

ORDINANCE 20-\_\_

AN ORDINANCE OF THE CITY OF PORT ST. LUCIE, FLORIDA, AMENDING TITLE V, PUBLIC WORKS, OF THE CODE OF ORDINANCES TO INCLUDE CH. 54, RIGHTS-OF-WAY; AMENDING CH. 97, STREETS AND SIDEWALKS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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**WHEREAS**, the City of Port St Lucie, Florida (“City”) desires to amend Title V, Public Works, and Title IX, General Regulations, Chapter 97, Streets and Sidewalks of the Port St Lucie Code of Ordinances (“Code”); and

**WHEREAS**, the purpose and intent of the amendments is to consolidate requirements for the use of rights-of-way into one chapter of the Code at Title V, Public Works, Chapter 54 Rights-of-Way.

**NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:**

**Section 1. Ratification of Recitals.** The foregoing recitals are hereby ratified and confirmed as true and correct and are hereby made a part of this Ordinance.

**Section 2.** Title V, Public Works, is amended by adding the following Chapter 54 (~~striketrough text~~ indicates deletions while underlined text indicates additions):

**CHAPTER 54. - RIGHTS-OF-WAY**

**Article I. - GENERAL PROVISIONS**

**Sec. 54.01. - Purpose.** The city, as provided by the code of ordinances and state statutes, owns and regulates the use of its public rights-of-way in the interest of public health, safety, and welfare.

**Sec. 54.02. - Prohibited uses.**

(a) Prohibited uses within any right-of-way include but are not limited to the following, unless specifically approved in writing by the city, or permitted by the public works department:

- (1) Barriers or obstructions.
- (2) Berms.
- (3) Decorative walls.
- (4) Trees, shrubs, or plantings (turf grass is allowed).
- (5) Irrigation systems.
- (6) Millings or loose rock.

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(b) Mailboxes, other than those prescribed by the United States Postal Service and the Florida Department of Transportation Roadway and Traffic Standards, are prohibited.

**Sec. 54.03 - Prohibited acts.**

(a) Unless otherwise approved by written agreement of the city, a city permit, or other specific legal authority, it shall be unlawful to:

(1) Place or maintain any structure, object, or feature within the right-of-way.

(2) Spill, dump, or otherwise deposit any material upon a right-of-way.

(3) Block, obstruct, or otherwise interrupt the flow of traffic or drainage within a right-of-way.

(b) The city shall remove any structure, object, feature, or material placed or spilled upon, over, or beneath the surface of any right-of-way by any person or entity unless done so pursuant to written approval of the city, a city permit, or other specific legal authority. The costs of removal and restoration of the right-of-way shall be the sole responsibility of the person installing or causing to be installed the structure, object, feature, or material, and the city shall take any actions deemed necessary and appropriate to collect the costs of such removal and restoration.

**Sec. 54.04 - Abandonment.**

(a) The abandonment of right-of-way is reserved for unusual or special circumstances.

(b) A written request and review fee along with any additional information required by the city engineer shall be submitted to the city engineer for review.

(c) The city engineer will review the request and submit a written recommendation for city council review and action.

(d) The applicant shall be responsible for all costs associated with the preparation and recording of plats, warranty deeds, or other such instruments, and any other expenses required to accomplish the abandonment.

**Secs. 54.05 - 54.19 - Reserved.**

**Article II . - RIGHT-OF-WAY PERMIT**

**Sec. 54.20. - Permit required.**

(a) No officer or agent of the city and no person, whether operating under contract with the city, under a franchise, indeterminate permit, or otherwise, shall make or cause to be made any work in any publicly owned right-of-way or property including, but not limited to, open areas,

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streets, sidewalks, or swales in the city without first obtaining a written right-of-way permit from the public works department.

- (b) Installation of mailboxes in accordance with the United States Postal Service regulations and Florida Department of Transportation design standards, including those published in the Manual on Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways, are exempt from the required right-of-way permit.

**Sec. 54.21. - Permit requirements.**

- (a) Public works to manage and keep record of permits.

(1) The right-of-way permit application and permit shall be managed and processed by the public works department.

(2) A record of permits issued under the provisions of this article shall be kept in the public works department.

- (b) Application.

(1) In the case where the work is performed by the city, the application shall be signed by the department head under whose direction the work is to be done.

(2) A plan for the maintenance of vehicular and pedestrian traffic must be submitted at the time of the initial permit application if any roads or sidewalks are to be closed or if traffic will be interrupted in any way.

(3) A current certificate of insurance meeting the requirements of section 54.22 must be submitted with the permit application or be on file with the city.

(4) The city reserves the right to require additional requirements or reject the request if the applicant has failed to comply with the requirements of a previous permit.

- (c) General permit requirements.

(1) The permittee shall notify the city and affected residents, property owners, developers, businesses and agencies a minimum of 48 hours prior to starting non-emergency work within the right-of-way.

(2) The right-of-way permit shall be available for inspection at the location of the work.

(3) When pedestrian and/or vehicular traffic are to be affected during the course of the permitted activity, a city road, lane and sidewalk closure permit will also be required.

(4) Permittee shall, at its own expense, restore any disturbed area or property to its previous condition or better.

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- (5) All disturbed grass areas within the right-of-way shall be sodded by permittee immediately following and/or concurrently with any work performed.
- (6) The work shall be completed in accordance with the approved right-of-way permit, specifications, plans and the Engineering Standards for Land Development.
- (7) Each permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall indemnify and hold harmless the city, its officers, employees, agents, and appointed and elected officials from any liability or responsibility for any accident, loss, or damage to persons or property resulting from or caused by any activities associated with the issuance of the permit.
- (8) In consideration of granting the permit, the permittee agrees that at the request of and within the time specified by the city, any and all poles, wires, pipes, culverts, cables, sod, landscaping, driveways, sprinklers, or other facilities and appurtenances authorized or placed in the right of way by permittee, shall be removed from the right-of-way, or re-set or re-located thereon, as required and as so notified by the city, at the expense of the permittee, or the permittee's successor or assigns.
- (9) The permittee shall notify the city at the completion of the work within the right-of-way.
- (10) The work performed shall not adversely affect the public's health, safety, or general welfare, and shall be conducted and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the permittee. Public works may issue a stop work order for any right-of-way work that is creating a threat to the public's health, safety, or general welfare, or if the work is not in accordance with the approved right-of-way permit.

(d) Defects.

- (1) The permittee shall be responsible for all defects occurring within 1 year from the completion of the restoration work and shall be liable for all damages resulting from any defects.
- (2) The public works director shall give written notice to the permittee stating the defect, the work to be done, the cost, and the period of time deemed to be reasonably necessary to complete the work. After receipt of the notice, the permittee must, within the time specified, repair the defect or indemnify the city for the cost of doing the work as set forth in the notice. Defective work shall be repaired by the permittee in accordance with city requirements.

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(e) Emergencies. In situations requiring immediate action in order to safeguard life, property, or to restore an interruption in utility service, the franchise, utility, or agency shall notify the city, in writing, within 48 hours of initiating repairs requiring excavation, or on the first business day after repairs begin.

**Sec. 54.22. - Certificate of insurance.**

(a) Prior to the commencement of any work by the applicant seeking the permit, the applicant shall provide a certificate of insurance to the city, at its own expense, for the following:

(1) Commercial General Liability Insurance with no less than \$1,000,000 each occurrence, \$2,000,000 aggregate, for bodily injury and property damage liability;

(2) Business Automobile Liability Insurance covering any auto, owned, non-owned and hired automobiles, with limits not less than \$1,000,000 per accident. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Automobile Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability Policy, or separate Business Auto Coverage form.

(3) Workers' Compensation Insurance as in accordance with Chapter 440, Florida Statutes, and Employers' Liability in limits not less than \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum.

(b) A waiver of subrogation is required in favor of the city under each policy. All deductible amounts shall be paid for and be the responsibility of the applicant for any and all claims that may occur as a result of the permit.

(c) Except as to Workers' Compensation and Employers' Liability Insurance, said certificate(s) shall clearly state that coverage required has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as additional insureds, and include the specific area in which the permit is issued.

(d) The certificate of insurance shall be current and shall evidence policies issued from a company or companies duly licensed by the state and acceptable to the city. In the event of the failure of the applicant to provide a current certificate of insurance, the applicant shall not proceed with any work.

**Sec. 54.23. - Construction Surety.**

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(a) Prior to issuing a right-of-way permit where the work is to facilitate installation of city infrastructure required by a development order or development permit, or restoration of public rights-of-way, the city shall require a construction surety, in an amount not to exceed 120 percent of the cost of the new construction or restorations, to secure the infrastructure within the public rights-of-way.

(1) Twelve months after the completion of the work or restoration in public rights-of-way in accordance with the surety, the registrant may eliminate the surety. However, the city may subsequently require a new surety for any subsequent work in the public rights-of-way.

(2) The construction surety shall be issued by a surety having a rating reasonably acceptable to the city; shall be subject to the approval of the finance director, or designee, and city attorney, or designee; and shall provide that: "For 12 months after issuance of this surety, this surety may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the surety of intent to cancel or not to renew."

(b) The rights reserved to the city under this section are in addition to all other rights and remedies of the city, whether reserved in this article or authorized by other law, and no action, proceeding, or exercise of a right with respect to the construction surety will affect any other right the city may have.

**Secs. 54.24—54.29. - Reserved.**

**Article III. - DRIVEWAY PERMIT**

**Sec. 54.30. - Permit required.**

(a) *Single family lot.* For a single-family lot, modification of an existing driveway or construction of a new driveway connecting to a city road right-of-way shall require a driveway permit.

(b) *Non-single-family lot.* For a non-single-family lot, modification of an existing driveway connecting to a city road right-of-way shall require a driveway permit. Construction of a new driveway for a non-single-family lot connecting to a city road right-of-way shall be included in the site work permit for the development.

**Sec. 54.31. - Permit requirements.**

(a) *Public works to manage and keep record of permits.*

(1) The driveway permit application and permit shall be managed by the public works department.

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(2) A record of permits issued under the provisions of this article shall be kept in the public works department.

(b) Application.

(1) In the event that the construction of the driveway is for a city project, the application shall be signed by the department head under whose direction the work is to be done.

(2) A plan for the maintenance of vehicular and pedestrian traffic must be submitted with the application.

(3) A fee for the processing and inspections shall be charged for this permit.

(4) The city reserves the right to require additional requirements or reject the request if the permittee has failed to comply with the requirements of a previous permit.

(c) General permit requirements.

(1) The work shall be completed in accordance with the approved driveway permit.

(2) The driveway permit shall be available for inspection at the location of the work.

(3) Removal of the existing driveway within the road right-of-way shall not occur until after stakeout inspection by the public works department.

(4) The permittee shall notify the city for the following inspections: culvert stakeout, driveway, and final.

(5) The work shall not alter the material, slope, or apply any coatings to the roadway sidewalk that is adjacent to or bisects the driveway.

(6) The work performed shall not adversely affect the public's health, safety, or general welfare, and shall be conducted and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the permittee. The city may issue a stop work order for any work that is creating a threat to the public's health, safety, or general welfare, or if the work is not in accordance with the approved driveway permit.

**Secs. 54.32-54.39. - Reserved.**

**Article IV. - UTILITIES**

**Sec. 54.40 - Requirements.**

(a) The placement and maintenance of utilities within rights-of-way shall be made only when such work is made pursuant to and in compliance with all applicable regulations, the conditions of the right-of-way permit, and current industry standards.

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(b) Utility work within city rights-of-way shall follow the general requirements set forth in this section as well as the requirements established in the Engineering Standards for Land Development.

(1) Any relocation, alteration, or destruction of city owned or maintained facilities within the right-of-way without approval of the city and not done in the presence of city personnel will be replaced at the expense of the permittee.

(2) Any work performed shall not adversely affect the public's health, safety, or general welfare, and shall be conducted and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the permittee. The city may issue a stop work order for any right-of-way work that is creating a threat to the public's health, safety, or general welfare, or if the work is not in accordance with the approved right-of-way permit.

(3) Any utility, structure, or other type of object within the right-of-way which causes or contributes to the deterioration of the road shoulder, swale or other roadway systems, or which creates a hazard to safe vehicle operation shall be subject to removal at the discretion of the city and at the sole cost of the installer.

**Secs. 54.41 - 54.49 - Reserved.**

**Article V. - NEWSPAPER VENDING MACHINE**

**Sec. 54.50. - Purpose; interpretation.** The city council finds and determines that the strong and competing interests of the public and of newspapers require a reasonable accommodation which can only be satisfactorily achieved through the means of this article which is designed to accommodate such interests by regulating the time, place and manner of using newsracks. It is not the intent of this article to in any way discriminate against, regulate or interfere with the publication, circulation, distribution or dissemination of any newspapers.

**Sec. 54.51. - Definitions.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) Newsrack. Any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and/or sale of newspapers or other publications.

(b) Owner. The particular person who is responsible for installing and/or maintaining a newsrack.

(c) Person. Any individual, company, corporation, association or other legal entity.



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- (d) Publisher. The person, if different from owner, who utilizes a newsrack for distribution of his or her publication.
- (e) Travel lane. That portion of roadway designed and ordinarily used for vehicular travel.
- (f) Swale. The depressed earthen area adjacent to the road and used for stormwater drainage purposes; usually located between a street/road and the private property line.

**Sec. 54.52. - Standards.**

- (a) No person shall install, use or maintain any newsrack which projects onto, into or over any part of the travel lane of any street, or which rests, wholly or in part, upon, along or over any portion of a travel lane.
- (b) No person shall install, use, or maintain any newsrack which, in whole or in part, rests upon, in, or over any sidewalk, swale, or road right-of-way when such installation, use, or maintenance endangers the safety of persons or property; or when such site or location is used for public utility purposes, public transportation purposes or other government use; or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle; or the use of poles, posts, traffic signs, signals, hydrants, mailboxes, or other objects permitted at or near that location; or when such newsrack interferes with the maintenance or repair of any swale or sidewalk.
- (c) Any newsrack which, in whole or in part, rests upon, in, or over any sidewalk, swale, or road right-of-way shall comply with the following standards:
  - (1) No newsrack shall exceed 5 feet in height, 40 inches in width, or 2 feet in depth.
  - (2) Newsracks may be chained or otherwise attached to one another; however, no more than 3 newsracks may be joined together in this manner, and a space of no less than 18 inches shall separate each group of 3 newsracks so attached.
  - (3) No newsrack shall be placed, installed, used or maintained:
    - a. Within 3 feet of any marked crosswalk.
    - b. Within 15 feet of the curb return of any unmarked crosswalk.
    - c. Within 15 feet of any fire hydrant, fire call box, police call box or other emergency facility.
    - d. Within 3 feet of any driveway.
    - e. Within 3 feet ahead of and 15 feet to the rear of any sign marking a designated bus stop.

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f. Within 3 feet of any bus bench.

g. At any location where the clear space for pedestrian travel is reduced to less than 6 feet.

h. Within 3 feet of any area improved with lawn, flowers, shrubs or trees.

(4) No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

(5) Each newsrack shall be maintained in a clean, neat and attractive condition and in good repair at all times.

(d) Every owner who places or maintains a newsrack in the city shall have his name, address and telephone number and, if different from the owner, the publisher's name, address and telephone number affixed thereto in a place where such information may be easily seen.

**Sec. 54.53. - Enforcement.**

(a) Upon determination by the public works director that a newsrack has been installed, used or maintained in violation of the provisions of this article, an order to correct the offending conditions shall be issued to the owner and publisher whose name, address and telephone number is affixed to the offending newsrack as required by this article. Such order shall be mailed by regular mail and shall specifically describe the offending condition and suggest action necessary to correct the condition. The order shall contain the results and data collected from any pedestrian and vehicular traffic study that may have been performed to ascertain the offending condition. In addition, a copy of the order shall be posted on the offending newsrack.

(b) Failure to properly correct the offending condition within 10 business days after the mailing or posting date of the order, whichever is later, shall result in the offending newsrack being removed by the city. Any newsrack removed hereunder shall be stored at the distributor's expense for a period of 30 days. The newsrack shall be released to the distributor upon proper showing of ownership and payment of all removal and storage charges. In the event the newsrack is not claimed within the 30-day period, the newsrack shall be sold at the next public auction and the proceeds paid shall be applied first to storage charges and then paid to the general revenue of the city.

(c) In the event the distributor of the newsrack appeals the order to correct the offending condition, then removal of the newsrack shall be stayed pending final disposition of the appeal.

(d) Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this article may appeal to the city manager, or his designee. An appeal of the

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order must be made within 10 days after the mailing or posting dates, whichever is later. The appeal shall be made by delivering a letter briefly stating the basis for the appeal to the city clerk. A hearing regarding the appeal will be held no more than 30 days after receipt of the letter of appeal. The distributor will be given at least 7 days' notice of the time and place of the hearing. The distributor will be given a reasonable opportunity to be heard. At the conclusion of the hearing, the city manager, or his designee, shall make a conclusive determination. The determination shall be reduced to writing and signed by the city manager, or his designee, and filed in the city clerk's office within 10 days of the hearing and a copy will be sent to the distributor. The decision of the city manager or his designee shall be effective when filed with the city clerk.

**Secs. 54.54—54.59. Reserved.**

**Article VI. - SIGNAGE**

**Sec. 54.60. – General provisions.**

- (a) Unless approved otherwise, permanent signage within rights-of-way shall be limited to regulatory, warning, and information signage for the users of the right-of-way.
- (b) All signs and sign supports shall comply with the latest edition of the Florida Department of Transportation Design Standards, the latest edition of the Manual of Uniform Traffic Control Devices and Sunshine One Call requirements.

**Sec. 54.61. - Directional signage.**

- (a) Permanent directional signage shall be restricted exclusively to the guiding or directing of vehicles and/or pedestrians to any public building, park, or transportation facility.
- (b) All directional signs shall be approved by the city engineer.

**Sec. 55.62. - Memorial Marker.**

- (a) Highway safety memorial markers memorialize people who have died as a result of a vehicle related crash and to remind motorists to protect human life by driving safely.
- (b) Requests can be made by immediate family members or friends. Requests from friends shall require the approval of the immediate family.
- (c) Requests for highway safety memorial markers within city rights-of-way are to be submitted in writing to the city engineer. The request shall include the spelling of the name to appear on the marker, contact information for the immediate family, and a copy of the accident report.

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- (a) The markers shall be fabricated, installed and maintained by the public works department within city owned rights-of-way.
- (b) The markers will consist of a fifteen-inch diameter aluminum sign panel with a white background and black letters mounted to a five-foot steel signpost. All markers are uniformly inscribed with "Drive Safely, In Memory" followed by the name.
- (c) The marker may not be placed at the exact location where the fatality occurred due to restricted space, safety concerns, property owner complaints, or other constraints.
- (d) No other objects shall be placed on or around memorial markers.
- (e) The marker shall remain in the right-of-way for twelve months; however, the public works department reserves the right to remove the marker earlier due to construction or other maintenance needs.

**Secs. 54.63—54.69. Reserved.**

**Article VII. – ROAD, LANE AND SIDEWALK CLOSURE PERMITS**

**Sec. 54.70. City approval required for all road, lane and sidewalk closures.** City approval for a road, lane or sidewalk closure is required for all interruptions of the flow of pedestrian or vehicular traffic, including intermittent stops, slowing of traffic, a closure of a lane or sidewalk, or a closure with detours.

**Sec. 54.71. Road, lane or sidewalk closure request requirements.**

(a) Request procedures.

- (1) A request for a road, lane or sidewalk closure must be submitted to the public works department.
- (2) A request shall be submitted no less than 48 hours prior to the work being performed which will cause the road, lane or sidewalk closure.
- (3) The public works department will review the request, and if approved, will provide the requestor with a permit for the road, lane or sidewalk closure subject to any conditions imposed by the city.
- (4) The public works department will notify the appropriate agencies and emergency services of any approved road/lane closure.

(b) General permit requirements.

- (1) The requestor is responsible for restoring the disturbed area to its previous condition or better.

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(2) The requestor is responsible for completing the work in accordance with the approved permit.

(3) Road, lane and sidewalk closures shall be completed in accordance with current Florida Department of Transportation Maintenance of Traffic Standards and any conditions imposed by the city.

(4) The city has the right to stop the work and reestablish traffic flow if delays are excessive, or deemed a hazard, or if the maintenance of traffic is not in accordance with the conditions of the permit. Work may continue after the conditions are rectified.

(c) Exception. A request for a road, lane or sidewalk closure is not required during emergency conditions where the health, safety, and welfare of the public may be adversely affected.

**Secs. 54.72 - 54.79. Reserved.**

**Section 3.** Title IX, General Regulations, Chapter 97, Streets and Sidewalks, Articles II and III are repealed in their entirety.

**Section 4. Conflict.** If any ordinances, or parts of ordinances, are in conflict herewith this Ordinance shall control to the extent of the conflicting provisions.

**Section 5. Severability.** The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

**Section 6. Codification.** The provisions of this Ordinance shall be made a part of the Code of Ordinances of the City of Port St. Lucie, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; the word “ordinance” may be changed to “section” or other appropriate word as may be necessary.

**Section 7. Effective Date.** This Ordinance shall become effective immediately upon final adoption on second reading.

**PASSED AND ADOPTED** by the City Council of the City of Port St. Lucie, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY COUNCIL  
CITY OF PORT ST. LUCIE

By: \_\_\_\_\_  
Gregory J. Oravec, Mayor

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ATTEST:

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Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

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James D. Stokes, City Attorney