

**BUSINESS OF THE CITY COUNCIL
WINDSOR HEIGHTS, IOWA
AGENDA STATEMENT**

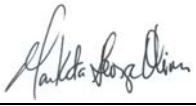
Item No. 11
For Meeting of 05/17/10

ITEM TITLE: Consideration of Resolution approving the MPO Bylaws and 28E Agreement as amended for the Des Moines Area Metropolitan Planning Organization.

CONTACT PERSON: Marketa George Oliver, City Administrator

SUMMARY EXPLANATION

On the agenda for your consider is a resolution approving the MPO Bylaws and 28E Agreement as amended. This is the fifth amended and substituted agreement for the Des Moines area Metropolitan Planning Organization. You will find a summary of the changes included in the information following this agenda statement. These changes do not affect the cost we pay for MPO services/membership. That cost has remained constant for several years.

<input checked="" type="checkbox"/> Resolution _____ Ordinance ____ Contract _____ Other (Specify) _____
Funding Source _____
APPROVED FOR SUBMITTAL _____ <div style="text-align: center;"> City Administrator</div>

STAFF RECOMMENDATION: This matter was discussed at the Public Works Committee meeting. Pass resolution on a roll call vote.

COUNCIL ACTION:

RESOLUTION NUMBER 10-0517/

A RESOLUTION APPROVING THE MPO BYLAWS AND 28E AGREEMENT AS
AMENDED

WHEREAS, the City of Windsor Heights is a member of the Des Moines Area Metropolitan Planning Organization (MPO), as organized under Iowa Code Chapter 28E; and

WHEREAS, there has been a proposal to adopt certain amendments to the MPO Bylaws and corresponding amendments to the MPO 28E Agreement; and

WHEREAS, MPO Bylaws amendments require two readings and affirmative votes of a majority of member government representatives, and amendments to the 28E Agreement require an affirmative vote of a majority of member government representatives; and

WHEREAS, amendments to the 28E Agreement also require an approval of three-fourths of the member governments by resolution; and

WHEREAS, the requisite votes by the representatives of the MPO member governments have taken place to adopt the accompanying Bylaws and 28E Agreement AS AMENDED, subject only to the requisite approval of three-fourths of the member governments by resolution;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, that Windsor Heights does hereby approve the MPO Bylaws and 28E Agreement AS AMENDED.

PASSED AND APPROVED THIS 17th DAY OF MAY 2010.

Jerry Sullivan, Mayor

ATTEST:

Marketa George Oliver, City Administrator/Clerk

Changes in general:

- Additions, deletions, and comments are shown with explanatory comments and underscoring.
- Where the “Amended and Substituted Agreement” was referenced, the word “Fifth” was inserted at the beginning of this phrase to indicate that this is the fifth revision to the original 28E agreement.

Specific changes:

- Article III, paragraph 1
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “Membership – Except as restricted by section 4 of this Article, to become a member of the MPO, a governmental entity must: (a.) be located wholly or partially within the Metropolitan Planning Area; (b.) adopt this Fourth Amended and Substituted Agreement perpetuating the MPO by resolution of its governing body; and (c.) have a population of at least 1500 as shown by the most recent federal census or official intercensal estimate. To retain membership in the MPO, each member government must comply with all requirements of this Fourth Amended and Substituted Agreement.”
- Article III, paragraph 2(a)
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “The representative or representatives of each member government who shall serve on the MPO shall be a member or members of its governing body or other person or persons appointed in the manner approved by such governing body. Alternate representatives may be similarly appointed on a temporary or permanent basis, as a member government shall determine. In case a member government has more than one representative, alternate representatives for that member government shall be entitled to vote in the absence of any representative of that member government.”
- Article III, paragraph 2(b)
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “Each member government shall be entitled to one representative on the MPO, plus one or more additional representatives based on the member government's population within the Metropolitan Planning Area as follows: One additional representative for each 25,000 population or fraction thereof over the first 10,000, as shown by the most recent census or official intercensal estimate.”

- Article III, paragraph 3(c)
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “The Unified Planning Work Program (UPWP) and the annual UPWP budget must be submitted on an annual basis to the member governments and must be approved by resolution of the governing bodies of at least a majority of the member governments. The UPWP to be submitted for approval shall be based upon federal funding allocations issued by the Iowa Department of Transportation.”

- Article III, paragraph 3(d)
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “At any time, on any question before the MPO, other than those matters set out in subsection c. hereof, or review and comment on federal transportation grants (i.e. "A-95 reviews") or the Project Priority Selection Process for including projects in the Transportation Improvement Program, a minimum of any two member governments represented at a meeting may request a weighted vote. Under the weighted vote method, issues will be decided by assigning to each member government for which a representative is present and voting a number equal to the population within the Metropolitan Planning Area, by the most recent federal census or official intercensal estimate, for that member government. Under the weighted vote method, an issue must receive three-fourths of the total votes cast in order to be adopted”

- Article IV, paragraph 1
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “The MPO shall approve an annual budget and assessment schedule. The assessment for each member government shall be based on the ratio of each member government's population within the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate. For this purpose, a county member's population shall be the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO.”

- Article VI, paragraph 2
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “In the event of termination, all assets of the MPO shall be distributed to and all liabilities of the MPO shall be assumed by those governments which are members at the time of such termination, based upon the ratio of each member government's population within the Metropolitan Planning Area to the total population of the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate, with the population of each county member based upon the portion of the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO.”

- Article VII, paragraph 1
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:
 - “The terms and provisions of this Fourth Amended and Substituted Agreement may be amended by a majority vote of the representatives on the MPO at any regular or special meeting called for such purpose, and approved by resolution of the governing bodies of three-fourths (3/4) of the member governments.”

- Article IX, paragraph 1
 - Addition to or change of wording. For your reference, the same paragraph from the **Fourth** Amended and Substituted 28E Agreement, dated July 2005, read as follows:

Des Moines Area Metropolitan Planning Organization

28E Agreement

Fifth Amended and Substituted

March 2010

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Des Moines Area MPO
28E Agreement

The Des Moines Area MPO has prepared this document with partial funding from the United States Department of Transportation Federal Highway Administration and the Federal Transit Administration, and in part through local matching funds provided by the Des Moines Area MPO member governments. These contents are the responsibility of the Des Moines Area MPO. The United States Government and its agencies assume no liability for the contents of this report or for the use of its contents. This document was approved as of August 2005. The Des Moines Area MPO's 28E Agreement has been filed and approved with the Iowa Secretary of State as of _____, 2010

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FIFTH AMENDED AND SUBSTITUTED
AGREEMENT ESTABLISHING
THE
DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION

ARTICLE I - ESTABLISHMENT

The Des Moines Area Metropolitan Planning Organization (hereinafter referred to as "the MPO") is hereby established and created as a voluntary organization of certain county and city governments in the Metropolitan Planning Area, as set forth on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Metropolitan Planning Area"). The Metropolitan Planning Area includes the Des Moines Urbanized Area as defined by the U.S. Bureau of the Census (hereinafter referred to as the "Des Moines Urbanized Area").

ARTICLE II - ORGANIZATION, PURPOSE AND POWERS

The MPO is organized as a separate legal entity pursuant to the provisions of Chapter 28E, Code of Iowa, 1997, as amended, with the powers and purposes to carry out transportation planning activities for the metropolitan area. The purpose of the Fifth Amended and Substituted Agreement is to make revisions to the previous Amended and Substituted Agreement that became effective on September 7, 2005, which replaced the previously existing agreement that became effective on April 19, 2001, which replaced the previously existing agreement that became effective on February 26, 1998, which replaced the previously existing agreement that became effective on May 19, 1993, which replaced the previously existing agreement that became effective on July 1, 1983, and to authorize the MPO to continue, pursuant hereto, to serve as a designated metropolitan planning organization, pursuant to Part 450 of Title 23 of the Code of Federal Regulations, and any amendment or successor section thereto; and to enable the MPO to carry out a transportation planning process as outlined therein.

The MPO is also authorized, upon designation by the State of Iowa, to review and comment on federal transportation planning or construction grants for which member governments have applied, and to determine their consistency with adopted area wide transportation plans. Except as otherwise hereinafter provided, the powers of the MPO shall be exercised by the member governments representatives or, where appropriate, alternate representatives, acting by and

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through the MPO in accordance herewith.

ARTICLE III - MEMBERSHIP - VOTING REPRESENTATION

1. Membership - Except as restricted by section 4 of this Article, to become a member of the MPO, a governmental entity must: (a.) be located wholly or partially within the Metropolitan Planning Area; (b.) adopt this Fifth Amended and Substituted Agreement perpetuating the MPO by resolution of its governing body; and (c.) have a population of at least 1500 as shown by the most recent federal census or official intercensal estimate. The foregoing to the contrary notwithstanding, the Des Moines Area Regional Transit Authority ("DART") shall be a member pursuant to the terms of this agreement. To retain membership in the MPO, each member government/agency must comply with all requirements of this Fifth Amended and Substituted Agreement.

2. Representation

a. The representative or representatives of each member government who shall serve on the MPO shall be a member or members of its governing body or other person or persons appointed in the manner approved by such governing body. Alternate representatives may be similarly appointed on a temporary or permanent basis, as a member government shall determine. In case a member government has more than one representative, alternate representatives for that member government shall be entitled to vote in the absence of any representative of that member government. The DART representative to the MPO, and any alternate, will be someone other than the designated representative or alternate of any other member government.

b. Each member government shall be entitled to one representative on the MPO, plus one or more additional representatives based on the member government's population within the Metropolitan Planning Area as follows: One additional representative for each 25,000 population or fraction thereof over the first 10,000, as shown by the most recent census or official intercensal estimate. DART will be entitled to one representative or alternate and one vote at meetings of the MPO Policy Committee.

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The foregoing to the contrary notwithstanding, the representation for each county member shall be based upon the portion of the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that is not otherwise represented on the MPO.

- c. Each representative shall serve at the pleasure of the governing body by which that representative was approved.

d. The Iowa Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, and the Des Moines International Airport may serve as non-voting, advisory members of the MPO, and may be represented by their respective designees.

- e. Counties and incorporated areas wholly or partially within the Metropolitan Planning Area which are not eligible for full membership will be entitled to Associate Membership with one non-voting, advisory representative appointed by that governmental entity upon payment of an associate membership fee as established from time-to-time by the MPO.

3. Voting

- a. A quorum of the MPO shall be required for the conduct of its business. A quorum shall consist of a majority of the total number of persons who have been appointed as representatives of member governments.
- b. In the ordinary conduct of the MPO's business, each representative will have one vote; and the majority vote of those representatives present and voting shall decide such matters.
- c. The Unified Planning Work Program (UPWP) and the annual UPWP budget must be submitted on an annual basis to the member governments and must be approved by resolution of the governing bodies of at least a majority of the member governments. The UPWP

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Transit Authority

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to be submitted for approval shall be based upon federal funding allocations issued by the Iowa Department of Transportation. The UPWP need not be submitted to or approved by DART.

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During the ensuing budget year, the MPO may, for administrative purposes, amend the UPWP and the annual budget as long as the total budget does not increase or decrease by more than ten (10) percent and the local assessments remain the same.

- d. At any time, on any question before the MPO, other than those matters set out in subsection c. hereof, or review and comment on federal transportation grants (i.e. "A-95 reviews") or the Project Priority Selection Process for including projects in the Transportation Improvement Program, a minimum of any two member governments represented at a meeting may request a weighted vote. DART cannot be one of the member governments requesting a weighted vote.

Under the weighted vote method, issues will be decided by assigning to each member government for which a representative is present and voting a number equal to the population within the Metropolitan Planning Area, by the most recent federal census or official intercensal estimate, for that member government. Under the weighted vote method, DART will have one vote. Under the weighted vote method, an issue must receive three-fourths of the total votes cast in order to be adopted.

4. Withdrawal and Readmission

- a. Withdrawal - A member government may withdraw from membership on the MPO when its governing body requests such withdrawal by resolution, sent by certified mail, return receipt requested, to the MPO. Any such withdrawal shall become effective on the date which is the later of the following: (1) the date specified in the resolution, or (2) upon receipt of the resolution by the MPO. As provided in Article IV hereof, a member government shall be deemed to have withdrawn upon nonpayment of assessment within thirty (30) days after notice thereof is sent by certified mail, return receipt requested, to the Mayor or Chair of the Board of Supervisors and the City Clerk or County Auditor of the member government involved.

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In the event of withdrawal, such government shall not be relieved of its obligation to pay its share of the expenses of the MPO for the MPO fiscal year in which such withdrawal occurs.

- b. Readmission - Any member government which has withdrawn or has been deemed to have withdrawn from the MPO may apply for readmission. The MPO shall establish a readmission fee for any applicant. The minimum readmission fee shall not be less than twenty five (25) percent of the assessment for which the applicant would have been obligated had it been a member of the MPO during the prior MPO fiscal year. The maximum readmission fee shall not exceed two hundred (200) percent of the assessments for which the applicant would have been obligated during its non-membership period.

ARTICLE IV - BUDGET AND ASSESSMENT SCHEDULE

The MPO shall approve an annual budget and assessment schedule. The assessment for each member government shall be based on the ratio of each member government's population within the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate. For this purpose, a county member's population shall be the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO. DART will not be charged any assessment.

All annual assessments are due and payable on July 1 of each year. Any member government which fails to pay any assessment, in full, within 30 days (or such other period of time as may be requested by the member government and approved by the MPO) after the due date shall become delinquent for non-payment of the assessment. No representatives of that member government shall thereafter be allowed to vote on any matter coming before the MPO.

Written notice of delinquency shall be sent by certified mail, return receipt requested, to the Mayor or Chair of the Board of Supervisors and City Clerk or County Auditor of the member government involved. Upon non-payment of the full assessment within 30 days of receipt of the delinquency notice, that member government will be deemed to have withdrawn its membership on the MPO.

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ARTICLE V - OPERATIONAL MATTERS

1. In the conduct of its business, the MPO may cooperate with, contract with, and accept and expend funds from federal, state, and local agencies, public or semi-public entities, private individuals, profit and non-profit corporations, and any other legally recognized association or entity.
2. The MPO may appoint such advisors or create such technical or advisory committees as it deems desirable.
 - a. There shall be established a Transportation Technical Committee, composed of technical representatives appointed by the member governments and such other individuals appointed by the Chair of the MPO. No member government may have more technical representatives than it has representatives on the MPO, up to a maximum of three. The Iowa Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration may serve as non-voting, advisory members of the Transportation Technical Committee. The Transportation Technical Committee shall review and develop recommendations on all matters referred to it by the MPO, and it may adopt such rules or procedures for its operation as are not inconsistent with this Agreement.
 - b. A member of the Transportation Technical Committee may not serve as a representative or alternate of a member government on the MPO.
3. The MPO shall approve such transportation plans, reports or recommendations as are required by the federal and state governments as prerequisites for eligibility for federal or state transportation grants. In addition, the MPO shall prepare annually a Unified Planning Work Program that details planning activities to be conducted, the responsibilities for conducting those activities, and the proposed budget for those activities.
4. The MPO may make such arrangements as it deems necessary to secure administrative, staff and planning services, including contracting with any member government or any other public or private entity. Such services shall be included in the annual Unified Planning Work Program of the MPO.

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5. The officers of the MPO shall be a Chair, Vice Chair, and Secretary/Treasurer, each of whom shall be elected annually from the primary representatives of the member governments. Elected officers shall have such duties as are customary to their respective offices.
6. There will be an Executive Committee composed of six or seven members; the three officers of the MPO; three additional members elected by the MPO from the primary representatives of the member governments; and the Immediate Past Chair ex officio if that person remains a primary representative to the MPO. All members of the Executive Committee, at the time of election to their office or the Executive Committee, shall be holders of a federal, state or local government elective office, EXCEPT that one person on the Executive Committee may be other than a holder of a government elective office. At least one member of the Executive Committee shall be a primary representative from Des Moines. The Executive Committee shall have and exercise only such powers as may be delegated by the MPO from time-to-time. In no situation shall substantive decisions affecting the MPO be made exclusively by the Executive Committee; all such executive recommendations must be approved by the full MPO. The Executive Committee shall act only with a quorum of at least four members. The Executive Committee will provide public notice of the meeting time and place and provide for meetings to be open to the public, unless closed by resolution of the Executive Committee to deal with matters privately where Chapter 21, Code of Iowa, 1997, requires or allows the public to be excluded.
7. The MPO may adopt Bylaws and other rules or operational procedures which are not inconsistent with this Fifth Amended and Substituted Agreement.

ARTICLE VI - TERMINATION

The MPO may be terminated upon an affirmative vote of not less than three-fourths (3/4) of the representatives present at any regular meeting, or at a special meeting called for such purpose, which vote must be ratified by resolution of the governing bodies of not less than three-fourths (3/4) of the member governments.

In the event of termination, all assets of the MPO shall be distributed to and all liabilities of the MPO shall be assumed by those governments which are members at the time of such termination, based upon the ratio of each member

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government's population within the Metropolitan Planning Area to the total population of the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate, with the population of each county member based upon the portion of the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO. The foregoing to the contrary notwithstanding, DART will not succeed to any assets or liabilities of the dissolved MPO.

ARTICLE VII - AMENDMENTS

The terms and provisions of this Fifth Amended and Substituted Agreement may be amended by a majority vote of the representatives on the MPO at any regular or special meeting called for such purpose, and approved by resolution of the governing bodies of three-fourths (3/4) of the member governments, including DART.

ARTICLE VIII - SEPARABILITY

If any one or more of the provisions of this Agreement is declared unconstitutional or otherwise illegal, the validity of the remainder hereof shall not be affected thereby. If the unconstitutionality or illegality is due to the scope or breadth of the provision then the same shall be deemed valid to the extent that it is constitutional and legal.

ARTICLE IX - EFFECTIVE DATE AND DURATION

1. This Fifth Amended and Substituted Agreement shall not be effective until such time as it shall have been approved by at least three-fourths (3/4) of the following governmental entities: Dallas County, DART, Polk County, Warren County, the City of Altoona, the City of Ankeny, the City of Bondurant, the City of Carlisle, the City of Clive, the City of Des Moines, the City of Grimes, the City of Johnston, the City of Mitchellville, the City of Norwalk, the City of Pleasant Hill, the City of Polk City, the City of Urbandale, the City of Waukee, the City of West Des Moines, and the City of Windsor Heights; and shall have been thereafter filed and recorded as provided by law.
2. It is the intention of this Fifth Amended and Substituted Agreement that the

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MPO be a perpetual organization made up of the original parties hereto and any eligible parties which may later adopt this Fifth Amended and Substituted Agreement.

3. This Fifth Amended and Substituted Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Fifth Amended and Substituted Agreement to be executed by their duly authorized officers on the day and year indicated below.

CITY OF xxx

By: _____
xxx, Mayor

Date: _____

Attest:

xxx, City Clerk

Resolution/Roll Call _____

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COUNTY OF xxx

By: _____
xxx, Supervisors Chairperson

Date: _____

Attest:

xxx,

Resolution/Roll Call

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DART

By: _____
xxx, Commission Chairperson

Date: _____

Attest:

xxx,

Resolution/Roll Call

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