



City of Des Moines

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FRIDAY COUNCIL RECAP

October 9, 2020

The following items were approved and/or discussed at last night's meeting.

ADMINISTRATION

Item 1: **RESPONSE TO AIRPORT STUDIES**

City Manager Michael Matthias advised Council that there was a discussion with Representative Tina Orwall and other City Managers about finding ways to finance Part 2 of the Ultra Fine Particle Study with the University of Washington. Five Cities, Federal Way, Burien, Normandy Park, SeaTac and Des Moines will each put \$12,500 in for the study. Staff will be asking Council to approve entering into an Interlocal Agreement with the above mentioned Cities at the October 22, 2020 meeting. Representative Tina Orwall has been invited to attend.

Puget Sound Regional Council was funded by the General Aviation Administration to do a Regional Aviation Baseline Study, which is currently open for public comment. Today, the Mayor and City Manager will be sending a letter to Josh Brown, Executive Director of Puget Sound Regional Council (PSRC) which addresses a number of assumptions in the baseline study that are exceedingly troubling. One assumption is that all the different options that PSRC looked at assumed complete implementation of the Sustainable Airport Master Plan (SAMP) taking place before the Master Plan has had any kind of environmental review. You can read the full letter here:

<http://www.desmoineswa.gov/DocumentCenter/View/5164/Josh-Brown-10092020>

CONSENT CALENDAR

The following items were approved by Council 7-0.

Item 1: APPROVAL OF VOUCHERS

Total A/P Checks/Vouchers	#161298-161429	\$ 832,315.14
Electronic Wire Transfers	#1526-1537	\$ 503,825.50
Payroll Checks	#19389-19390	\$ 7,821.09
Payroll Direct Deposit	#380001-380145	\$ 364,035.06
Total Checks and Wires for A/P and Payroll:		\$1,707,996.79

Item 2: DRAFT ORDINANCE 20-049: COMCAST CABLE FRANCHISE AGREEMENT, SECOND READING

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The state legislature has granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

The City's existing franchise agreement with Comcast was approved in 2003 and expired in 2009. Although the agreement has expired, the parties have continued to operate under the terms of the franchise. However, many of the terms and conditions are outdated and in need of updates.

Since expiration of the franchise in 2009, previous negotiations had stalled. However, in 2018, the City and Comcast began seriously negotiating a new agreement. This draft ordinance is the result of those negotiations. This draft ordinance has been reviewed by the City Council's Ad Hoc Franchise Committee and approved for submission to the City Council. The City Council reviewed this draft ordinance on September 24, 2020 and approved it for a second reading on October 8, 2020.

There are a number of federal laws and rules that apply to cable franchise agreements which place limitations on a City's authority. Although cities are limited in what they can regulate, this Agreement addresses the areas where regulation is possible in order to effectively protect the interests of the citizens as well as to allow Comcast to provide residents of Des Moines with essential cable, internet and telephone services.

In general, many of the franchise provisions remain the same as the previous franchise. The key terms are detailed below.

- 1. Franchise Term:** The term of the Franchise is for 10 years.
- 2. Franchise fees:** Comcast will pay to the City 5% of gross revenues. This is consistent with the current fee and the maximum allowed under federal law.
- 3. Performance and customer service:** City can hold performance evaluation session in a public meeting to consider compliance with federal laws and franchise. Additionally, Comcast will provide annual written report showing customer complaints and resolutions. Comcast has also provide a customer service phone number for the City to place on our website as well as on their billing documents.

4. **Indemnification/Insurance:** Franchise is consistent with prior agreement and sufficient to cover foreseeable events.
5. **Relocation, Undergrounding and Right of Way Management:** The Franchise reflects current City practice and is consistent with state law and prior franchise. Comcast is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way. Comcast is also required to pay City permit fees as applicable.
6. **Taxes:** Under DMMC 3.68.060(5) the City imposes a 10% utility tax on cable providers.
7. **Abandonment:** The Franchise requires that Comcast inform the City of any equipment in the right of way that is no longer in use. The City can then decide whether to require it to be removed or to allow it to remain in place. Any removal would be at the sole expense of Comcast.
8. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

New Provisions: The following items are new or are significantly updated from the prior franchise.

1. HD Channel - As a result of this new agreement, the City will be receiving a high definition (HD) channel for the City's government access channel 21. The channel will be channel 321 and will be available for all customers who have HD services.
2. Increased PEG Fees - Public Access, Educational Access, and Government Access fees (PEG) provide funding for the City to purchase the equipment needed to broadcast on Channel 21 and now Channel 321. In the previous franchise, Comcast paid the City \$140,000 for equipment costs upon execution of the Agreement but did not call for additional payments over the remaining term. As a result, the City has not received any PEG fees since 2003. In this proposed draft, the City is seeking monthly payments of \$0.12 per customer per month in order to cover anticipated capital improvements over the first five years of the agreement. There is re-opener language in the agreement for a potential increase to \$0.15 after five years if the cost of improvements increases.
3. New federal actions: There has been some new federal laws and orders issued since the last franchise agreement that will affect this agreement. One specifically relates to complimentary service (free cable to public facilities). It is likely that under federal law this will soon be considered a form of franchise payment and Comcast would be able to subtract the cost of those services from their franchise payment. Once this order goes into effect, Comcast will notify the City and the City will need to consider if cable tv is needed at City facilities and other public facilities.

Non-Franchise Comcast Issue:

The City has previously expressed an interest in installing cable service at the City Activity/Senior Center. Outside of this agreement, pursuant to attachment 2 (side letter) Comcast has proposed to cover roughly \$2,500 of the cost of that installation. The remaining cost would be borne by the City (estimated cost \$13,000). Approval of this Franchise does not bind the City to move forward with this project.

Although this project was previously identified as a priority, it will need to be reassessed given COVID 19 and in coordination with the Senior Services Committee.

Follow up from September 24, 2020 Council meeting:

At the first reading on September 24, the question was asked about when the last performance evaluation of Comcast was conducted. Over the life of the franchise, Comcast has met with the City's administrative team numerous time to discuss the state of the cable system in Des Moines. One of these meetings resulted in a formal presentation to Council about Comcast's continued investment in the system across Des Moines. In addition to the face to face meetings, annual reports overview phone performance statistics, complaints, subscriber connects/disconnect, and performance under the FCC Technical Standards. The last performance review resulted in determining the need for HD PEG for the City Channel and put the parties on this pathway for renewing the franchise.

The bulk of the taxes and fees that the City collects from Comcast will not change. The City will begin to receive additional PEG fees in the amount of \$0.12 per month per subscriber (\$8,000-\$10,000 per year). Residents of Des Moines who are Comcast customers will not see a rate increase due to this Agreement other than the \$0.12 per month.

Item 3:

CONSULTANT CONTRACT AMENDMENT #10 – GRANT FREDRICKS

Mr. Fredricks has been providing management consulting services under contract since January 2013 following his retirement from the City in November 2012. As a State Personnel System (PERS) 2 retiree, he may work up to 867 hours a year for employers covered by PERS such as the City. In 2013 he worked a total of 800 hours, 482 hours in 2014, 410 hours in 2015, 494 hours in 2016, 500 hours in 2017, 682 hours in 2018, 459 hours in 2019 and up to 500 2020 hours if this addendum is approved. All of his 2020 time was spent on FWLE and will continue to be fully reimbursed by Sound Transit under the terms of Task Orders #3.

Mr. Fredricks had been working in Des Moines four or five days a month until the City Hall COVID-19 closures and from his home office when it was not necessary to commute to City Hall. He occasionally participated in City Council and Council Committee meetings and currently represents the City with Sound Transit as a City project coordinator. He now works remotely from home.

In 2020, Mr. Fredricks has been working under an amended \$60,000 (400 hours) City Council-approved contract on FWLE planning, design review and permitting, managing agreements with Sound Transit, and working with Highline College on the College Way Connection Project in the College East Parking Lot. Mr. Fredricks' hourly rate was increased on July 1, 2018 and is proposed to remain unchanged through 2021.

The FWLE-related work in 2020 has been more complex and time consuming than anticipated when the 2020 contract was approved last summer. It has included reviewing detailed design builder plans and designs, completing Highline College's and Sound Transit's rights-of-way vacations and dedications; supporting City FWLE-designated task force staff through design and construction; and administering ST agreements.

Professions outside the fields described in RCW 39.80 may provide consulting services such as long-range planning and studies, project management, economic analyses, real estate negotiations, etc. These consulting services are provided through personal service agreements in accordance with RCW 39.29. For professional service contracts, like the one for Mr. Fredricks, the City can select or appoint based on the specific experience of the individual and the proposed work to be performed. There are no other specific selection requirements for professional service contracts.

The 2020 budget has enough capacity to accommodate up to \$15,000 of additional 2020 spending because Sound Transit fully reimburses his time as provided for in Task Order #3. The adopted 2021 Budget will be developed to accommodate up to \$60,000 in services provided by this contract as proposed anticipating that these costs will be reimbursed by ST in accordance with Task Order #3 authorized by the City Council Services Agreement with ST.

Item 4:

**STREET SWEEPING SERVICES CONTRACT ADDENDUM #1
WITH MCDONOUGH AND SONS INC. FOR STREET SWEEPING
SERVICES**

On June 26, 2014, the City Council awarded the 2014 – 2018 Street Sweeping Services Contract to McDonough and Sons Inc. in the not to exceed amount of \$239,525.96 (for 53 months).

On September 17, 2018, the City extended the contract with McDonough and Sons Inc. for Street Sweeping Services as allowed by contract for two additional years at no additional bid pricing increase.

Due to current COVID-19 conditions, and the current unstable economic environment; Staff decided to explore the option of another two year extension through the end of 2022 with the current sweeping vendor, provided the City and vendor could come to a mutually agreeable extension. The level of service the City has received over the past six years has been very good with minimal quality control issues and very few complaints from residents. In fact, the current vendor has provided the best level of service for the City and residents in the last dozen years or so. The current vendor was agreeable with the opportunity to continue providing sweeping services to the City. The current vendor is requesting a modest increase of \$2.00 per centerline mile of road swept. This will amount to an annual increase of \$3,287.04 over our current annual contract amount (\$52,494.24). For reference, even with this requested increase, the price of the runner-up vendor in 2014 was \$3.00 more per centerline mile. Given the past bid results and modest increase request, staff believes extending the contract is not only providing the optimum financial approach, but in the best interest of the City and citizens with regard to the positive level of service being experienced.

As a part of the City' National Pollution Discharge Elimination System (NPDES) permit, the City is required to routinely clean the conveyance system and adhere to best practices for keeping the storm system and catch basins clean. Regular street sweeping helps to mitigate the amount of debris entering the City's storm system. The Surface Water Enterprise fund is used to fund this service based on the need to keep the storm system clean and free of contaminants and debris.

The SWM Utility has sufficient funds budgeted for these sweeping services.

Item 5: MOU BETWEEN THE CITY OF DES MOINES AND THE DES MOINES POLICE GUILD

The Des Moines Police Guild January 1, 2019 to December 31, 2021 collective bargaining agreement, includes new language, "*Holiday Shift Coverage*" that provides an additional premium for staff, who are called into work on a holiday, to cover a shift. Staff will receive an additional (.50x) of their regular rate hourly rate for all overtime hours worked when filling a shift or providing extra coverage. The intent of this language is to assist management with covering shifts or scheduling for extra coverage on a holiday. This premium acts as an incentive for an officer, who is on their scheduled day off, to cover a shift on a holiday such as Thanksgiving or Christmas Day where ensuring shift coverage may be problematic.

Article 8. Hours of Work and Overtime, J. Overtime states that, "*overtime (1.5x rate) is paid for any time worked in excess of the employees scheduled workweek.*" An officer who reports to work on their day off will receive an overtime premium regardless if the day is holiday. The Holiday Shift Coverage language provides an additional (.50x) on top of the overtime premium the officer would already be entitled to receive. The Holiday Shift Coverage premium is designed to motivate an employee to come to work on their scheduled day off to ensure coverage for the City on holidays that tend to be busy for law enforcement. Overtime at the police department is typically offered on a voluntary basis.

The negotiated MOU broadens the language of "*Holiday Shift Coverage*" to "*Overtime- Holiday premium.*" The proposed language would allow any employee that is called into work on their scheduled day off on a specific holiday (i.e. New Year's Day, Independence Day, Thanksgiving Day or Christmas Day) to receive an additional (.50x) premium regardless if it was due to shift coverage or reporting to work for a homicide investigation. The current contract language is too restrictive. For example, if an officer is called into work in an overtime capacity on a holiday to provide shift coverage, they would be eligible for a (.50x) premium. However, a detective called into work on their scheduled day off on the same holiday, would not be paid the additional (.50x) premium because they were not "covering" or filling a shift. The proposed language ensures pay equity for any staff who are reporting to work on a scheduled day off at the City's request on specific holidays regardless if it is for shift coverage or to investigate a crime.

The financial impact of this agreement will be minimal for the City. The current language and the additional (.50x) premium was already accounted for in the 2020 overtime budget for the police department. The proposed language now restricts the premium to certain holidays and is only applied if either staff coverage is needed or if staff are required to report to work. This proposed language will likely either generate a small savings to the City or potentially cost the same as the current language. Additionally, the proposed language ensures pay equity amongst staff for work of equal value.

NEW BUSINESS

This item was approved by Council 7-0:

Item 1: 2020-2021 POLICE VEHICLE PURCHASE

There is an emergent need to purchase a new police vehicle in 2020 to accommodate a new officer. Staff has the ability to purchase an existing police vehicle off of state contract from the Washington State Patrol. With Council authorization, that vehicle could be in service within the next 4-6 weeks, after set up is complete. This vehicle would be purchased and paid for in 2020, and would need to be included as part of the upcoming 2020 budget amendments.

The proposed 2021 budget includes the purchase of four (4) new Police Department fleet vehicles. The total price for the patrol vehicles including tax, equipment and set up fees will be approximately \$70,000.00 per vehicle. There is a significant lag time in the delivery of these fleet vehicles, especially when all other Cities are submitting their fleet orders, typically in December and early January. The goal here is to get in front of the line on our 2021 police fleet purchases, in order to get these vehicles into service sooner. While these vehicles would be ordered in October 2020, we would not receive or pay for the vehicles until 2021.

The projected 2020 budget, and the proposed 2021 budget include funds for these police vehicle purchases.

Item 2: PRESENTATION OF CITY MANAGER'S RECOMMENDED 2021 BUDGET

The 2021 Annual Budget was filed with the City Clerk on October 1, 2020.

City Manager Michael Matthias and Finance Director Beth Anne Wroe introduced the 2021 Preliminary Annual Budget document, which is available on the City's website, <http://www.desmoineswa.gov/DocumentCenter/View/5162/2021-Preliminary-Annual-Budget-003>

More information will be part of the October 22, 2020 Council packet, available on the website on Friday, October 16, 2020.

Next City Council Meeting: October 22, 2020