

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 15 A-B

DATE: July 15, 2008

STAFF: Felix Lee  
Beth Sowder  
Teresa Ablao

### SUBJECT

Items Relating to Relocating Certain Provisions of the City Code Regarding Unreasonable Noise and Nuisance Gatherings to Chapter 17, Relocating Provisions Regarding Snow Removal to Chapter 20, and Making Amendments to the Penalty Provisions for Civil Infractions.

### RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

### EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 084, 2008, Relocating Certain Provisions of the City Code Regarding Unreasonable Noise and Nuisance Gatherings to Chapter 17 and Relocating Certain Provisions Regarding Snow Removal to Chapter 20.
- B. First Reading of Ordinance No. 085, 2008, Amending Certain Sections of the City Code and the Land Use Code Pertaining the Penalties for Civil Infraction Violations

Ordinance No. 084, 2008, would relocate certain provisions within Chapter 17 and 20 of the City Code in order to place them logically within the Code for consistency and clarity of enforcement mechanisms.

Ordinance No. 085, 2008, would clarify the penalties for civil infractions. Under this Ordinance, the third and subsequent violations of the same Code provision within a twelve-month period of time could be charged and prosecuted as criminal misdemeanors.

### BACKGROUND

#### Ordinance No. 084, 2008

In order to ensure proper and logical placement of ordinances within the Municipal Code, staff is recommending moving some Code provisions without changing their content. Many provisions in the City Code directed toward the conduct of persons are contained in Chapter 17 of the Code. These are criminal violations enforced by Police Services. Chapter 20 of the Code addresses issues of the condition and appearance of properties; many of these provisions are civil infractions and are enforced by Code Compliance.

The unreasonable noise and nuisance gatherings ordinances regulate the conduct of persons rather than the physical condition of properties and are misdemeanor offenses; thus, they are more logically contained in Chapter 17 of the Code.

Conversely, since the sidewalk snow and ice removal provisions regulate the physical condition of property, are civil infractions, and are enforced by Code Compliance, they should be contained in Chapter 20 of the Code.

For the reasons above, the recommended changes include:

- (a) Unreasonable noise – moved from Sec. 20-22 to Sec. 17-129. This provision specifically deals with behavior, is a criminal misdemeanor and is enforced by Police.
- (b) Nuisance gatherings – moved from Sec. 20-31 to Sec. 17-132. This provision deals with behavioral problems, is a criminal misdemeanor and is enforced by Police.
- (c) Sidewalk snow and ice removal – moved from Sec. 24-21 to Sec. 20-102. This provision deals with a property condition, is a civil infraction and is enforced by Code Compliance.

#### **Ordinance No. 085, 2008**

This is another housekeeping item. It amends the penalty provisions for civil infractions to deal with an issue that arose while drafting amendments to Ordinance No. 088, 2008, pertaining to dirt yards and dilapidated fences. The proposed amendments clarify that the third and subsequent violations of the same civil infraction within twelve months may be charged as a criminal misdemeanor. The proposed amendments will harmonize all Code language dealing with the penalty provisions for civil infractions.

ORDINANCE NO. 084, 2008  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
RELOCATING CERTAIN PROVISIONS OF THE CODE OF THE CITY OF FORT  
COLLINS REGARDING UNREASONABLE NOISE AND NUISANCE  
GATHERINGS TO CHAPTER 17 AND RELOCATING CERTAIN PROVISIONS  
REGARDING SNOW REMOVAL TO CHAPTER 20

WHEREAS, the provisions of Chapter 17 of the City Code (the "Code") pertain to behavioral offenses such as those against persons, property, public safety and decency, and violations of those provisions are punishable as misdemeanor criminal offenses; and

WHEREAS, the provisions of Chapter 20 of the Code address the condition and appearance of properties within neighborhoods, and most violations of Chapter 20 are civil infractions; and

WHEREAS, the noise regulations contained in Sections 20-22 and the prohibition against nuisance gatherings in Article III of Chapter 20 are regulations dealing with the conduct of persons and should instead be contained in Chapter 17 of the City Code; and;

WHEREAS, Section 24-21 and 24-22 of the Code deal with the removal of snow and ice from City sidewalks by the owners or occupants of adjacent property and violations of those sections are investigated and prosecuted as civil infractions, so the provisions thereof would more appropriately be located in Chapter 20 of the Code dealing with nuisances; and

WHEREAS, the Council has determined that it is in the best interests of the City that the Code be amended to move Article II and Article III of Chapter 20 to Chapter 17, with certain amendments, and to move Section 24-21 and 24-22 to Chapter 20, Article VII.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 20-22 of the Code of the City of Fort Collins is hereby being moved to Section 17 of the Code and being numbered as Section 17-129 and will read in its entirety as follows. Sections 20-23 through 20-29 shall be renumbered accordingly.

**Sec. ~~20-22~~17-129. Unreasonable noise prohibited.**

(a) No person shall make, continue or cause to be made or continued any unreasonable noise; and no person shall knowingly permit such noise upon any premises or in or upon any vehicle owned or possessed by such person or under such person's control or operation.

(b) For purposes of this Section, members of Police Services are empowered to make a prima facie determination as to whether a noise is unreasonable, which determination may be based upon, but need not be limited to, a consideration of the following factors:

- (1) The time of day;
- (2) The size of any gathering of persons creating or contributing to the noise;
- (3) The presence or absence of noise amplification equipment; and
- (4) Any other factors tending to show the magnitude and/or disruptive effect of the noise.

(c) In any prosecution charging a violation of this Section, proof that the owner or tenant of the premises upon which the unreasonable noise occurred was present at the time of the violation shall constitute prima facie evidence that such person was in control of the premises and knowingly permitted the violation to occur.

(d) With regard to the operation of motor vehicles, and without limiting the generality of Subsection (a) above, unreasonable noise shall include, but not be limited to:

- (1) The continuous or repeated sounding of any horn or signal device of a motor vehicle, except as a danger signal. For the purposes of this Subsection, *continuous* shall mean continuing for an unnecessary or unreasonable period of time.
- (2) The operation of any motor vehicle in a manner which causes excessive noise as a result of an unlawful, defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine or tire squeal.

Section 2. That Article III of Chapter 20 of the Code of the City of Fort Collins is hereby being moved to Chapter 17 of the Code and is being numbered 17-130 through 17-135 and will read in its entirety as follows and all subsequent Articles in Chapter 20 to be renumbered accordingly:

**Sec. ~~20-30~~17-130. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*Cost of abatement* shall mean the costs incurred by the City or the Poudre Fire Authority to respond to and/or abate the **public nuisance gathering** defined in § ~~20~~17-131. Such costs of abatement may include, without limitation, the cost of paying police officers or any other City or Poudre Fire Authority employees; any equipment expense incurred by the City or the Poudre Fire Authority; any appropriate overhead; the cost of any medical treatment to injured police officers or other personnel dispatched to the scene of the nuisance; any loss or damage incurred by any City department or the Poudre Fire Authority, and the cost of repairing any damaged equipment or property. If the responsible person cleans up any trash and litter from the social gathering on any public or private property within twelve (12) hours of contact by police, the cost of abatement will not include any City clean-up costs.

*Offending property owner* shall mean the record owner of the property where the social gathering or party which has been determined to be a **public nuisance gathering** under § ~~20-31~~**17-13** took place.

*Responsible person* shall mean any person convicted of a violation of Subsection ~~120-32(a)~~**17-13**. If such a person is under the age of eighteen (18) years, the term *responsible person* includes, in addition, the person's parent or guardian.

*Social gathering* shall mean a party, gathering or event of five (5) or more persons who have assembled or are assembling for a social activity or for a special occasion.

**Sec. ~~20-31~~**17-131**. Nuisance gatherings.**

A social gathering or party which is conducted on residential premises within the City and which, by reason of the conduct of those persons in attendance, results in the occurrence of any one (1) or more of the following conditions or events on neighboring public or private property: rioting; the unlawful carrying or possessing of an open container of alcohol or fermented malt beverage in public; public urination or defecation; the unlawful sale, furnishing, possession or consumption of alcohol or fermented malt beverages; the deposit of trash or litter; the destruction of property; the generation of pedestrian or vehicular traffic, standing or parking which obstructs the flow of traffic or interferes with the ability to render emergency services; excessive, unnecessary or unreasonable noise which disturbs the comfort, quiet or repose of the neighborhood, including public disturbances, brawls, fights or quarrels; or conduct or condition which injures, or endangers the safety or health of the neighborhood, or results in any indecent or obscene conduct, or results in any indecent exposure by persons attending the social gathering or party, is hereby declared to be an unlawful ~~public nuisance~~.

**Sec. ~~20-32~~**17-132**. Prohibited; penalty.**

(a) Any person being the owner, occupant, tenant or otherwise having any possessory control, individually or jointly with others, of any premises who either sponsors, conducts or hosts a social gathering or party and knowingly permits such social gathering or party to become a **public nuisance gathering** as defined by § ~~120-31~~**17-131** is hereby deemed to have committed a misdemeanor, and upon conviction shall be subject to the penalties as provided by § 1-15 of this Code, and may further be ordered, as a condition of any sentence, to pay the costs of abatement pursuant to § ~~20-33~~**17-133**. In any prosecution for a violation of this Section, proof that the owner or tenant of the premises upon which the nuisance party occurred was present at the time of the violation shall constitute prima facie evidence that such person was in control of the premises, and sponsored, conducted or hosted the social gathering or party and knowingly permitted the violation to occur.

(b) All participants in any party or social gathering declared to be a ~~public~~ nuisance **gathering** by a police officer shall cease participating and immediately disperse upon order of a police officer, and all persons not domiciled at the site of such social gathering or party shall leave the property immediately. Any person failing or refusing to obey and abide by such order commits a misdemeanor criminal offense, and any person convicted of a violation of this Section shall be subject to the penalties provided by § 1-15 of this Code.

(c) Proof that a person convicted of a violation of this Section had attempted to disperse the participants at the social gathering or party, together with written verification that such person had initiated contact with Fort Collins Police Services or Colorado State University Police Department for assistance, shall be a mitigating factor in determining an appropriate penalty and apportionment of the cost of abatement.

**Sec. ~~20-33~~17-133. Payment of costs of abatement; assessment; appeal.**

(a) The cost of abating a ~~public~~ nuisance **gathering** defined by § ~~20-30~~17-130 shall be assessed against the responsible person(s) according to such apportionment as the Municipal Judge may deem appropriate. Any unpaid costs assessed against an offending property owner shall be a lien upon the property until such assessment is paid.

(b) The City Manager shall cause the Financial Officer to bill the responsible persons for the cost of abatement, which bill shall include the name and address of the responsible persons, the date and time of the incident and the expenses incurred by specific City departments in responding to or abating the ~~public~~ nuisance **gathering**.

(c) Any responsible person who wishes to dispute the determination that he or she is liable for the cost of abatement may do so by submitting a request to the City Manager for an administrative review hearing in writing no more than ten (10) days after the assessment of the cost of abatement. The City and the responsible person disputing the fee shall be given notice of the hearing and an opportunity to be heard.

(d) If any such assessment against an offending property owner is not paid within thirty (30) days after billed by the Financial Officer to the owner by deposit in the United States mail addressed to the owner of record at the address as shown on the tax rolls or such other, more recent address as may be available to the City, and any agents, representatives or other responsible persons as may be known, or after administrative review, the Financial Officer is authorized to certify to the County Treasurer the delinquent assessment, giving the name of the owner as it appears of record, the number of the lot and block and the amount of the assessment plus a ten-percent penalty. The certification is to be the same in substance and in form as required for the certification of other taxes. The County Treasurer, upon receipt of such certification, is authorized to place it upon the tax list for the current year and

to collect the assessment in the same manner as general property taxes are collected, together with any charges as may by law be made by the County Treasurer and all laws of the State for the assessment and collection of general taxes, including the laws for the sale of property for taxes, and the redemption thereof shall apply to and have full force and effect for the collection of all such assessments. Notwithstanding the foregoing, if the offending property is not subject to taxation, the Financial Officer may elect alternative means to collect the amounts due pursuant to this Article, including the commencement of an action at law or in equity and, after judgment, pursue such remedies as are provided by law.

**Sec. ~~20-34~~17-134. Other remedies.**

Nothing in this Article shall be construed as affecting the ability of the City to initiate or continue concurrent or subsequent criminal prosecution or civil proceeding for any violation of the provisions of the City Code or state law arising out of the circumstances necessitating the application of this Article.

Section 3. That Sections 24-21 and 24-22 of the Code of the City of Fort Collins are hereby moved to Chapter 20, Article VII of the Code and are being numbered 20-102 through 20-103 and will read in their entirety as follows:

**Sec. ~~24-21~~20-102. Removal of snow and ice required; lien.**

(a) The owners or occupants of property abutting ~~upon or adjacent to~~ sidewalks within the City shall at all times keep the sidewalks abutting ~~upon or adjacent to~~ the lot or lots owned or occupied by them free and clear of snow and ice. If any such owners or occupants shall fail to remove the snow and ice from the sidewalks abutting ~~upon or adjacent to~~ their property within twenty-four (24) hours after the accumulation of snow and ice, then the City Manager may at once have the hazard corrected by removal of snow and ice from the sidewalk or by the application of abrasive material; and the cost, including inspection and other incidental costs in connection therewith, including the costs for carrying charges and costs of administration, shall be assessed against the property abutting ~~upon or adjacent to~~ the snow obstruction and the owner thereof.

(b) If the property owner contests the declaration of nuisance and/or the assessment of costs, he or she shall file a written request with the Director of Neighborhood and Building Services, within ten (10) days from the service of a notice of assessment, a written request for a hearing before the Referee.

(c) Such assessment shall constitute an automatic, perpetual lien in the several amounts assessed against each property from the date the assessment became due until paid. Such liens shall have priority over all other liens except general taxes and prior special assessments. In case any such assessment that has not been set for hearing pursuant to Subsection (b) is not paid within thirty (30) days after it has been certified by the Director of Neighborhood and Building Services and billed by the

Financial Officer or his or her designee to the owner by deposit in the United States mail, addressed to the owner of record at the address as shown on the tax rolls of the County Assessor, or such other, more recent address as may be available to the City, and any agents, representatives or occupants as may be known, the Financial Officer or his or her designee shall be authorized to certify to the County Treasurer the list of delinquent assessments, giving the name of the owner of record, the number of the lot and block and the amount of assessment plus a ten-percent penalty. The certification shall be the same in substance and in the same form as required for the certification of taxes. The County Treasurer, upon the receipt of such certified list, is hereby authorized to place the same upon the delinquent tax list for the current year and to collect the assessment in the same manner as taxes are collected with such charges as may by law be made by the Treasurer, and all the laws of the State for the assessment and collection of the general taxes, including the laws for the sale of property for unpaid taxes, shall apply to and have full force and effect for the collection of all such assessments. Notwithstanding the foregoing, if the offending property is not subject to taxation, the City may elect alternative means to collect the amounts due pursuant to this Article, including the commencement of an action at law or in equity and, after judgment, pursue such remedies as are provided by law.

**Sec. ~~24-22~~20-103. Violations and penalties.**

Any person who violates any provision of this Division commits a civil infraction and is subject to a civil ~~the~~ penalty, costs and fees as provided for in ~~provisions of § 1-15(f). If a person commits three (3) or more violations in twelve (12) consecutive months of any provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve-month period shall constitute a misdemeanor criminal offense and shall be subject to a penalty or imprisonment, costs and fees and any other orders imposed in accordance with § 1-~~ 15.

Introduced, considered favorably on first reading, and ordered published this 15th day of July, A.D. 2008, and to be presented for final passage on the 19th day of August, A.D. 2008.

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 19th day of August, A.D. 2008.

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Mayor

ATTEST:

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City Clerk

ORDINANCE NO. 085, 2008  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CERTAIN SECTIONS OF THE CODE OF THE  
CITY OF FORT COLLINS AND THE LAND USE CODE  
PERTAINING THE PENALTIES FOR CIVIL INFRACTION VIOLATIONS

WHEREAS, the violation of certain provisions of the City Code are designated as civil infractions; and

WHEREAS, the City Council has previously approved language which elevates the violation of civil infractions to a criminal misdemeanor after a second violation in twelve months in order to provide motivation to reduce recidivism; and

WHEREAS, Council desires to clarify these penalty provisions to be consistent throughout the City Code; and

WHEREAS, the proposed amendments will provide more efficient and effective enforcement by providing clarification; and

WHEREAS, Council believes that the proposed amendments will promote the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 1-15 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 1-15. General penalty and surcharges for misdemeanor offenses, traffic offenses and traffic and civil infractions.**

...

(f) **Except as provided in subsection (4) below,** Any person found responsible for a violation of this Code designated as a civil infraction shall pay a civil penalty **for such infraction** of not more than one thousand dollars (\$1,000.) plus costs, damages and expenses as follows:

(1) **Each act of violation and every day upon which a violation occurs shall constitute a separate violation.**

(~~2~~) A person found responsible by the Municipal Court or Referee for any violation of this Code charged as a civil infraction shall pay the penalty and costs assessed, which may include all costs, direct and indirect, which the City has incurred in connection with the civil infraction. In addition, the

Municipal Judge or referee may issue any orders necessary to abate a nuisance.

(23) If a defendant fails to answer a citation for a civil infraction or notice to appear in court or before a referee for such infraction, a default judgment shall enter in the amount of the civil penalty plus all costs, expenses and damages. In the event a defendant fails to pay a civil penalty, costs, damages or expenses within thirty (30) days after the payment is due or fails to pay a default judgment, the City may pursue any legal means for collection and, in addition, may obtain an assessment lien against the property that was the subject of the violation if the Code violation is designated as a nuisance in Chapter 20, is a violation of any civil infraction contained in Chapter 5, 12, 20, 24 or 27, or is a violation of Land Use Code Section 3.18.16 and was committed by an owner or tenant of the property, as defined in Land Use Code Section 5.1.2.

(34) ~~Each act of violation and every day upon which a violation occurs shall constitute a separate violation. If a person commits three (3) or more violations in twelve (12) consecutive months~~ **If a person who is alleged to have committed a violation of any provision of this Code that is classified as a civil infraction has been found liable for two (2) or more such violations within the twelve (12) month period immediately preceding the new alleged violation, then, whether or not the previous violations were committed at the same premises as the new alleged violation, the new alleged violation may be charged as** ~~, the third such violation and any subsequent violations within said twelve-month period shall constitute a misdemeanor criminal offense and shall be~~ **that is** subject to a penalty or imprisonment, costs, fees and any other orders imposed in accordance with this Section.

...

Section 2. That Section 5-265 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 5-265. Violation; minimum penalties.**

An owner, property manager or occupant commits a civil infraction by violating any provision of §§ 5-263 and 5-264. A finding that such civil infraction exists shall subject the offender(s) to any or all of the following actions:

(1) The imposition of ~~a civil~~ **the penalty provisions of § 1-15(f)** ~~of not more than one thousand dollars (\$1000.) for each violation, with each day during which the violation occurs constituting a separate violation;~~

...

Section 3. That Section 12-26 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 12-26. Violations and penalties.**

Any person who violates § 12-18 of this Article commits a civil infraction and is subject to a ~~civil~~**the** penalty, ~~costs and fees as provided for in~~**provisions of** § 1-15(f). ~~If a person violates any provision of this Code that is classified as a civil infraction three (3) or more times in twelve (12) consecutive months, the third such violation and any subsequent violations committed within said twelve-month period shall constitute a misdemeanor criminal offense.~~ Any person who violates any other provision of this Article also commits a misdemeanor. All such misdemeanor violations are subject to a fine or imprisonment in accordance with § 1-15. ~~A separate offense shall be deemed committed on each day during or on which a civil or criminal violation occurs or continues.~~

Section 4. That Section 20-45 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 20-45. Violations and penalties.**

Any person who violates any provision of this Article, except Subsections 20-42(f) and 20-42(j), commits a civil infraction and is subject to a ~~civil~~**the** penalty; ~~costs and fees as provided for in~~**provisions of** § 1-15(f). Any person who violates Subsections 20-42(f) or 20-42(j) commits a misdemeanor criminal offense and is subject to a penalty or imprisonment, costs and fees and any other orders imposed in accordance with § 1-15. ~~If a person commits three (3) or more violations in twelve (12) consecutive months of any other provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve-month period shall also constitute a misdemeanor criminal offense subject to §1-15.~~

Section 5. That Section 20-96 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 20-96. Violations and penalties.**

Any person who violates any provision of this Article commits a civil infraction and is subject to a ~~civil~~**the** penalty, ~~costs and fees as provided for in~~**provisions of** § 1-15(f). If a person commits three (3) or more violations in twelve (12) consecutive months of any provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve-month period shall constitute a misdemeanor criminal offense and shall be subject to a penalty or imprisonment, costs and fees and any other orders imposed in accordance with § 1-15.

Section 6. That Section 20-107 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 20-107. Violations and penalties.**

Any person who violates any provision of this Article commits a civil infraction and is subject to a ~~civil~~**the** penalty, costs and fees as provided for in ~~provisions of § 1-15(f)~~. If a person commits three (3) or more violations in twelve (12) consecutive months of any provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve-month period shall constitute a misdemeanor criminal offense and shall be subject to a penalty or imprisonment, costs and fees and any other orders imposed in accordance with § 1-15.

Section 7. That Section 27-62 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 27-62. Violations and penalties.**

Any person who violates §§ 27-18, 27-18(a)(1—4) or 27-58 commits a civil infraction and is subject to a ~~civil~~**the** penalty, costs and fees as provided for in ~~provisions of § 1-15(f)~~. Any person who commits three (3) or more violations in twelve (12) consecutive months of any provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve-month period shall constitute a misdemeanor criminal offense and shall be subject to a fine or imprisonment, costs and fees and any other orders imposed in accordance with § 1-15.

Section 8. That Section 2.14.4 of the Land Use Code of the City of Fort Collins is hereby amended to read as follows:

**2.14.4 Criminal and Civil Liability; Penalties**

...

(B) An owner, property manager, or occupant commits a civil infraction by violating any provision of Section 3.8.16 of this Land Use Code. Each day during which the limitation on the number of occupants is exceeded shall constitute a separate violation. A finding that such civil infraction has occurred shall subject the offender(s) to **the penalty provisions of § 1-15(f) of the Code of the City of Fort Collins and**, any or all of the following actions:

...

Introduced, considered favorably on first reading, and ordered published this 15th day of July, A.D. 2008, and to be presented for final passage on the 19th day of August, A.D. 2008.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 19th day of August, A.D. 2008.

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Mayor

ATTEST:

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City Clerk