



**CITY OF ELKHORN
COMMON COUNCIL MEETING AGENDA**

September 16, 2019 ~ 5:30 p.m.

Council Chambers, City Hall, 9 S. Broad St., Elkhorn, Wisconsin

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4) **Public Comment** *Although the public may speak on any item that is not included on this agenda as a "Public Hearing or Forum", the Council may not respond or discuss the issue brought forward at this time. In accordance with open meeting laws the Council must notice an item on the agenda to allow discussion on that matter. Your comments will be considered and may be placed on a future agenda for further discussion.*
- 5) **Consent Agenda** *(One motion & a second will approve all of the following items listed. Any item may be pulled from the list and handled separately.)*
 - a) Common Council and Public Safety Meeting Minutes: September 3, 2019; Financial & Judicial, Legislative & Regulatory, Municipal Services & Utilities Meeting Minutes: September 9, 2019
 - b) Walworth County Ag Society Temporary Class "B" Beer License for Plaza de Mexico, October 12, 2019 from noon to 10 p.m.
 - c) Walworth County Ag Society Temporary Class "B" Beer License for a Concert, October 11, 2019 from 5 p.m. to 11:30 p.m.
- 6) **Bills Payable**
 - i) Consideration and recommendation to pay
- 7) **Report of City Officers**
 - a) Mayor
 - b) City Administrator
- 8) **Report on Liaison Committee Meetings**
 - a) Fire Advisory
 - b) Library
 - c) Recreation Advisory
 - d) Chamber
 - e) Fire/EMS Advisory Steering
- 9) **Committee Reports**
 - a) Public Safety
 - i) Recommendation to Approve Police Department Revisions Regarding Bias-Based Policing (#401), Vehicle Towing and Release (#502) and Impaired Driving (#504) (*Resolution under New Business*)
 - b) Financial & Judicial
 - i) Recommendation to fund EEDA and Extend Building Improvement Grant Program for 2020
 - ii) Discussion on Schedule for 2020 Budget Reviews
 - c) Legislative & Regulatory
 - i) Recommendation to Conditionally Approve Class "B" Fermented Malt Beverage License for Holiday Inn Express
 - ii) Discussion on Changes to City Ordinance Regarding Open Burning
 - d) Municipal Services & Utilities
 - i) Recommendation to Replace Water Services, The Pines Subdivision

- ii) Discussion on 1985 Annexation Agreement With Oakwood/Green Acres Subdivision
- iii) Recommendation to Widen and Improve a Portion of E. Page Street in 2020

10) Unfinished Business

- a) Ordinance 19-06 An Ordinance to Adopt Wisconsin Administrative Code SPS 316 and 324 related to Electrical Code (Second Reading)
- b) Resolution No. 19-10 To name Ehlers and Associates Inc. as Pay Agent for the City of Elkhorn General Obligation & Revenue Bond Principal and Interest Payments

11) New Business

- a) Resolution No. 19-12 Police Department Policy Updates

12) Adjourn

DATED at Elkhorn, Wisconsin, this 13th day of September 2019

Lacey Reynolds, Deputy Clerk

Should you have any questions or comments regarding any items on this agenda, please contact the City Clerk's office at 723-2219. Upon reasonable notice to the City Clerk, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services.

CITY OF ELKHORN COMMON COUNCIL
MEETING MINUTES
September 3, 2019
COUNCIL CHAMBERS, 9 S. BROAD ST., ELKHORN, WI 53121

The Common Council meeting was called to order by Mayor Reynolds at 5:30 p.m. in the Council Chambers followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Howie Reynolds, Aldermen Tim Shiroda, Frank Boggs, Karel Young, Tom Myrin, Ron Dunwiddie, Scott McClory

Others present: City Administrator Sam Tapson, Attorney Ward Phillips, Finance Director James Heilman, City Clerk Cairie Virrueta, Police Chief Joel Christensen, Utility Director John Murphy, DPW Manager Matthew Lindstrom, Fire Chief Rod Smith, Recreation Director Karl Sorvick, City Engineer Greg Calhoun, Zoe Makhsous, Jeff Raykovich, other interested persons

PUBLIC COMMENT

None.

CONSENT AGENDA

City Clerk Virrueta said the August 19th Council minutes had an error. The motion for the New Beginnings CUP was incomplete. This was the first Council meeting the new Deputy Clerk created minutes for. Clerk Virrueta said she listened to the recording and the correct motion made was: "Motion to deny application based on the fact that it does not fit City's Comprehensive Plans as it is not consistent with it, the design of the parking area does not meet parking ordinance, and the driveway location and access to the adjacent property is inadequate for the proposed business." ***Motion (Young/McClory) to approve the minutes of the August 19, 2019 Common Council meeting as amended; and the August 26, 2019 Public Safety and Committee of the Whole meetings. Voice vote, all approved, motion carried.***

REPORT OF CITY OFFICERS

MAYOR'S REPORT

Mayor Reynolds presented City Administrator Tapson an appreciation award for his many years of service to the City.

CITY ADMINISTRATOR'S REPORT

No report.

COMMITTEE REPORTS

PUBLIC SAFETY

Recommendation to draft updates to Ordinance Section 5.17 regarding open burning

Alderman Dunwiddie said the committee considered whether to allow open burning and it fully supported not allowing it. He said the City provides more than adequate leaf pickup options. The committee will continue to allow campfires, which are inspected and permitted by the Fire Chief. He said the recommended changes will go to L&R and then to the Council. Administrator Tapson said he has a draft that he will send this week. Alderman Myrin asked what prompted the change. Mayor Reynolds said complaints from citizens, that it is not healthy and the City provides leaf pickup services. Alderman Dunwiddie said Elkhorn is one of the only cities that still allows it. Administrator Tapson said it is environmentally unsound. Alderman McClory asked how you can control no leaf burning while allowing campfires, and what is a campfire vs. a fire pit? Administrator Tapson said it is clearly defined in the suggested ordinance.

UNFINISHED BUSINESS

Zoe Makhsous Appeal of Council Denial of Conditional Use Permit Extension

Mayor Reynolds said the City's ordinance allows for an appeal of a CUP decision. Makhsous said she signed the contract with Scherrer and paid deposit to start construction. She provided a photocopy of the check she provided to Scherrer. She said the City told them that could not start work on project until the main building was completed. She said her CUP did not say that. She claims misinformation give to Scherrer stopped the entire project, which caused delay. She said due to this miscommunication the CUP extension should be allowed. Administrator Tapson said the CUP did not require they build in a certain way. He said it would be beneficial if someone from Scherrer confirmed what they were told. Makhsous said the administrator told her he recalled the conversation; Administrator Tapson denied this and he only confirmed what the CUP said. Makhsous said she did not know she needed someone else to attend the meeting and she requested a continuance. Mayor Reynolds asked why she did not do the rest of the building; Makhsous said she was working on a SIP and could not start without the SIP being approved. The continuance was allowed and the appeal will continue at the Council meeting on October 7th.

NEW BUSINESS

Resolution No. 19-10 Naming Ehlers as Pay Agent for the City of Elkhorn General Obligation & Revenue Bond Principal and Interest Payments

Finance Director Heilman said he was anticipating having the resolution by today's meeting; however, he didn't get it yet. It will return for the next meeting.

Ordinance 19-06 An Ordinance to Adopt Wisconsin Administrative Code SPS 316 and 324 related to Electrical Code

This is a first reading.

WE Energies Distribution Easement for Gas (YU SW00053G)

Administrator Tapson said the City Attorney reviewed this and he had no major concerns. It was sent to the DPW Manager and Utility Director to finish.

Agreement with Sand Creek Consultants for Seymour Court for Phase 1 Environmental Report

Mayor Reynolds asked if there were any objections. Administrator Tapson asked if this needed to be done. Finance Director Heilman spoke to the architect who said this would be incorporated into future soil borings of the property. ***Motion (McClory/Dunwiddie) to enter into the agreement with Sand Creek Consultants for a Phase 1 Environmental Report in the amount of \$2,500. Roll call vote: McClory, yes; Dunwiddie, yes; Shiroda, yes; Boggs, yes; Myrin, no; Young, yes. Motion carried.***

2019 Pond Maintenance Change Order for Integrated Lakes Management

City Engineer Calhoun said the project is substantially complete, but some additional maintenance was needed for some ponds. Mayor Reynolds asked if it included a treatment for smell; it did not. ***Motion (Myrin/Shiroda) to approve the Change Order in the amount of \$15,132. Roll call vote: McClory, yes; Dunwiddie, yes; Shiroda, yes; Boggs, yes; Myrin, no; Young, yes. Motion carried.***

ADJOURN

Motion (McClory/Boggs) to adjourn at 6:02 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

CITY OF ELKHORN
Public Safety Committee Minutes
First Floor Conference Room, City Hall, 9 S. Broad St., Elkhorn, Wisconsin

September 3, 2019

Public Safety Committee was called to order at 5:00 p.m. by Alderman Dunwiddie followed by roll call.

Roll Call

Present: Aldermen Ron Dunwiddie, Karel Young, Frank Boggs

Also Present: City Administrator Sam Tapson, Finance Director James Heilman, City Clerk Cairie Virrueta, Police Chief Joel Christensen, Police Captain Al Brandl

Police Department Policy Revisions Regarding Bias-Based Policing (#401), Vehicle Towing and Release (#502) and Impaired Driving (#504)

Adjournment

Police Chief Christensen said #401 is a new policy and is straightforward. He said the entire department attended training on fair and impartial policing. He said #504 is the result of a US Supreme Court decision on a case from Wisconsin regarding implied consent law. It deals with obtaining blood tests from unconscious drivers without a search warrant. He said the PD will deal with it case by case. The final revision, #502, is more complicated. Captain Brandl has been working on a list of towing companies for the City. He asked if city businesses should be given preference. There is only one towing business who has a secured facility that would qualify. Captain Brandl said companies need to be within a 15 minutes response time or 30 minutes for commercial. Alderman Boggs said more than one company should be on the list. Alderman Dunwiddie said the policy should be reworded to put towing companies on the list with a certain number of miles from the city. ***Motion (Young/Boggs) to approve all policies, with suggested changes to Vehicle Towing and Release, and bring forward to the Council. Voice vote, all approved, motion carried.***

Adjourn

Motion (Boggs/Young) to adjourn at 5:19 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

CITY OF ELKHORN
Finance & Judicial Committee Minutes
First Floor Conference Room, 9 S. Broad Street, Elkhorn, Wisconsin

September 9, 2019

The Finance and Judicial Committee was called to order at 4:30 p.m. by Alderman McClory, followed by roll call.

Roll Call

Present: Aldermen Scott McClory, Tom Myrin

Also present: City Administrator James Heilman, City Clerk Cairie Virrueta, Police Chief Joel Christensen, Derek D'Auria

EEDA Request for Funding for 2020; Request to Extend Building Improvement Grant Program

D'Auria said the EEDA raised money for the flower pots and skating rink this past year. Project Elkhorn had an event with food trucks that was well attended. Administrator Heilman said they are asking for \$20,000 which is in line with last year. With the new Holiday Inn Express the City will have more dollars available. The EEDA is requesting \$50,000 for the building improvement grant program for next year. Administrator Heilman asked that the EEDA look at offering the program to all City businesses, not just the downtown. He also suggested partnering with the Chamber's members; D'Auria will look into it. Alderman Myrin would like to see some tweaks made to the program so all the funds aren't used up on one project. D'Auria said a business may decide to spend more on improvements with the grant funds available. **Motion (Myrin/McClory) to approve EEDA funding for 2020 in an amount not to exceed \$20,000 and to extend the Building Improvement Grant Program for 2020 up to \$50,000.** The committee asked that D'Auria and Administrator Heilman meet to work on changing the program; Administrator Heilman said he will bring the changes back to the Council for approval. **Voice vote, all approved, motion carried.**

Discussion on 2020 Budget Schedule

Committee members reviewed the schedule and felt it could be condensed down into fewer meetings. This will be discussed at the Council meeting to decide on dates and times.

Adjournment

Motion (Myrin/McClory) to adjourn at 5:10 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

CITY OF ELKHORN
Legislative and Regulatory Committee Minutes
First Floor Conference Room, 9 S. Broad Street, Elkhorn, Wisconsin

September 9, 2019

Legislative and Regulatory Committee was called to order at 5:15 p.m. by Alderman Young followed by Roll Call.

Roll Call

Present: Aldermen Karel Young, Frank Boggs, Ron Dunwiddie

Also present: Administrator James Heilman, Police Chief Joel Christensen, City Clerk Cairie Virrueta, Jeff Rakovich, John Giese, Kellen Olshefski

Consider Application from Holiday Inn Express for a Class "B" Fermented Malt Beverage License, Agent: Patti Lamb

City Clerk Virrueta said state statute allows for a hotel to have a beer license. ***Motion (Dunwiddie/Boggs) to approve the Holiday Inn Express for a Class "B" Fermented Malt Beverage License conditioned upon an Occupancy Permit and Departmental approvals being obtained. Voice vote, all approved, motion carried.***

Review Changes to City Ordinance Regarding Open Burning

John Giese expressed his concerns with changing the ordinance. Administrator Heilman said the major change was to prohibit leaf burning. The ordinance allows campfires and fire pits. City Clerk Virrueta said the Fire Chief suggested allowing campfires year round. Police Chief Christensen was concerned with the wording regarding burning being a nuisance; Administrator Heilman will look at that closer. The committee decided to have the changes be in effect next year and will let residents know in their utility bills as well as the winter tax letter. Changes will be brought back for the October meeting.

Adjournment

Motion (Boggs/Dunwiddie) to adjourn at 5:44 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

CITY OF ELKHORN
Municipal Services and Utilities Committee
Minutes
First Floor Conference Room, 9 S. Broad Street, Elkhorn, Wisconsin

September 9, 2019

Municipal Services and Utilities Committee was called to order at 5:45 p.m. by Alderman Boggs followed by Roll Call.

Roll Call

Present: Frank Boggs, Karel Young, Ron Dunwiddie

Also present: Administrator James Heilman, City Clerk Cairie Virrueta, DPW Manager Matthew Lindstrom, Police Chief Joel Christensen, Utility Director John Murphy, Kellen Olshefski

Discussion and Recommendation on Water Services Replacements, The Pines of Elkhorn Subdivision

Administrator Heilman said three streets are done and two and a half only have a binder course. Long Needle services are springing leaks as they were installed with inferior materials. The street needs to be replaced but need to take care of the leaks first. Utility Director Murphy said there are holes as big as your fingertip and he recommended replacing them all, which is about 11 or 12 mains. He said this includes the intersection with Sugar Pine. Administrator Heilman will discuss with the present developer sharing the costs for the repairs. ***Motion (Dunwiddie/Young) to have Kapur do study on the road improvements with an RFP for next spring. Voice vote, all approved, motion carried.***

Discussion on 1985 Annexation Agreement between the City and Oakwood/Green Acres Subdivision

Administrator Heilman said the agreement allowed the subdivision to not building to City standards. Work cannot be done without 50% of owners agreeing and homeowners have to pay for any street improvements. The streets do not have storm sewer, curb, gutter or sidewalks. Alderman Boggs likes the rural atmosphere of the subdivision but would like to see better streets. The street improvements could be done by special assessments. Utility Director Murphy said the storm water needed to be addressed before street improvements, especially on Maclean. Administrator Heilman suggested holding informational meetings to make the owners aware of the agreement and its content. Alderman Boggs suggested the City Attorney look at the agreement and make a better one. The informational meetings will be sometime in October with letters being sent to the homeowners.

Discussion and Recommendation on Construction to Widen and Improve a Portion of E. Page Street

DPW Manager Lindstrom said this is the area between Lincoln and the fair's parking area. There are three homes there. The road is 15-16 feet wide and during fair events it becomes a one-way for cars exiting the parking area. The homeowners have had difficulty getting to their driveways during fair events. Lindstrom said it is also used as a pedestrian route to fairgrounds and there are no sidewalks. He suggested adding a sidewalk to one side and making the street 28 feet wide. The cost would be \$113,445. Administrator Heilman said this could be added to the 2020 streets project. As the City will be reconstructing the entire road, no special assessment for the sidewalks would be imposed. ***Motion (Dunwiddie/Young) to go forward with widen and improving E. Page St. for the 2020 budget, as drafted. Voice vote, all approved, motion carried.***

Adjourn

Motion (Dunwiddie/Young) to adjourn at 6:28 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

Lacey Reynolds

From: James Heilman
Sent: Friday, September 13, 2019 11:04 AM
To: Lacey Reynolds
Subject: FW: Class B Temporary Retailer Permit Application for Oct 11, from the Walworth County Fairgrounds

From: Larry Gaffey <larry@walworthcountyfair.com>
Sent: Thursday, September 12, 2019 4:37 PM
To: James Heilman <JHeilman@cityofelkhorn.org>
Subject: Class B Temporary Retailer Permit Application for Oct 11, from the Walworth County Fairgrounds

Mr. Heilman,

We have been approached by a promoter who would like to host a concert at the fairground's grandstand on Friday, October 11th and therefore we are requesting approval for a Temporary Class B Retailers License to sell beer.

The promoter has done many events at the fairgrounds with great success and only minor operational challenges. His events have proven to be financially fruitful for the fairgrounds. There have been a handful of noise complaints, we adjusted and to the best of my knowledge, satisfied law enforcement.

The concert entertainment will be a very popular band from Mexico that will attract an audience that is in their 20's and 30's and he anticipates a full grandstand. There will also be an opening act. The headliner will not finish their music set until midnight. The concert will be at a normal grandstand concert volume.

As our application for a Temporary Class B Retailers License states, we will stop the sale of beer at 11:30 pm.

Why do we want this event? Concerts that are brought in by an outside promoter are very profitable for the venue. They pay rent, take all the financial risk and give the venue concession sales.

Why such short notice? The headline band is playing in the Chicago area on a connecting date and they approached the promoter looking for a venue to fill a last-minute gap in their schedule. He was just notified yesterday.

Why do we have to make a fast decision? The band will find a venue outside of Chicago to fill the date. In almost every case they approach many promoters and venues all at once waiting for a yes. We are in competition with other venues that understand the profitability and low-risk benefits of an outside promoted concert. We have an advantage because the promoter (our renter) has a very good reputation with entertainers.

Why are we giving more detail about this event than others in the past? The hours of the event and it's sound are later than events we have done or hosted in the past. The concert would be scheduled to end at Midnight. Our rental contract would necessarily spell out the times allowed for the performances and we would be obligated to that timeline.

The Walworth County Agricultural Society is requesting approval for its application for a Class B Retailers License to sell beer on October 11, 2019, for an outside promoted concert in our grandstand that will last until Midnight.

Respectfully,

--

Larry Gaffey

Walworth County Fairgrounds

General Manager

Bias-Based Policing

401.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidance to department members that affirms the Elkhorn Police Department's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships).

401.1.1 DEFINITIONS

Best Practice WILEAG - 1.7.8.1

Definitions related to this policy include:

Bias-based policing - An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement.

401.2 POLICY

Best Practice

The Elkhorn Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

401.3 BIASED-BASED POLICING PROHIBITED

Best Practice WILEAG - 1.7.8.2

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

401.4 MEMBER RESPONSIBILITIES

Best Practice

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any biased-based actions by another member.

Elkhorn Police Department

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Bias-Based Policing

401.4.1 REASON FOR CONTACT

Best Practice

Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

401.5 SUPERVISOR RESPONSIBILITIES

Best Practice

Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
 - 1. Supervisors should document these discussions, in the prescribed manner.
- (b) Supervisors should periodically review MAV recordings, portable audio/video recordings, Mobile Digital Computer (MDC) data and any other available resource used to document contact between officers and the public to ensure compliance with this policy.
 - (a) Supervisors should document these periodic reviews.
 - (b) Recordings or data that capture a potential instance of bias-based policing should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning bias-based policing.

401.6 TRAINING

Best Practice **MODIFIED**

Training on fair and objective policing and review of this policy should be conducted as directed by the Chief of Police.

Vehicle Towing and Release

502.1 PURPOSE AND SCOPE

Best Practice

This policy provides the procedures for towing a vehicle by or at the direction of the Elkhorn Police Department.

502.2 IMPOUNDS

State **WILEAG - 6.2.13, 6.2.14.3**

When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone or by leaving a notice attached to the vehicle at least 48 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately (Wis. Stat. § 349.13(3)).

The responsibilities of those employees storing or impounding a vehicle are as follows.

502.2.1 VEHICLE REPORT

Best Practice

Department members requesting towing, seizure or impound of a vehicle shall complete a vehicle report form that includes written authorization for the tow truck operator to possess the vehicle and a description of property within the vehicle. A copy shall be given to the tow truck operator and the original submitted to the Records Section as soon as practicable after the vehicle is stored.

502.2.2 REMOVAL FROM A TRAFFIC CRASH SCENE

Best Practice **WILEAG - 6.2.6.5**

When a vehicle has been involved in a traffic crash and must be removed from the scene, the officer shall have the driver select a towing company, if reasonably possible, and shall relay the request for the specified towing company to the Dispatch Center. When there is no preferred company requested, a company will be selected from the rotational list of towing companies in the Dispatch Center.

If the owner is incapacitated or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a crash, the officer shall request the dispatcher to call a company selected from the rotational list of towing companies. The officer will then conduct an inventory and store the vehicle using a vehicle impound and inventory report.

502.2.3 STORAGE AT AN ARREST SCENE

Best Practice **WILEAG - 6.2.6.5**

Whenever a person in charge or in control of a vehicle is arrested, it is the policy of this department to provide reasonable safekeeping by towing the arrestee's vehicle subject to the exceptions

Elkhorn Police Department

Policy Manual

Vehicle Towing and Release

described below. The vehicle, however, shall be towed whenever it is needed for the furtherance of an investigation or prosecution of the case, or when the community caretaker doctrine would reasonably suggest that the vehicle should be towed (e.g., traffic hazard, high-crime area).

Situations where consideration should be given to leaving a vehicle at the scene in lieu of towing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition, include:

- A traffic-related warrant arrest.
- Situations where the vehicle was not used to further the offense for which the driver was arrested.
- Whenever the licensed owner of the vehicle is present, willing and able to take control of any vehicle not involved in criminal activity.
- Whenever the vehicle otherwise does not need to be towed and the owner requests that it be left at the scene. In such cases the owner shall be informed that the Department will not be responsible for theft or damages.

502.2.4 DRIVING A NON-CITY VEHICLE

Best Practice **WILEAG - 6.2.13**

Vehicles that have been towed by or at the direction of the Department should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or to comply with parking regulations.

502.2.5 DISPATCHER'S RESPONSIBILITIES

Best Practice

Upon receiving a request for towing, the dispatcher shall promptly telephone the specified towing service. The officer shall be advised when the request has been made and the towing service has been dispatched.

When there is no preferred company requested, the dispatcher shall call the next firm in rotation from the list of approved towing companies and shall make appropriate entries on that form to ensure the next firm is called.

502.2.6 RECORDS SECTION RESPONSIBILITY

State **WILEAG - 6.2.14.3, 6.2.14.2, 6.2.14.1**

Approved vehicle impound/storage forms shall be promptly filed so that they are immediately available for release or review should inquiries be made.

Records Section personnel shall promptly enter pertinent data from the completed vehicle report form into the Wisconsin Department of Justice Transaction Information for the Management of Enforcement (TIME) system and return the form for approval.

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Vehicle Towing and Release

Within 24 hours of the impound of a vehicle ordered to be removed by a member of this department, it shall be the responsibility of the Records Section to notify the towing service of the name and last-known address of the vehicle's registered owner and lien holders of record, unless the towing services agreement requires the City to notify the owner and lien holders of the towing.

Records Section personnel shall determine the names and addresses of any individuals having an interest in the vehicle through WisDOT or TIME computers. Notice shall be sent to all such individuals by certified mail. The notice shall include:

- (a) The name, address, and telephone number of this department.
- (b) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage.
- (c) The authority and purpose for the removal of the vehicle.
- (d) A statement that, in order to receive a post-impound hearing, the owner, or his/her agent, shall request the hearing in person, in writing or by telephone within 10 days of the date appearing on the notice.

502.3 TOWING SERVICES

Best Practice

The City of Elkhorn periodically selects one or more firms to act as official tow services and awards contracts to those firms. Those firms will be used in the following situations:

- (a) When it is necessary to safeguard a vehicle due to the inability of the owner or operator to take the required action.
- (b) When a vehicle is being held as evidence in connection with an investigation.
- (c) When it is otherwise necessary to store a motor vehicle. This would include situations involving the recovery of stolen or abandoned vehicles and the removal of vehicles obstructing traffic in violation of state or local regulations.

If more than one firm has been awarded contracts, they shall be placed on a rotation list.

502.4 VEHICLE INVENTORY

Best Practice **WILEAG - 1.7.3.6**

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage form. This includes the trunk and any compartments or containers, even if they are closed and/or locked. Members conducting inventory searches should be as thorough and accurate as practicable in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property while the owner is in police custody, to provide for the safety of officers and the public, and to protect the Department against fraudulent claims of lost, stolen or damaged property.

Vehicle Towing and Release

If the apparent potential for damage to a locked container reasonably appears to outweigh the protection of the items inside, other options to consider regarding locked containers include, but are not limited to, obtaining access to the locked container from the owner, placing the locked container into safekeeping or obtaining a written waiver of responsibility for the contents of the locked container.

502.5 PRESERVATION OF EVIDENCE

Federal WILEAG - 11.1.2, 11.2.2

An officer removing a vehicle, who has probable cause to believe that the vehicle or its contents constitute any evidence which tends to show that a criminal offense has been committed, or tends to show that a particular person has committed a criminal offense, should ensure that all legally required and reasonably necessary efforts to preserve the evidence, including but not limited to, safe storage, are taken until the evidence is released to the owner or otherwise disposed of according to law.

502.6 SECURITY OF VEHICLES AND PROPERTY

Best Practice WILEAG - 11.2.2

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, an officer should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g., cash, jewelry, cellular telephone, prescriptions) that are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property.

Any personal property shall be returned to the owner of the vehicle during regular office hours upon presentation of proper identification (Wis. Stat. § 349.13(5)(b)(2)).

Impaired Driving

504.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidance to those department members who play a role in the detection and investigation of operating while intoxicated (OWI).

504.2 POLICY

Best Practice MODIFIED

The Elkhorn Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Wisconsin's impaired driving laws.

When probable cause exists to believe that a person is operating a vehicle in violation of Wisconsin's impaired driving laws an arrest of the operator should be made.

504.3 INVESTIGATIONS

Best Practice MODIFIED

Officers are trained in the visual detection of impaired drivers and are expected to remain vigilant for signs of impairment when contacting motorists involved in traffic crashes and during traffic stops; and shall enforce impaired driving laws with due diligence.

504.3.1 FIELD TESTS

Agency Content

Unless the driver is uncooperative or physically unable to perform, the officer should have the operator perform the three Standardized Field Sobriety Tests (SFST):

- Horizontal Gaze Nystagmus (HGN)
- Walk and Turn (WAT)
- One Leg Stand (OLS)

Other alternate tests may be used in addition to the three mentioned when investigating violations of OWI laws.

504.3.2 PRELIMINARY BREATH TEST

Agency Content

An officer who has probable cause to believe that a person has committed a violation of Wisconsin's impaired driving laws or where the officer detects any presence of alcohol, a controlled substance or any other drug on a person operating a commercial motor vehicle, may request that the person submit to a preliminary breath test (PBT). The result of the PBT may be used by the officer in deciding whether to arrest the person and whether to require or request additional chemical testing under Wis. Stat. §343.305(3). A person may refuse to take the PBT (Wis. Stat. § 343.303).

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504.3.3 ARREST

Agency Content

Based on the totality of the circumstances the officer will decide if there is probable cause to arrest. The officer will take into consideration the circumstances that brought the driver/operator to the attention of the officer, e.g. traffic crash, unusual driving behavior, witness statements, etc. The officer will also take into consideration any signs of impairment of the driver/operator, performance (or refusal) of SFST, other tests and observations.

If probable cause exists to believe that a person was driving/operating a vehicle in violation of Wisconsin's impaired driving laws an arrest of the driver/operator should be made. The officer should inform the driver/operator that he/she is under arrest and safely transport the arrestee to the police department and/or to an authorized testing facility. The officer should check the driver's/operator's driving record and CHRI to determine the number of prior offenses the driver/operator may have.

504.3.4 VEHICLE

Agency Content

The officer will secure the arrestee's vehicle and its contents prior to leaving the scene. The vehicle may be left legally parked on a public street or parking lot. If the vehicle is illegally parked or parked on private property, the vehicle may be moved if consent can be obtained from the driver/owner or if permission is obtained from an individual in control of the private property the vehicle may remain parked. In addition, with the driver's/owner's consent the vehicle may be turned over to a sober individual, with a valid operators license, to be removed. If the vehicle cannot be legally parked, the vehicle may be towed.

This does not mandate release if the vehicle is to be seized as evidence.

504.3.5 ARRESTEE RELEASE

Agency Content

If allowed by the rules of the court, a person arrested for OWI may be released to a responsible adult. The individual to whom the person is released is required to sign an OWI Responsibility Release containing his/her name and address, and that he/she will be responsible for the person.

A person arrested for OWI who is unable to be released to a responsible adult may not be released until 12 hours have elapsed or until a chemical test administered under Wis. Stat. § 343.305 shows a blood alcohol content of less than 0.04 (Wis. Stat. § 345.24).

504.3.6 CRASHES

Agency Content

Officers investigating a person for OWI shall make all reasonable efforts to obtain a chemical sample if the person was involved in a crash that resulted in a fatality or serious physical injury (Wis. Stat. § 343.305(2)).

504.4 CHEMICAL TESTS

State WILEAG - 6.2.6.3

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A person implies consent under Wisconsin law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Wis. Stat. § 343.305):

- (a) The officer has arrested the person for operating a motor vehicle while under the influence of an intoxicant, controlled substance, or any other drug.
- (b) The officer has arrested the person for operating a motor vehicle with a detectable amount of a restricted controlled substance in the person's blood.
- (c) The officer has arrested the person for operating a motor vehicle with a prohibited alcohol concentration.
- (d) The officer has arrested a person under the age of 21 who has any detectable amount of alcohol in his/her system.
- (e) The officer has arrested a person who was operating a commercial motor vehicle while having an alcohol concentration of 0.04 or more.
- (f) The officer has arrested the person for causing injury to another person while OWI or with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his/her blood.
- (g) The officer has arrested the person for causing injury to another person while operating a commercial motor vehicle with an alcohol concentration of 0.04 or more.
- (h) The officer has arrested the person for a violation of Wis. Stat. § 940.25 (injury by intoxicated use of a vehicle).
- (i) The officer has arrested the person for a violation of Wis. Stat. § 940.09 (homicide by intoxicated use of vehicle or firearm).
- (j) The person was involved in an accident resulting in substantial bodily harm to any person and the officer detects any presence of alcohol, a controlled substance, a controlled substance analog, or other drug (Wis. Stat. § 343.305(3)(ar)).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious) the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

504.4.1 BREATH SAMPLES

Best Practice WILEAG - 11.1.2, 6.2.6.3, 1.7.3

The Captain should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Captain.

504.4.2 QUALITY ASSURANCE

Best Practice

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This department shall utilize a quality assurance program conducted by quality assurance specialists or operators regarding devices that are used to conduct alcohol concentration determinations, and shall generate records of periodic maintenance of those devices pursuant to any applicable state law (Wis. Stat. § 343.305(6)).

504.4.3 BLOOD SAMPLES

State WILEAG - 11.1.2, 6.2.6.3

Only persons authorized by law to draw blood shall collect blood samples (Wis. Stat. § 343.305(5)(b)). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task (Wis. Stat. § 343.305(5)(b)).

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be drawn for alternate testing. Unless medical personnel object, two samples should be drawn and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

504.4.4 URINE SAMPLES

Best Practice WILEAG - 11.1.2, 6.2.6.3

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee tested should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

504.4.5 STATUTORY NOTIFICATIONS

State WILEAG - 6.2.6.3, 1.7.3

An officer requesting that a person submit to a chemical test shall read to the person the mandatory statutory warning provided by Wis. Stat. § 343.305(4).

504.4.6 ADDITIONAL TESTING

State MODIFIED WILEAG - 6.2.6.3

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If a person submits to a chemical test requested pursuant to the implied consent law, he/she is entitled to a reasonable opportunity, upon request, to have additional chemical testing done (Wis. Stat. § 343.305(5)).

504.4.7 OFFICER RESPONSIBILITIES

Agency Content

If a chemical test indicates the presence of a controlled substance or a prohibited alcohol concentration, the officer shall forward the result to WisDOT (Wis. Stat. § 343.305(7)). The person shall be informed that his/her driving privilege will be administratively suspended for six months and that the person has the right to an administrative hearing. The form to request the administrative review shall be provided to the person (Wis. Stat. § 343.305(8)). If the person was operating a commercial motor vehicle, the officer shall also issue the person an out-of-service order.

504.5 REFUSALS

State **MODIFIED** **WILEAG - 6.2.6.6**

When an arrestee refuses to provide a chemical sample, officers should:

- (a) Audio- and/or video-record the admonishment and the response when it is practicable.
- (b) Document the refusal in the appropriate report.

504.5.1 STATUTORY NOTIFICATIONS UPON REFUSAL

State **WILEAG - 6.2.6.6**

Upon refusal to submit to a chemical test as required by law, officers shall serve the person with the notice of intent to revoke the person's operating privilege (Wis. Stat. § 343.305).

The officer shall forward copies of the notice to the appropriate prosecuting attorney, as well as the Wisconsin Department of Transportation (WisDOT), in the manner prescribed by WisDOT. If the person was operating a commercial motor vehicle, the officer shall issue the person a 24-hour out-of-service order (Wis. Stat. § 343.305(9)).

504.5.2 BLOOD SAMPLE WITHOUT CONSENT

Best Practice **WILEAG - 6.2.6.3**

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.
- (b) The officer can articulate that exigent circumstances exist, the person has been arrested for OWI, the officer reasonably believes that a chemical test will reveal evidence of intoxication, and no reasonable objection to the withdrawal has been presented by the arrestee. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited

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substances in the person's bloodstream. Exigency can be established by the existence of special facts, such as a lengthy delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

504.5.3 FORCED BLOOD SAMPLE

Best Practice **WILEAG - 6.2.6.3, 11.1.3**

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances.
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In first-time OWI and misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

504.5.4 OFFICER ACCESS TO ADDITIONAL SAMPLE

State **WILEAG - 6.2.6.6**

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If a person refuses to submit to a chemical test but has had a sample of blood, urine or other bodily substance taken for any reason, the officer may obtain a portion of that sample sufficient for analysis or may request that a sample be available as allowed by law (Wis. Stat. § 905.04(4)(f)).

504.6 RECORDS SECTION RESPONSIBILITIES

State

The Confidential Secretary will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office and WisDOT (Wis. Stat. § 343.305(7); Wis. Stat. § 343.305(8); Wis. Stat. § 343.305(9)).

504.7 ADMINISTRATIVE HEARINGS

Best Practice

The Confidential Secretary will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to WisDOT.

Any officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify the prosecuting attorney.

An officer called to testify at an administrative hearing should document the hearing date and WisDOT file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

504.8 REPORTING

Agency Content

In addition to all WisDOT forms that are required to be completed, an officer should complete an incident report narrative. Information that should be documented includes, at a minimum:

- (a) The SFST administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in Wisconsin or another jurisdiction.

504.9 TRAINING

Best Practice **MODIFIED**

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The Chief of Police should ensure that officers participating in the enforcement of OWI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to OWI investigations. The Chief of Police should confer with the prosecuting attorney's office and update training topics as needed.

2020 BUDGET PRESENTATIONS/REVIEW

<u>DATES</u>	<u>PROCESS</u>	<u>Governing Body</u>
September 23 rd	Review 5 year Capital Budget	Committee of the Whole
October 14 th	Budget submitted to Council	Committee of the Whole
October 21 st	Budget Work Session Administration Public Works & Recreation	Common Council
October 24 th	Notice of Public Hearing	City Clerk Publishes
October 28 th	Budget Work Session Utilities & Library	Committee of the Whole
November 4 th	Budget Work Session Law Enforcement & Fire/EMS	Common Council
November 11 th	Public Hearing	Committee of the Whole
November 18 th	Budget Passage	Common Council

The Budget Work Sessions on October 21 and November 4 will be listed as the last item on the agenda for those Common Council meetings. The Common Council may choose to hold those Work Sessions prior to the Common Council meeting (4:30). The only concern would be time constraints.

The Committee of the Whole meetings will begin at 5:00 P.M., except for November 11 (Public Hearing), which will begin at 6:00 P.M.

Additional Work Sessions can be added as needed.

CITY OF ELKHORN, WISCONSIN

RESOLUTION NO. 19-10 APPOINTING BOND TRUST SERVICES CORPORATION AS FISCAL AGENT IN CONNECTION WITH CERTAIN OUTSTANDING OBLIGATIONS

WHEREAS, the City of Elkhorn, Walworth County, Wisconsin (the City) has outstanding certain debt obligations described below (collectively, the “Obligations”);

- (i) \$5,350,000 General Obligation Corporate Purpose Bonds, Series 2005 dated June 1, 2005;
- (ii) \$5,350,000 General Obligation Promissory Notes, Series 2010 dated September 9, 2010;
- (iii) \$3,735,000 General Obligation Promissory Notes, Series 2011 dated July 12, 2011;
- (iv) \$1,795,000 General Obligation Corporate Purpose Bonds, Series 2012A dated November 28, 2012;
- (v) \$6,000,000 General Obligation Promissory Notes, Series 2014A dated August 21, 2014;
- (vi) \$4,305,000 General Obligation Refunding Bonds, Series 2015A dated March 10, 2015;
- (vii) \$6,380,000 Waterworks and Electric System Revenue Refunding Bonds, Series 2016A dated May 17, 2016;
- (viii) \$8,570,000 General Obligation Corporate Purpose Bonds, Series 2017A dated November 8, 2017; and

WHEREAS, the Obligations were issued in book-entry-only form registered in the name of CEDE & CO. as nominee of The Depository Trust Company, New York, New York (“DTC”), and DTC acts as securities depository for the Obligations;

WHEREAS, the City Council deems it to be necessary, desirable and in the best interest of the City to appoint a bank or trust company to serve as fiscal agent and to perform the duties of registrar and fiscal agent for such Obligations; and

WHEREAS, the City is currently acting as fiscal agent for the Obligations and deems it to be necessary, desirable and in the best interest of the City to appoint Bond Trust Services Corporation as successor fiscal agent for the Obligations.

NOW, THEREFORE, the City Council of the City of Elkhorn, Walworth County, Wisconsin, does resolve that:

Section 1. Appointment of Fiscal Agent. The principal of and interest on the Obligations shall be paid by Bond Trust Services Corporation, Roseville, Minnesota, which is hereby appointed as the issuer's registrar and, fiscal agent, pursuant to the provisions of Section 67.10(2), Wisconsin Statutes (the "Fiscal Agent"), to be effective immediately upon adoption and approval as of the date of this resolution.

Section 2. Fiscal Agency Agreement. The Fiscal Agency Agreement between the City and the Fiscal Agent shall be substantially in the forms attached hereto as Exhibit A and is hereby approved, and the City shall pay such fees and expenses of the Fiscal Agent set forth in the Fiscal Agency Agreement. The City Mayor and City Clerk are hereby authorized to execute the Fiscal Agency Agreement.

Section 3. Notice of Appointment of Fiscal Agent. The officers of the City are authorized and directed to work with the City's financial advisor and dissemination agent, Ehlers & Associates, Inc., to provide notice of the appointment of the Fiscal Agent to DTC.

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Adopted and recorded this 16th Day of _____, 2019

Howie Reynolds
Mayor

Attest:

Lacey Reynolds
Deputy City Clerk

[SEAL]

**CITY OF ELKHORN
RESOLUTION NO. 19-12**

RESOLUTION AMENDING THE ELKHORN POLICE DEPARTMENT POLICY

WHEREAS, the Common Council of the City of Elkhorn has previously adopted certain policies and procedures pertaining to the Elkhorn Police Department, and;

WHEREAS, it is considered to be appropriate and advisable to review such matters, from time to time, and to revise the Elkhorn Police Department Policies as may be necessary to ensure that the actions of the Department are in accordance with the law and recognized best practices.

BE IT RESOLVED by the Common Council of the City of Elkhorn, Walworth County, Wisconsin that the Elkhorn Police Department Policies have been amended to incorporate the following policies: Bias-Based Policing (#401), Vehicle Towing and Release (#502) and Impaired Driving (#504).

DATED this _____ day of _____, 2019.

Howie Reynolds, Mayor

ATTEST:

Cairie Virrueta, City Clerk

Adopted: _____

Approved: _____