's infrastructure investments, and continue the optimal performance of the transportation system.

(4) **Establishment of Vehicle License Fee Revenue Source.** The Board shall have the authority to establish an annual vehicle fee in the amount of \$20, consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, set forth in RCW 82.80.140 and chapters 36.73 and 46.16 RCW.

(5) **Dissolution of district.** The Benefit District shall be dissolved when all indebtedness of the district has been retired and when all of the district's anticipated responsibilities have been satisfied.

**Sec. 3. Severability - Construction.**

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

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

**Sec. 4. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_\_ day of \_\_\_\_\_, 2008 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_





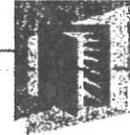
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## Library

### Fact Sheets



Fact Sheets / Quality Infrastructure / 2007 / Transportation Benefit District Legislation in Effect Fact Sheet, September 2007

## TRANSPORTATION BENEFIT DISTRICT LEGISLATION IN EFFECT

[Printable version](#) (pdf, 71 kb)

Through the cooperative efforts of the Association of Washington Cities (AWC) and the Washington State Associations of Counties (WSAC), significant legislation will go into effect on July 22, which results in the most important local transportation tool for cities and counties in sixteen years – Transportation Benefit Districts (TBDs). They are independent taxing districts that can impose an array of taxes or fees either through a vote of the people or through council action. TBDs are flexible: they allow cities and counties to work cooperatively on addressing both regional and local transportation challenges.

### Frequently Asked Questions

#### Background

In 1987, the Legislature created Transportation Benefit Districts ("TBD") as an option for local governments to fund transportation improvements. Since 2005, the Legislature has amended the TBD statute to expand its uses and revenue authority. Most recently, the Legislature amended the TBD statute to authorize the imposition of vehicle fees and transportation impact fees without a public vote. The purpose of these materials is to help you better understand TBDs.

#### What is a Transportation Benefit District (TBD)?

A TBD is a quasi-municipal corporation and independent taxing district created for the sole purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district.

#### Who may create a TBD?

The legislative authority of a county or city may create a TBD by ordinance following the procedures set forth in Chapter 36.73. The county or city proposing to create the TBD may include other counties, cities, port districts, or transit districts through interlocal agreements.

However, King, Pierce, and Snohomish counties, and the cities within those counties cannot create a TBD until December 1, 2007.

#### Who governs the TBD?

The members of the legislative authority (county or city) proposing to establish the TBD is the governing body of the TBD. The legislative authority is acting ex officio and independently as the TBD governing body. If a TBD includes additional jurisdictions

## ATTACHMENT 2

through interlocal agreements, then the governing body must have at least five members, including at least one elected official from each of the participating jurisdictions.

**Why create a TBD if the county or city legislative authority is the governing board?**

A TBD is a legal creature. Although a TBD has many of the powers of a county and city (impose taxes, eminent domain powers, can contract and accept gifts, etc.), - it is a separate taxing district, which is important for property tax purposes. Additionally, by being a separate legal and taxing creature, TBDs are flexible. For example, more than one type of jurisdiction can be part of a TBD and the boundaries can be less than countywide or citywide.

**Can a TBD be created without imposing fees or proposing voter approved revenue options?**

No. The creation of a TBD must be through an ordinance. The ordinance must include a finding that the creation of a TBD is in the public's interest, the boundaries of the TBD, a description of the transportation improvement or improvements proposed by the district, and the proposed taxes, fees, charges, etc. the TBD will impose to raise revenue to fund the identified improvement or improvements.

**Are TBD revenues required to be spent as they are collected?**

No. The governing body must develop a plan that specifies the transportation improvements to be provided or funded by the TBD. As part of this plan, the TBD's governing board can indicate if the funds will be used immediately, or if they will be collected for a specified period. Typically, funds that are collected for a specified period before being expended are used to fully fund large projects, when bonding, or serve as a match for state or federal funds that may only become available in a specified time frame.

**What are the boundaries of a TBD?**

The boundaries of a TBD may be less than the boundaries of those jurisdictions participating in the TBD. For example, a county or city may choose to have the TBD boundaries identical with the county or city, or just include a portion of the county or city. However, if a TBD chooses to exercise the tax authority that does not require a public vote (e.g. vehicle and impact fees), the boundaries of the TBD must be countywide, citywide, or unincorporated countywide.

**What transportation improvements can be funded by a TBD?**

A TBD can fund any transportation improvement contained in any existing state or regional transportation plan that is necessitated by existing or reasonably foreseeable congestion levels. This can include maintenance and improvements to city streets, county roads, state highways, investments in high capacity transportation, public transportation, transportation demand management and other transportation projects identified in a regional transportation planning organization plan or state plan.

**Can a TBD fund maintenance and preservation activities?**

Yes. A TBD may fund the operation, maintenance, and preservation of the programs and facilities noted above. Additionally, maintenance and preservation activities are noted in many state and regional transportation plans. For example, preservation of existing transportation facilities is the number one priority within

the Washington State Transportation Plan. Eliminating the backlog of asphalt pavement projects and maintaining chip seal paving, along with many other maintenance and preservation activities, are specifically noted as priorities in that Plan.

However, keep in mind that any transportation improvement also needs to be "necessitated by existing or reasonably foreseeable congestion levels". Consequently, not every street, road, transit program, etc. will qualify as a transportation improvement.

**If the TBD transportation improvements must be in a state or regional plan, does that mean only state and regional roads such as arterials, can be funded?**

No. The TBD statute originally limited the use of funds for city streets and county roads to 40% of funds generated. That limitation was removed to make TBD an option for purely locally determined activities. For example, both the Washington State Transportation Plan, 2007-2026 State transportation plan ([www.wsdot.wa.gov/NR/rdonlyres/063D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTP111406\\_nomaps.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/063D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTP111406_nomaps.pdf)) and the Puget Sound Regional Council's Destination 2030 Update at page 62 ([www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf](http://www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf)) note that adequate maintenance, preservation, and expansion of local roads are an Important element of the "system" and that new local options should be put to this purpose.

**What if the transportation improvements are not currently in an existing state or regional plan?**

We suggest that you work with your Regional Transportation Planning Organization (RTPO) to incorporate your proposed improvements into the RTPO's plan. As noted above, most RTPO's and the state plan have already identified a broad range of local transportation improvements as priorities.

**What revenue options do TBD's have?**

TBD's have several revenue options subject to voter approval:

1. Property taxes – a 1-year excess levy or an excess levy for capital purposes;
2. Up to 0.2% sales and use tax;
3. Up to \$100 annual vehicle fee per vehicle registered in the district; and
4. Vehicle tolls.

Please Note: There are exemptions or unique requirements when using the vehicle fee or vehicle tolls.

TBD's have two revenue options not subject to voter approval, but subject to additional conditions:

1. Annual vehicle fee up to \$20. This fee is collected at the time of vehicle renewal and cannot be used to fund passenger only ferry-service improvements.
2. Transportation impact fees on commercial and industrial buildings. Residential buildings are excluded.

In addition, a county or city must provide a credit for a commercial or industrial transportation impact if the respective county or city has already imposed a transportation impact fee.

Please Note: Foregoing a vote is an option only. A county or city still has the option of placing either the annual fee of up to \$20 or

the impact fees to the vote of the people as an advisory vote or an actual requirement of imposition.

**What are the additional conditions required to impose revenue options not subject to voter approval?**

To impose either fee, the TBD's boundaries must be countywide or citywide, or if applicable, in the unincorporated county.

**Vehicle Fees:** A county that creates a TBD to impose up to a \$20 vehicle fee must first attempt to impose a countywide fee to be shared with cities by interlocal agreement. Sixty percent (60%) of the cities representing seventy-five (75%) of the incorporated population must approve the interlocal agreement for it to be effective. If an interlocal agreement cannot be reached, the county is authorized to create a TBD and impose the fee only in the unincorporated area of the county.

In addition, credits must be provided for previously imposed TBD vehicle fees. Credits are not required for voter approved vehicle fees.

**Commercial and Industrial Transportation Impact Fees:** A TBD that is either countywide or citywide must provide a credit for a commercial or Industrial transportation impact fee if the respective county or city has already imposed a transportation impact fee. This is commonly called a "no double-dipping" provision.

**What are the effective dates to impose revenue options not subject to voter approval?**

All counties except King, Pierce and Snohomish	
July 22, 2007 to January 18, 2008	County only Note: A county may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect.
January 19, 2008	All 36 counties and cities within the 36 counties.

King, Pierce and Snohomish County Eligibility	
December 1, 2007 to May 22, 2008	County only Note: King, Pierce, or Snohomish County may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect.
May 23, 2008	All counties and cities

**If we create a countywide TBD for the up to \$20 vehicle fee, how is the revenue distributed to cities?**

The revenue must be shared according to the interlocal agreement. The law does not prescribe what the interlocal agreement contains. Consequently, the revenue can be shared by population, number of vehicles within each jurisdiction, project list, a combination of these, or whatever the county and cities can reach agreement on.

**What happens if a city imposes the up to \$20 vehicle fee and then the county imposes a countywide fee without voter approval?**

The law requires TBDs to provide a credit for vehicle fees previously imposed by a TBD.

For example, if a City was the first to create a TBD to impose a \$20 vehicle fee and subsequently its County creates a countywide TBD imposing a \$20 vehicle fee, the County TBD must provide a \$20 credit against its fee for vehicles registered in the City. As a result,

no fee would be collected by the County TBD from vehicles registered in the City. Additionally, the City would not be part of the Interlocal agreement with the County or be included in the number/ percentages needed for the interlocal agreement to be effective.

However, if in the same example, the City TBD imposed only \$10 of the \$20 vehicle fee and the County TBD imposed a countywide \$20 vehicle fee, only a \$10 credit would be provided for vehicles registered in the City. The County TBD would collect \$10 from vehicles registered in the City. Consequently, the County TBD would need to include the City in the Interlocal agreement discussions and the City is included in the number/percentages needed for the interlocal agreement to be effective.

**What other requirements should I be aware of?**

Revenue rates, once imposed, may not be increased, unless authorized by voter approval.

If project costs exceed original costs by more than 20 percent, a public hearing must be held to solicit public comment regarding how the cost change should be resolved.

The TBD must issue an annual report to include the status of project costs, revenues, expenditures, and construction schedules.

The TBD must be dissolved upon completion of the project(s) and the payment of debt service.

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**Checklist**

For a checklist that highlights many of the important considerations when creating a Transportation Benefit District (TBD), please see [www.awcnet.org/tbd](http://www.awcnet.org/tbd).

Eligibility requirements vary. For additional questions on Transportation Districts, please contact AWC staff Ashley Probart at [ashleyp@awcnet.org](mailto:ashleyp@awcnet.org) Sheri Sawyer at [sheris@awcnet.org](mailto:sheris@awcnet.org).



## Engrossed Substitute House Bill (ESHB) 1858 – Relating to the imposition of fees by transportation benefit districts.

- Amended state law: RCW 36.73.050, 36.73.065, 36.73.120 and 82.80.140.
- The changes, in part, allow transportation benefit districts (TBDs) that fully encompass a city or county to impose up to \$20.00 in vehicle license fees without voter approval, if the fees are approved by a majority of the TBD Board.
- The annual vehicle fee is due for each vehicle subject to license tab fees under RCW 46.16.0621 and for each vehicle subject to gross weight fees under RCW 46.16.070 with an unladen (scale) weight of 6,000 pounds or less.
- Vehicles registered with a Disabled American Veteran exemption would be exempt from the tax.
- The annual vehicle licensing fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the Department of Licensing.

### Exempt vehicles

The following vehicles are specifically exempted from the vehicle licensing fee:

- Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181;
- Off-road and nonhighway vehicles as defined in RCW 46.09.020;
- Vehicles registered under chapter 46.87 RCW and the international registration plan; and
- Snowmobiles as defined in RCW 46.10.010.

### Vehicles Subject to ESHB 1858

Use Class	Description	What Makes it Subject...
CAB	Taxicab	<u>46.16.0621</u>
CMB (powered)	Combination	<u>46.16.070</u> , if scale weight is 6000 pounds or less
COM (powered)	Commercial vehicle	<u>46.16.070</u> , if scale weight is 6000 pounds or less
CYC	Motorcycle	<u>46.16.0621</u>
FIX	Fixed Load vehicle	<u>46.16.070</u> , if scale weight is 6000 pounds or less
F/H, 6 seats or less	For Hire	<u>46.16.0621</u>
F/H, 7 seats or more	For Hire	<u>46.16.070</u> , if scale weight is 6000 pounds or less
H/D	House Moving Dolly	<u>46.16.0621</u>
LOG (powered)	Used exclusively for hauling logs	<u>46.16.070</u> , if scale weight is 6000 pounds or less
MH	Motorhome	<u>46.16.0621</u>
MOB	Mobile Home	<u>46.16.0621</u> (if actually licensed)
PAS	Passenger vehicle	<u>46.16.0621</u>
STA, 6 seats or less	Stage	<u>46.16.0621</u>
STA, 7 seats or more	Stage	<u>46.16.070</u> if scale weight is 6000 pounds or less

Use Class	Description	What Makes it Subject...
TLR	Private-use trailer (if over 2000 pounds scale weight)	<u>46.16.0621</u>
TOW	Tow truck	<u>46.16.0621</u>
TRK	Truck	<u>46.16.070</u> , if scale weight is 6000 pounds or less
TVL	Travel trailer	<u>46.16.0621</u>

### Vehicles NOT Subject to ESHB 1858

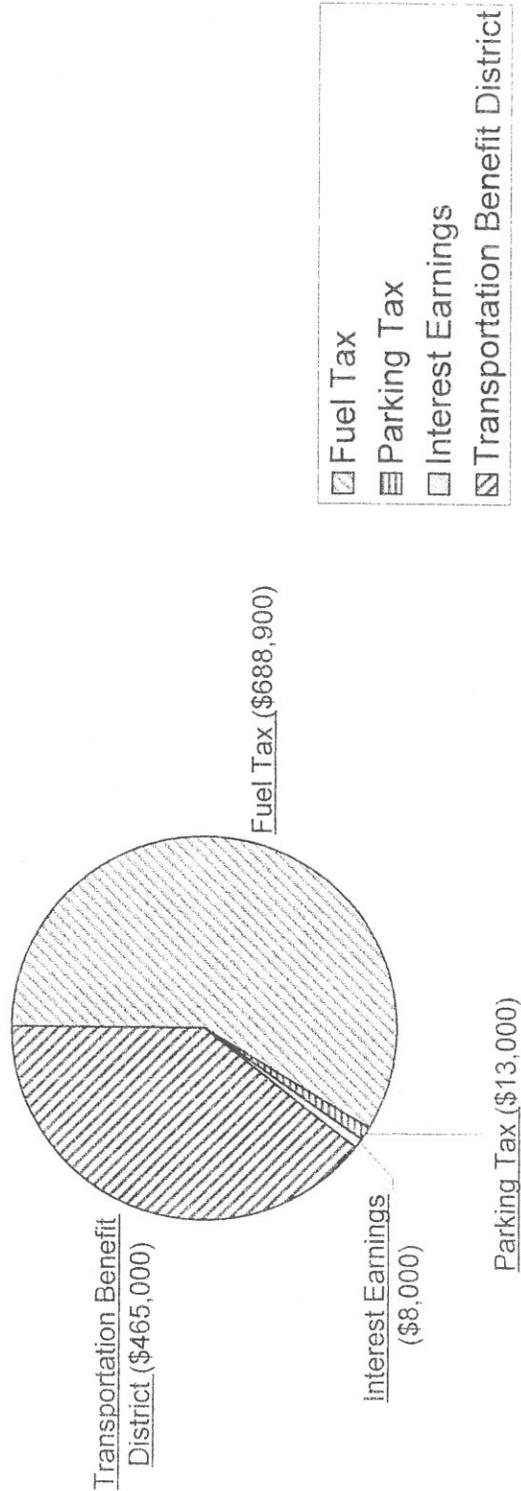
Use Class	Description	What Makes it Not Subject...
C/G	Converter Gear	Not licensed
CMB non-powered	Trailers	Not subject to license fees
CMP	Campers	Exempt. Licensed under <u>46.16.505</u>
COM non powered	Commercial	Licensed under <u>46.16.085</u>
EX	State, County, City, Indian	Not subject to license fees
FAR	Farm	Exempt per language in bill/law
FCB	Farm Combination	Exempt per language in bill/law
FED	Federally owned	Not subject to \$30 license fee
FEX	Farm Exempt	Not subject to license fees
H/C (i.e., Antique vehicle)	Horseless Carriage (see specific use class for vehicle type)	Not subject to license fees
LOG (non powered)	Used exclusively for hauling logs	Licensed under <u>46.16.085</u>
ORV	Off Road Vehicles	Exempt per language in bill/law
PED	Moped	Licensed under <u>46.16.630</u>
RES	Restored and Collector Vehicles	Not subject to license fees
SCH	Private School	Not subject to license fees
SNO	Snowmobiles	Exempt per language in bill/law
SNX	State, county, city owned snowmobiles	Not subject to license fees
TLR	Personal use trailers, single axle (less than 2,000 pounds scale weight)	Exempt. Licensed under RCW <u>46.16.086</u>

Fund 101	
Estimated 2010 Annual Budget Revenues	
Funding Sources	Amount
Fuel Tax	\$688,900 *
Parking Tax	\$13,000
Interest Earnings	\$8,000
Transportation Benefit District	\$465,000
<b>Total:</b>	<b>\$1,174,900</b>

Fund 101	
Previously Adopted Budgets	
Year	Amount
2006	\$1,448,862
2007	\$1,545,248
2008	\$1,278,637
2009	\$1,267,283 (if \$170,800 fuel tax transfer to Arterial Streets CIP is net made)

\* Assumes 100% of the Fuel Tax Revenue Remains in Operating Budget. (Historically, about 25% of the fuel tax has been transferred to Fund 102: Arterial Streets)

### Fund 101: Street Maintenance Estimated 2010 Revenue Sources





**Transportation Benefit District (TBD): Implementation Steps**

**Initial Implementation Steps**

- Adopt Draft Ordinance No. 08-277, Authorizing a \$20 Vehicle License Fee
- Work with the State Department of Licensing (DOL) to:
  - Validate the TBD boundary. Under the \$20 Councilmanic fee level, a city-wide boundary is required by law.
  - Validate addresses specific to the City and provide that to DOL.
  - Develop a communication plan on the fee and coordinate plan with DOL.
  - DOL will need the 180 days as described in statute to get up and running.
  - There is a start up cost associated with the creation of a TBD. This is independent of the 1% ongoing charge DOL can impose per state law. There may be a cost sharing opportunity for us if we work with Lake Forest Park, Edmonds, Olympia and other cities that have created a TBD. It will take one to two weeks for DOL to get a preliminary fiscal note/cost estimate prepared.
- Create a Transportation Benefit District budget to receive TBD revenues and to transfer funds to City Funds for TBD expenditures.
- Potential need to develop an inter-local agreement between the City and the TBD.

**Potential Annual TBD Administrative Expenses**

- City Clerk – Creating agendas, recording meetings, developing minutes, and tracking records related to Board actions.
- Finance Director – Serve as treasurer for the TBD, develop and issue an annual report
- Lead Accountant – Account for revenues and expenditures, account transfers, and payment of invoices.
- Public Works Administrative Assistant – Track and monitor TBD eligible expenditures, and code related invoices for payment.
- Planning, Building and Public Works Director and Public Works Maintenance Superintendent – Work with City staff to develop TBD projects and related expenditures that meet the requirements of State statute, monitor and evaluate TBD projects for implementation and annual TBD budget development.
- City Manager and City Attorney – Administrative and legal involvement as necessary.

**Potential Annual TBD Project Expenses**

- Selected preservation and maintenance costs identified in the City's Street Fund.
- Selected road overlay costs identified in the City's Transportation Capital Fund and/or Arterial Street Fund.
- Other City Capital Projects as authorized by the City Council.

## **TBD Budget / Funding Structure**

- The funding structure described below would require the TBD Board to meet a minimum of two times per year to:
  - adopt the annual TBD budget
  - to receive and review the annual report, and
  - at other times as needed
- The TBD budget/fund would receive the monthly vehicle license revenue.
- An annual budget would be developed with expenditures from the City Street Fund, and potentially the City Arterial Street Capital Fund and/or Transportation Capital Improvement Fund.
- Administrative expenditures would be tracked during the year and funds would be transferred from the TBD budget/fund to the City General Fund as reimbursement.
- Project expenditures would be tracked and funds would be transferred from the TBD budget/fund to the requisite City Fund as reimbursement.
- The fund transfers, if included in the TBD budget, would be implemented by the Treasurer and Lead Accountant as journal entries and would not require the TBD Board to meet.

## **Annual Report and Material Change Policy**

The City will develop and issue an annual report indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules to the public and to newspapers of record in the district.

The TBD Board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan.

## **Implementation Timeline**

- December 18<sup>th</sup>: Vehicle License Fee Ordinance adoption
- December 2008-January 2009: Work with Department of Licensing on implementation issues
- January-February 2009: Development of TBD projects and related expenditures that meet the requirements of State statute
- January-March 2009: Recommendation, review, and adoption of TBD operational policies and budget
- Throughout 2009: TBD project expenditures are tracked and monitored, fund transfers are made as needed, and information is collected for annual report

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**Fax: 206.870.4387**

**OFFICE OF THE  
DES MOINES  
CITY ATTORNEY**

# Memo

**Date:** December 17, 2008  
**To:** Des Moines City Council  
**From:** Pat Bosmans, City Attorney  
**Re:** Answers to Questions Regarding Transportation Benefit Districts  
**Cc:** Tony Piasecki, City Manager

1. Does the board take action by resolution or by ordinance? Most special purpose districts only do resolutions.

*Most special purpose districts do operate generally by resolution. For port districts (RCW 53.12.245) and water-sewer districts (RCW 57.12.010) the enabling statutes provide that action shall be taken by resolution. Other statues such as the TBDs do not specify the format for action. Unlike many special purpose districts though, the TBD has been granted the power of eminent domain (RCW 36.73.130) and that power generally requires an ordinance.*

*In Port of Edmonds v. Fur Breeders, 63 Wn. App. 159 (1991), the Port had passed a resolution to acquire property by eminent domain. The action was challenged and the court found that while the Port was required to follow the same process for eminent domain that cities follow, it acknowledged that a resolution of the Port was the equivalent of an ordinance for cities.*

*Presumably the TBD will generally act by resolution. We will reformat the ordinance before the TBD to put it in resolution format.*

2. If this is an independent board, we should not use the city's draft numbering system.  
*We will establish a TBD number system.*

3. Who is the board's official record keeper? City Clerk? Is there now a separate resolution and minutes system? The formation ordinance did list the treasurer as the finance director, should we have identified more positions such as secretary and administrator?

*The official record keeper for the Board is not designated by statute; the Board will need to designate that individual. There will be separate resolutions and minutes for the TBD. The statute grants the power to "hire employees, staff, and services" (RCW 36.73.040). Presumably the Board*



**will determine the employees or staff that is necessary and contract with the City for at least some of those responsibilities. The employees that carry out the responsibilities of the TBD should track their TBD time separately from their City time.**

4. The effective date uses a standard city ordinance paragraph. If it is a resolution couldn't it be immediate, or should we set an effective date in coordination with DOT on when it will actually start being collected?

**The current draft ordinance will be changed to a resolution so that it is effective upon passage. DOL has 6 months to begin collecting revenue on our behalf, they are considering the City's Ordinance as the date to begin counting. (RCW 82.80.140). It is recommended that we keep the current date in the TBD resolution so that the lag time between notice and collection is not drawn out causing the City to essentially forfeit some funding.**

5. If this is indeed a separate board, should the city attorney approve as to form and should the city clerk be attesting. Most special purpose districts have an officer as secretary that is responsible for the attesting.

**There is no requirement that the city attorney approve as to form the actions of the TBD nor for the clerk to attest, the Board will need to determine the need for these services.**

6. What publishing standards would apply to a resolution adopted by a TBD board?

**No statute regarding publishing resolutions was found. Based on the rational that TBD resolutions are the equivalent of city ordinances, I would suggest that we following the publishing standards for ordinances set out in RCW 35.22.288. That statute also sets out public notice requirements for meetings and agenda. The Board may want to establish its practices for publication, notice and other procedural matters by future resolutions.**

[RCW 35.22.288 Publication of ordinances or summary -- Public notice of hearings and meeting agendas]

*Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city. For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.*

*An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.*

*In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.]*

7. What notice procedures were followed establishing this first meeting and what are the noticing requirements?



***The City followed the same notice requirements required for a city council meeting – RCW 35.22.288 (see answer to 6.)***

8. Would the ordinance creating the district have been subject to referendum and if so when is the district formed?

***The ordinance establishing the TBD is not subject to referendum. While RCW 35A.11.090 sets out a number of ordinances that are exempt from the referendum process the list is not complete. Case law provides a two prong test: (1) Is the underlying ordinance legislative or administrative in nature and (2) is the power described in the underlying ordinance granted by the legislature to the legislative authority of a city or whether it is a power that has been granted to the corporate entity as a whole.***

***If the action is administrative, it is not subject to referendum. The underlying ordinance for the TBD is legislative in nature. Because the underlying ordinance is legislative in nature then the underlying ordinance must meet the second prong of the test.***

***The second prong is clear, if the power to establish the TBD has been granted to the legislative authority (the city council) then it is not subject to the powers of initiative or referendum. If the power has been granted to the corporate entity (the electorate), then it may be subject to initiative and referendum.***

***The action must pass both prongs of the test to be subject to referendum. The power of referendum may be exercised only if the action is legislative in nature and the subject of the legislation is not one that has been granted to the city council. The power to authorize a TBD has been granted exclusively to the city council and therefore not subject to referendum.***

***For instance, the legislature granted to the city council the authority to adopt and modify the zoning code. A referendum challenging a rezone was not allowed by the court. Leonard v. Bothell, 87 Wn. 2d 847 (1976). See also Lince v. Bremerton, 25 Wn. App. 309 (1980), an initiative that amended the zoning code is invalid because the zoning power was granted by the legislature to the city council. So too with zoning regulations under Chapter 36.70 RCW, the power to enact zoning regulations was granted by the legislature to the city council. Save Our State Park v. County Commissioners, 74 Wn. App. 637 (1994). An ordinance providing for annexation is not subject to a referendum because the powers of annexation have been granted by the legislature to the mayor and city council. State ex rel. Bowen v. Kruegel, 67 Wn. 2d 673 (1965).***

***The underlying ordinance establishing the TBD is not a proper subject for a referendum. The authority to establish the TBD was a direct grant from the legislature to the city council.***

9. If the ordinance correctly stated the 5 days after passage and publication and the publication did not occur until December 10 have we complied with meeting notice requirements if there is a time frame to notice meetings?

***Our office believes that the ordinance establishing the TBD was properly passed as a 5 day ordinance and that compliance with the notice requirements for city council meetings in the absence of statutory authority in the TBD statute meets acknowledged notice requirements.***

**CONFIDENTIAL**

**THIS DOCUMENT CONTAINS PRIVILEGED ATTORNEY  
WORK PRODUCT AND ATTORNEY-CLIENT  
COMMUNICATIONS.**

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CITY ATTORNEY'S FIRST DRAFT 12/17/08

TRANSPORATATION BENEFIT BOARD DRAFT RESOLUTION NO. 08-0002.TBD

A RESOLUTION OF THE DES MOINES TRANSPORTATION BENEFIT DISTRICT BOARD authorizing a vehicle license fee.

**WHEREAS**, chapter 36.73 RCW and RCW 35.21.255 authorize the City Council to establish a Transportation Benefit District within the City's jurisdiction for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district, that are consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels, and

**WHEREAS**, the City Council of the City of Des Moines found it to be in the best interests of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's transportation infrastructure consistent with chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future, and

**WHEREAS**, in Ordinance No. 1417, the City Council of the City of Des Moines established a Transportation Benefit District as authorized by RCW 35.21.225 and subject to the provisions of RCW 36.73, and

**WHEREAS**, the Transportation Benefit District includes the entire City of Des Moines as the boundaries currently exist, and

**WHEREAS**, pursuant to RCW 36.73.020(3), the members of the City Council, acting *ex officio* and independently, constitute the governing body of the Transportation Benefit District, and

**WHEREAS**, RCW 36.73.065 authorizes a Transportation Benefit District to impose, by majority vote of the district's governing board, up to twenty dollars of the vehicle fee authorized in RCW 82.80.140, and



**WHEREAS**, the Governing Board of the City of Des Moines Transportation Benefit District finds it in the best interests of the District to establish an annual vehicle fee in the amount of twenty dollars (\$20.00) for the purposes of ongoing transportation improvements that preserve and maintain the transportation infrastructure of the City of Des Moines, consistent with chapter 36.73 RCW; now therefore,

**THE DES MOINES TRANSPORTATION BENEFIT DISTRICT BOARD RESOLVES AS FOLLOWS:**

**Sec. 1. Establishment of annual vehicle fee.** An annual vehicle fee in the amount of twenty dollars (\$20.00) is established, consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, as set forth in RCW 82.80.140 and chapters 36.73 and 46.16 RCW.

**Sec. 2. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Sec. 3. Effective date.** This ordinance shall take effect and be in full force immediately after its passage, approval, and publication in accordance with law.

**ADOPTED BY** the Des Moines Transportation Benefit District Board this \_\_\_\_\_ day of \_\_\_\_\_, 2008 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
C H A I R

ATTEST:

\_\_\_\_\_  
CLERK



**RECOMMENDATION/CONCLUSION**

Staff recommends that Council approve the motion passing the Draft Ordinance establishing a Transportation Benefit District to a second reading on the next available Council meeting.

**CONCURRENCE**

Planning, Building & Public Works, Legal and Finance concur with the Recommendation.

