

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 15

DATE: October 7, 2008

STAFF: Ted Shepard

SUBJECT

First Reading of Ordinance No. 120, 2008, Amending Section 2.9.3(B) of the Land Use Code Modifying the Procedure for Initiating a Text Amendment.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

EXECUTIVE SUMMARY

There are two sub-sections to Section 2.9.3. The first, (A), describes the procedure for amending the zoning map and the second, (B), describes the procedure for amending the text.

Presently, amending the text of the Land Use Code may be proposed by City Council, the Planning and Zoning Board, the Director, any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.

The change would delete the ability to propose a text amendment to the Land Use Code by any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.

Residents and owners are not prohibited from proposing text amendments. Instead of a direct application, however, a request would be subject to established City Council policy which requires that proposed changes would need to be supported by the City Manager, the Leadership Team, or three Councilmembers.

BACKGROUND

Amend Section 2.9.3(B) to remove the ability of residents of the City or owners of property of land in the City to propose a text amendment to the Land Use Code.

Problem Statement

A wide variety of parties have the ability to propose a text amendment to the Land Use Code. Presently, amending the text of the Land Use Code may be proposed by City Council, the Planning and Zoning Board, the Director, any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.

There is a concern that this section of the Land Use Code is inconsistent with City Council's established policy for how changes to the City Code may be proposed. Under current policy, changes to the City Code can be proposed only by the City Manager, the Leadership Team, or three Councilmembers. This policy was established pursuant to Council Resolution 2003-117 (Attachment 2). Modifying Section 2.9.3(B) would align the two codes so that the amendment processes for both would be consistent.

Proposed Solution Overview

The change would delete the ability to propose a text amendment to the Land Use Code by any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.

Residents and owners are not prohibited from proposing text amendments. Instead of a direct application, however, a request would be subject to established City Council policy which requires that proposed changes would need to be supported by the City Manager, the Leadership Team, or three Councilmembers.

Code Change

Section 2.9.3

(B) *Text Amendment.* An amendment to the text of this Land Use Code may be proposed by the ~~City Council, the Planning and Zoning Board; or the Director, any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.~~

Planning and Zoning Board Recommendation

At the September 18, 2008 regular meeting of the Planning and Zoning Board, it voted 4-2 to approve the proposed change to Section 2.9.3(B).

ATTACHMENTS

1. Minutes from the September 18, 2008 meeting of the Planning and Zoning Board.
2. Resolution 2003-117 Repealing and Readopting Guidelines for Initiating and Developing Council Ordinances and Resolutions.

deal with them. He didn't believe those zoning violations are going to end with approval for commercial use. His hope is that when we finalize whatever plan is going to be approved, that very carefully consider how that plan would be enforced by Zoning Staff. How do you enforce when it's going to be behind a screened area and you won't have access because of a locked gate. If you could get in there, how would you know where that building (that houses the RVs) will be located and how would they know whether a violation exists. If the plan is clear, he knows that Zoning Staff will diligently enforce the Code and deal with the zoning violations.

He's confident the Board will give this the same careful review as the board gave to their rezoning and the modification of street standards. He is very pleased we finally got it into the City and it will be done under City standards which he believes are better than the County's.

Chair Schmidt said that if he wanted to share any other comments to send them to staff via email and they share that information in agenda packets.

Deputy City Attorney Paul Eckman said that if the comments made by Mr. Schumm are to be made a part of the record at the Whitman hearing, we should make sure that this section of minutes from tonight's meeting are included in that packet. Mr. Whitman will have a chance to see what was said tonight.

Chair Schmidt asked members of the Board if they wanted to pull items off the consent agenda. There were no requests from the Board. Chair Schmidt said they discussed the Vineyard Rezoning, # 19-08 at work session and the Board felt comfortable moving that to the Consent agenda but they'd like to know if there was anyone in the audience who would like to discuss the Vineyard Rezoning. There were none.

Consent Agenda:

1. Minutes from the August 21, 2008 Planning and Zoning Board Hearing
2. Vineyard Rezoning, # 19-08

Discussion Items:

3. Modifying the Text Amendment Procedures – Section 2.9.3(B) of the Land Use Code

Member Lingle moved for the approval of Item # 1, August 21, 2008 Planning and Zoning Board Hearing minutes and Item # 2 the Vineyard Rezoning, # 19-08. Member Stockover seconded the motion. The motion was approved 6:0.

Project: Modifying the Text Amendment Procedures – Section 2.9.3(B) of the Land Use Code

Project Description: This is a request for a Recommendation to City Council for a change to the Land Use Code that would modify the procedures for proposing a Text Amendment as described in Section 2.9.3(B). The change would have the effect of removing the ability of residents and property owners in the City of Fort Collins to directly apply for text amendment. Instead, the residents and owners can apply for changes to the Land Use Code consistent with the procedures for proposing changes to the City Code.

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Recommendation: Approval

Hearing Testimony, Written Comments and Other Evidence

Chief Planner Ted Shepard reported there are two sub-sections to Section 2.9.3. The first, (A), describes the procedure for amending the zoning map and the second, (B), describes the procedure for amending the text. When the Board takes action on the annual update to the Land Use Code, they are enacting text amendments as authorized under Section 2.9.3(B). Presently, amending the text of the Land Use Code may be proposed by City Council, the Planning and Zoning Board, the Director, any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.

The change would delete the ability to propose a text amendment to the Land Use Code by any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city. There is a concern that this section of the *Land Use Code* is inconsistent with City Council's established policy for how changes to the *City Code* may be proposed. Under current policy, changes to the City Code can be proposed only by the City Manager, the Leadership Team, or three Council members. Modifying Section 2.9.3(B) as proposed would align the two codes so that the amendment process for both would be consistent.

Residents and owners are not prohibited from proposing text amendments. Instead of a direct application, however, a request would be subject to established City Council policy which requires that proposed changes would need to be supported by the City Manager, the Leadership Team, or three Council members.

Planning staff is recommend approval

Chair Schmidt asked for a review of exactly what the policies are for how citizens can get text amendments to the City Code and how it would also work for the Land Use Code. Shepard said for the City Code proposed changes, it would need to be supported by the City Manager, the Leadership Team (Mayor, Mayor Pro Tem, City Manager, City Attorney, City Clerk), or three Council members. For the Land Use Code, in addition to the above the citizen could make a request to the Board or the Current Planning Director.

Chair Schmidt asked how a citizen might best make a text amendment request to the Board. Shepard said via a letter, an email, or during the Citizen Participation portion of a Planning & Zoning Hearing. Deputy City Attorney Eckman added that for legislative actions such as text amendments, citizens could lobby individual Board members (outside a regular meeting) who would then bring it to the full Board for consideration.

Member Lingle asked for clarification—are we just adding Planning & Zoning Board and the Current Planning Director to the proposed text change. Eckman replied yes. He added it is not in the City Code ("Black Book") how it can be amended—it's a Council policy. For the Land Use Code ("Blue Book,") we would have it codified that amendments would be put forward by the Board or the Director. The Land Use Code is a component of the City Code. The real purpose of this proposal is to make sure we did not have an inconsistent policy where citizens or land owners can propose text amendments to the Land Use Code when they could not propose a text amendment to the City Code itself.

Chair Schmidt asked if we say the Planning & Zoning Board does that mean a certain number need to bring it forward (similar to City Council policies?) Eckman said one member could bring it to the full

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Board. Eckman said it would take a majority vote of the Board to propose a text amendment to the Land Use Code (LUC) to City Council.

Member Lingle said he understood how Council policy worked (with three members required.) How would someone reading this in the LUC know they could also approach City Council or the City Manager? Eckman said you wouldn't know that by reading this language. You'd have to discover that outside of reading the LUC. If the Board or the Director could not be persuaded to move a recommendation forward, it would be incumbent on staff to inform the citizen of the "Council side of things"—which is the Council policy practice of requests to the Leadership Team, City Manager, or three members of City Council moving an action forward for Council's consideration.

Member Lingle said then we'd then place the impetus to start with the Board or the Director and not through City Council. Eckman said that's correct. Staff thought it appropriate to address it in this fashion for the Land Use/Planning side. Depending on its urgency, it would mostly likely be addressed with the annual LUC updates process.

Chair Schmidt asked if there was something in the LUC about the regular LUC update process. Does it say staff will generate land use code changes? It seems staff, through their dealings, make suggestions for what changes should be made. Eckman said there's no place in the LUC that outlines the process. He said that when the LUC was adopted, we knew we didn't have "perfection." We started with a process to bring forward recommendations for change every six months. When less and less changes were needed we went to once a year—that's where we are now.

Member Rollins confirmed the process today. For a citizen who wants to make a text amendment request they need to complete an application and pay a \$500 fee. Shepard said that's correct. Rollins said with this recommended change they would not longer need to do that—no fee would be required; is that correct? Shepard said yes.

Member Lingle asked if this agenda item was published in the newspaper. Shepard said yes, it was part of the published agenda.

Member Smith asked how many times a citizen has initiated a text amendment since the LUC was adopted in 1997. Shepard said he recalls one for sure—the chicken/hens in residential zones. And for the benefit of his fading memory, perhaps there were one or two others but less than one-half dozen. Member Smith asked if those requests been a drain on staff resources? Shepard said with the exception for chicken/hens, no.

Public Input

No audience members were present.

Member Stockover moved the Planning & Zoning Board recommends to City Council Modifying the Text Amendment Procedures – Section 2.9.3 (B) of the Land Use Code. It reads: "An amendment to the text of this Land Use Code may be proposed by the Planning and Zoning Board or the Director." In support of his motion, he referred to the Problem Statement and the Proposed Solution Overview as stated on Page 2 of the Staff Report. Member Campana seconded the motion.

Member Smith said he'd not be supporting the motion. The City has a proud tradition of citizens taking a leadership position in community planning. He thinks there is not an adequate problem statement to bring this as a remedy.

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Chair Schmidt said she felt the same way initially. When the Board discussed it at work session, however, they agreed the citizens still have an opportunity for connecting with the Planning & Zoning Board via sending an email or letter or through Citizen Participation. They would not have to spend \$500.

Chair Schmidt asked Shepard if no change was made and a suggestion was not well received by the Board, could a citizen still pay \$500 and file the appropriate paperwork for staff to spend time on working on an amendment. Shepard said that is correct. Eckman said that is what is interesting about the present process.

Member Lingle asked if they currently have the ability to petition. Eckman said there is no formal petition but everyone has the right to petition their government for redress of grievances under the constitution. That is why we have Citizen Participation on our agendas.

Member Lingle said initially he was where Member Smith is—his concern was putting up an additional impediment. What we had in place was much more direct and offered an ordinary citizen the right to have their ideas acted upon by the government. At work session he discovered the reason why it was worded in 1997. It was more than likely the result of some language that had been adopted from another jurisdiction as part of the drafting of the Land Use Code and not for some compelling reason. That information caused him to shift in his belief that we may now be taking away a right. He is more comfortable tonight in allowing that change to go through.

Chair Schmidt asked if we are trying to make comparable processes, why they need to have a majority vote of the Planning & Zoning Board when it only takes three Council members. Does the Council actually have to vote on it or can any three just send an email to staff to work on a text change? Eckman said it does not take a vote. It takes at least a straw poll for staff to know they have the momentum to go ahead and work on it.

Schmidt asked why we wouldn't then have a comparable procedure for the Planning and Zoning Board. Eckman said that Council regards the Board as a whole as it's advisory body on planning matters. Schmidt said if we're not actually making a text amendment recommendation but rather a recommendation on whether staff should proceed.

Shepard offered some anecdotal information. It reminded him of a time when staff had to work through a traffic operations issue with the Board in an almost retreat like fashion. It was at a time when a very active Board took a great interest in wanting to implement certain traffic controls, design and engineering changes. Engineering staff was quite concerned about that given the fact that members of the Board did not have the proper training. Staff had to explain to the Planning and Zoning Board that they did not have jurisdiction or the expertise on how to design a storm water system, size a sewer or water pipe, or make specific recommendations regarding traffic operations. (It had almost gotten to the point that if three of the members hit the same red light, you could almost hear them say let's just get rid of that signal.) We just had to come to agreement on boundaries for who had jurisdiction over what. It's probably wise that the Board take action with a majority vote versus a straw poll of three.

Eckman said he'd agree with that. The Board is appointed by the Council as a Board not as individual Board members. The Board should be speaking as a Board whenever it proposes an amendment to the LUC. It is one body that speaks with the majority of its votes.

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Rollins said she'd be supporting the motion. She was in the same group of being hesitant at first but after work session she doesn't think the public will have any less ability to be a part of the process. They have many different avenues and many different individuals that they can go to. If we don't support it, they can go to City Council. At the end of the day it would be Council who would be making those decisions (weighing in on our recommendation.)

Chair Schmidt asked when a person fills out a \$500 application now is it with just a basic idea scenario. On the chicken/hen amendment application, was the number six a part of the original application? Shepard said the actual number was worked out after the petitioner made his application.

Chair Schmidt had some concerns about initially broaching the topic at Citizen Participation—how well a budding idea initially be received. Additionally, it may promote petitioners to have very little background data. Member Rollins said if that's how it came to the Board, they could recommend the individual work with staff to developed a more full bodied case before a decision is made by the Board.

Chair Schmidt asked if a citizen had an idea and had not made a \$500 application, would staff still work with them at a certain level in developing something. Shepard said that is a really good question; in fact, that's how the chicken/hen petitioner first approached staff. He had basically gone outside their comfort zone for a staff supported text amendment. They recommended he use the process that included a \$500 fee and moved forward with him as the author and applicant.

Eckman said he then paid the \$500 and it did require a LUC change with respect to the definition of farm animals. All the rest of the change was in the animal code. Council wondered how this could happen--through the LUC someone can apply for a change that grows into a change in other parts of the City Code via necessity. How is that different from any other process for amending the City Code? They believed it did not make sense and that is why staff is bringing this amendment forward. It is a powerful way for addressing grievances. It's good constitutionally for people to come to the podium and plead their case. They don't need upon the payment of a fee to force the Council to take a vote on a piece of legislation.

Member Stockover ran through a scenario of how it might work at a Planning & Zoning Hearing. He asked if they would we have to vote that night on whether or not the Board wanted to pursue it. Would they discuss it at a work session with that person there or not there? Eckman said that you could direct staff to investigate and bring a report to a work session, to the next meeting or whenever you have the time to consider based on its urgency. You would not have to vote on it that night. Member Stockover asked if the board would have to make a motion and vote on pursuing the idea. Eckman said yes. Eckman added if you felt comfortable when an idea is initially broached, you could make a recommendation to City Council that evening.

Member Stockover said it sounds like there are plenty of options--it truly is at the Board's discretion based on how compelling the information the citizen brings forward. That is why he felt comfortable with it.

Member Smith said he didn't think this is an either/or proposition. There are options in place for someone who could not afford the \$500 but had the time and the patience for taking on the bureaucracy and get intimately involved with politics. Ultimately, those private property issues are very important to people. It hasn't been laid out to him that there's a real burden. It's a fundamental issue of good government that with which this City has done very well. The urban hens issue may have been uncomfortable or embarrassing politically for some but he thought it was a good exercise

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in local government. He thought we've always been very encouraging of vigorous civic discussions about these issues and he'd hate for it to disappear.

Chair Schmidt said we probably couldn't vote that same night because wouldn't there have to be public notice to make a change to the LUC. Eckman said that's the interesting thing about legislation. If an application is a quasi-judicial matter that requires procedural due process (notice and hearing.) If it legislative, however, you don't have to have notice and hearing. You can just vote on legislation. When City Council takes it up, notice is given on their agenda. You could consider it under Other Business—making a recommendation to City Council. You would not run afoul of any constitutional requirements for notice and hearing.

Member Lingle doesn't think they are likely to act then; it is more likely they'd take a vote to refer it to staff who will bring it back to the Board for their consideration.

Eckman said he had misspoken. The LUC in Division 2.9 does require a form of notice for text amendments. The notice provision says "notice is not applicable but in substitution therefore notice of the Planning & Zoning Board hearing shall be given in accordance with Section 2-72 of the City Code." There are some other provisions for text amendments that are under different sections of the Code.

The motion passed 4:2 with Chair Schmidt and Member Smith dissenting.

Other Business: The Board viewed the Making it Happen video produced by Planning, Development & Transportation Services.

Meeting adjourned at 7:20 p.m.

Steve Olt, Interim Current Planning Director

Brigitte Schmidt, Chair

NOTE TO FILE: Citizen Participation section sent to the Planner for the Whitman Storage Facility PDP to be heard by the Board on October 16, 2008.

**RESOLUTION 2003-117
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND READOPTING GUIDELINES FOR
INITIATING AND DEVELOPING COUNCIL
ORDINANCES AND RESOLUTIONS**

WHEREAS, on December 17, 1996, the City Council adopted certain guidelines for initiating and developing Council ordinances and resolutions that originate either from the Council Policy Agenda, a Council committee, a City staff initiative or direction received from three or more Councilmembers; and

WHEREAS, Section 2 of said resolution, which pertains to developing the substance of, and options for, such ordinances or resolutions provides that if the City Attorney or City Manager needs clarification and additional direction or the resolution of conflicting approaches to the content of such an item, direction is to be sought from either a Council committee, the "Council Leadership Team" (Mayor and Mayor Pro Tem), or, if necessary, the entire Council; and

WHEREAS, the majority of the previously existing Council committees have, through Council action, been abolished, so that such method of obtaining direction often no longer exists; and

WHEREAS, the Council Leadership Team may, on occasion, be divided in its direction with regard to the development of such an item; and

WHEREAS, it is seldom practical to require a formal vote of the entire Council in order to obtain direction with regard to the development of such items; and

WHEREAS, with regard to items not on the Council Policy Agenda that originate at the direction of the Leadership Planning Team or three or more Councilmembers, the City staff has recommended that clarification of such items could most clearly and simply be obtained from the Councilmembers who request the items; and

WHEREAS, the Council agrees with this recommendation and wishes to modify the above-referenced guidelines in this fashion.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FORT COLLINS that the process for initiating staff work on an ordinance or resolution, and developing the substance of, and options for, such items shall be as follows:

1. INITIATING WORK ON AN ORDINANCE OR RESOLUTION.

The source of ideas for new and revised policies may come from the Council policy agenda, individual Councilmembers, citizens, City boards and commissions, service clubs and organizations, ad hoc task forces, community groups, neighborhood associations, etc. The following procedures shall be followed in determining whether

staff resources should be devoted to the initiation of an ordinance or resolution in response to such proposals.

- (a) *Council policy agenda.* Upon Council's adoption of its policy agenda, and without further direction from the Council, work on specific ordinances and resolutions implementing the policy agenda and the goals and projects established by the Council will be commenced by City staff as directed by the City Manager.
- (b) *Other Council initiated ordinances and resolutions.* Work on other ordinances or resolutions can be initiated at the direction of the Council Leadership Team or at the direction of three Councilmembers, which direction may either be given at a regular Council meeting, a study session or a Council committee meeting; provided, however, that if any Councilmember desires that formal action of the Council be taken with regard to such request, such formal action shall occur at a regular Council meeting and shall require the approval of a majority of the Councilmembers present and voting.
- (c) *Recommendations from City Boards and Commissions.* If a City board or commission would like Council to consider adopting a policy or revising or eliminating an existing policy, the board or commission should contact its Council liaison or another Councilmember and discuss the request. The Council liaison or other Councilmember would then forward the request to a Council committee or to the entire Council at a regular meeting or study session under the "Other Business" segment of such meeting or study session. The Council liaison may forward with the request his or her comments and/or recommendations with regard to the request. Councilmembers shall then provide direction on whether or not staff should proceed with initiating work on an ordinance or resolution with regard to the request, in accordance with subparagraph (b) above.
- (d) *Staff initiated ordinances and resolutions.* Staff requests and suggestions for other ordinances and resolutions will be reviewed by the City Manager and presented to the City Council as he or she deems appropriate.
- (e) *Staff follow-up.* Council will be informed of work proceeding on any ordinance or resolution. Such communications will be particularly important for work that is initiated by a Council committee or the City Manager which is outside the context of full Council gatherings.

2. DEVELOPMENT OF THE SUBSTANCE OF, AND OPTIONS FOR, AN ORDINANCE OR RESOLUTION.

- (a) *Ordinances and resolutions on the Council policy agenda.* After commencing work on an ordinance or resolution on the Council policy agenda, the City

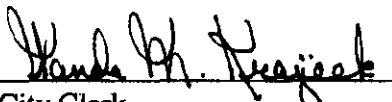
Attorney or City Manager may seek clarification, additional direction, or resolution of conflicting approaches to the content of such item from the Council Leadership Team or, if necessary, by motion under "Other Business" at a regular Council meeting, as approved by a majority vote of the Councilmembers present.

- (b) *Ordinances and resolutions not on the Council policy agenda.* After commencing work on an ordinance or resolution that is not on the Council policy agenda and that has been requested by the Council Leadership Team or by three or more Councilmembers, the City Attorney or City Manager should seek any necessary clarification, additional direction or resolution of conflicting approaches with regard to such item from the Councilmembers requesting the item. Optional versions of the item may be requested by two or more Councilmembers. Any Councilmember may seek staff input and/or staff recommendations regarding the item and either the City Manager or City Attorney may, in his or her discretion, make recommendations to the Council with regard to the item as part of the accompanying Agenda Item Summary. The Agenda Item Summary shall identify the Councilmembers requesting the item as the contact persons for the item.
- (c) *Cessation of work pending clarification.* If either the City Attorney or City Manager is unable to obtain clear direction or a resolution of conflicting approaches on any proposed ordinance or resolution, staff work on a pending ordinance or resolution will be suspended until such clarification and resolution is provided by City Council. City Council will be notified, in writing, when staff work on a pending ordinance or resolution has ceased.

Passed and adopted at a regular meeting of the City Council held this 21st day of October, A.D. 2003.


Mayor

ATTEST:


City Clerk

ORDINANCE NO. 120, 2008
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 2.9.3(B) OF THE LAND USE CODE
MODIFYING THE PROCEDURE FOR INITIATING A TEXT AMENDMENT

WHEREAS, Section 2.9.3(B) of the Land Use Code (“LUC”) states that text amendments may be proposed by the City Council, the Planning and Zoning Board, the Director, any resident of the City, or any owner or person having an ownership interest in land in the City; and

WHEREAS, this LUC provision does not comport with the provisions of Resolution 2003-117, which sets forth the procedure for initiating staff work on proposed new ordinances or resolutions of the City; and

WHEREAS, City Council has determined that LUC Section 2.9.3(B) should be amended so as to state that text amendments may be proposed only by the Planning and Zoning Board or the Director, as that term “Director” is defined in the LUC; and

WHEREAS, if this amendment is approved by the City Council, changes to the LUC may still be suggested by residents of the City or members of the City Council in the manner provided in Resolution 2003-117.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows that Section 2.9.3(B) of the Land Use Code is hereby amended to read as follows:

(B) ***Text Amendment.*** An amendment to the text of this Land Use Code may be proposed by ~~the City Council~~, the Planning and Zoning Board, ~~or the Director~~, ~~any resident of the city, or any owner or person having an interest in land located within the municipal boundaries of the city.~~

Introduced and considered favorably on first reading and ordered published this 7th day of October, A.D. 2008, and to be presented for final passage on the 21st day of October, A.D. 2008.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading this 21st day of October, A.D. 2008.

Mayor

ATTEST:

City Clerk