GOVERNMENT 101
The Council-Manager Form of Government

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City Attorney

1

The Des Moines Municipal Code

- Generally cities look to four sources of law for guidance. The Revised Code of Washington (RCW) is the state law and the intent of statutes are often expressed in the Washington Administrative Code (WAC).
- The Des Moines Municipal Code (DMMC) is the laws for the our City and those ordinances have the same effect as state statutes – with some exception.
- The third area is the Council's own Rules of Procedure (Rules)
- The fourth area "case law" – the interpretation of law as pronounced by the courts of appeal and the state or U.S. Supreme Court.

134

Form of Government

- DMMC 1.12.010
- There is adopted for the city the classification of non-chartered code city, governed by the provisions of chapters 35A.02 and 35A.13 RCW.

135

Powers of the City Council

- **RCW 35A.11.010**
- **Rights, powers, and privileges.**
  - Each city governed under this optional municipal code, whether charter or noncharter, shall be entitled "City of . . . . . ." (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and proceedings; use a corporate seal approved by its legislative body; and, by and through its legislative body, such municipality may contract and be contracted with; may purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit.

136

RCW 35A.11.020

Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people...

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

137

RCW 35A.11.020 (continued).

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to ***the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property,*** in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

138

RCW 35A.11.020 (continued).

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. ***Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080.***

139

City Manager

- DMMC 2.04.010 – Duties
- The powers and duties of the city manager, appointed by the city council during such period that the council-manager plan of government is in effect in the city, shall be coextensive with those powers and duties prescribed by the laws of the state now in force or as may be subsequently amended.

140

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.

141

Chapter 2.08 DMMC

- DMMC 2.08.010 – Statutory Offices.
- Pursuant to chapter 35A.13 RCW the statutory appointive offices of chief of police, city attorney, and city clerk are established.
- DMMC 2.08.050 – Departments, divisions, offices, employment:
- The city manager is authorized to establish such departments, divisions, offices, and employments as the city manager may find necessary or advisable to properly manage the business and affairs of the city, subject to such direction as the city council may wish to exercise through the budgetary process.

142

City Manager – Powers and duties RCW 35A.13.080

- The powers and duties of the city manager shall be:
- (1) To have general supervision over the administrative affairs of the code city;
- (2) To appoint and remove at any time all department heads, officers, and employees of the code city, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of a city planning commission, and other advisory citizens' committees, commissions, and boards advisory to the city council: PROVIDED FURTHER, That if the municipal judge of the code city is appointed, such appointment shall be made by the city manager subject to confirmation by the council, for a four year term. The council may cause an audit to be made of any department or office of the code city government and may select the persons to make it, without the advice or consent of the city manager;
- (3) To attend all meetings of the council at which his or her attendance may be required by that body;
- (4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;
- (5) To recommend for adoption by the council such measures as he or she may deem necessary or expedient;
- (6) To prepare and submit to the council such reports as may be required by that body or as he or she may deem it advisable to submit;
- (7) To keep the council fully advised of the financial condition of the code city and its future needs;
- (8) To prepare and submit to the council a proposed budget for the fiscal year, as required by chapter 35A.33 RCW, and to be responsible for its administration upon adoption;
- (9) To perform such other duties as the council may determine by ordinance or resolution.

143

City manager—Interference by Councilmembers.

- **RCW 35A.13.120**
- **City manager—Interference by councilmembers.**
- Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. ***Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately***. The provisions of this section do not 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.
- See also Council Rule 17

144

Council meetings.

- **RCW 35A.12.110 [See also RCW 35A.13.170, 42.30.070, DMMC 4.04.010 and Council Rules 1-3, and 8]**
- **Council meetings.**
- The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. ***Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting.*** All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. ***All council meetings shall be open to the public except as permitted by chapter 42.30 RCW.*** No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. ***Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting.*** Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

145

Council—Quorum—Rules—Voting.

- **RCW 35A.12.120: [See also RCW 35A.13.170 and Council Rule 6]**

- At all meetings of the council a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. ***The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.***
- ***The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council.***
- (See also DM City Council Rules of Procedure 6)

146

Voting

- **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.***

147

Code of Ethics

- State law, codified at *RCW 42.23.070, provides a code of ethics for county, city, and special purpose district officials. The code of ethics has four provisions, as follows:*
- 1. No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself or others;
- 2. No municipal officer may, directly or indirectly, give or receive any compensation, gift, gratuity, or reward from any source, except the employing municipality, for a matter connected with or related to the officer's services unless otherwise provided by law;

148

Code of Ethics, continued

- 3. No municipal officer may accept employment or engage in business that the officer might reasonably expect would require him or her to disclose confidential information acquired by reason of his or her official position;
- 4. No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer use such information for his or her personal gain.
- This last provision is particularly significant because it potentially applies to disclosure of information learned by reason of attendance at an executive session. Clearly, executive sessions are meant to be confidential, but the Open Public Meetings Act does not address this issue. Arguably, ***RCW 42.23.070(4) is applicable to information received in an executive session. See the section of this booklet on Open Public Meetings***

149

Q & A

- Question: Does the statute prohibit a local official from accepting gifts of minimal intrinsic value from someone who does or may seek to do business with his or her office?
- *Answer: Many officials, either because of the broad language of that statute or on principle, refuse to accept even a business lunch under those circumstances. Others regard items of only token or trivial value to be de minimus; i.e., of insufficient amount to cause legal concern.*

150

Q & A cont'd

- **Question: May a city accept a valuable gift from a foreign dignitary in connection with a visit?**
- ***Answer: A common policy is to allow the acceptance of such a gift on behalf of the jurisdiction, but not for personal use. Arguably, under the wording of RCW 42.23.070(2), a jurisdiction may adopt a formal policy by local "law" governing such occasions, allowing exceptions in appropriate cases involving essentially personal items, subject to disclosure and other procedures to guard against abuse.***

151

More Q & A

- Question: May a local official permit an individual or company to pay his or her expenses for travel to view a site or plant in connection with business related to the official's office?
- *Answer: The statute can be construed to prevent an official from being "compensated" in that manner. On the other hand, payment of expenses for a business trip arguably does not constitute compensation. Prudence suggests that if the trip is determined to be meritorious (and assuming that there is no potential violation of the appearance of fairness doctrine, described in a later chapter), the city, county, or district itself should pay the expenses and any payment or reimbursement from a private source should be made to the jurisdiction.*

152

Appearance of Fairness in Quasi-judicial Hearings

- The Appearance of Fairness Doctrine requires that for justice. When the Council is acting in it's quasi-judicial capacity the Doctrine applies. These hearings must not only be fair, they must also be free from even the appearance of unfairness. The cases usually involve land use matters, but the Doctrine has been applied to civil service and other hearings as well.
- See also Council Rule 15 for a more extensive discussion.

153

Do you want something on an 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.

154

Motions – Rule 19

- 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) 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) Rule 19(b) – **Time Limit. Each member of the Council shall speak for no more than ten (10) minutes unless granted an exemption by the majority of the Council.**
- (c) 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.**
- ***The City Attorney's Office will prepare motions for any item on a Council Agenda that you request.***

155

Ordinances

- **RULE 26. The procedure for ordinances is as follows:**
- (a) All ordinances shall have two separate readings. At each reading the title of an ordinance shall in all cases be read prior to its passage; provided that should a Councilmember request that the entire ordinance 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.
- (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.

156

Codified or Not

- Adding to, amending or repealing ordinances that are in the DMMC or seek to be in the DMMC are codified; i.e., they are put in the DMMC by Code Publishing.
- Those ordinances that require an ordinance format, such as the annual budget are not "codified" and would not be found in the DMMC but will appear as ordinances of the City duly passed.

157

Resolutions

- 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.

158

Ordinances, Resolutions and Motions

- An ordinance is more permanent in nature and has the force and effect of law.
- A resolution is more transitory; a resolution to grant authority to sign a contract, appoint citizens to committees, etc.
- Motions are even more transitory, usually made from the floor and could amend ordinances or resolutions or stand alone.
- Generally, any action taken by motion can be taken as a resolution, any action taken by resolution but not all actions taken by resolution can be taken by ordinance.

159

Questions or Comments

- Any additional questions or comments that are not addressed at this meeting can be directed to:
- Pat Bosmans
- (206) 870-6526
- Pbosmans@desmoineswa.gov

160

Thank you

161