

# Ordinance No. 704-2023 AS AMENDED

By Council Members Bishop and Griffin  
(by departmental request)

## AN EMERGENCY ORDINANCE

To amend Section 505.07 and various sections of Chapter 513 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended, relating to patios and parklets; and to change the name of Chapter 513.

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WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 505.07, as amended by Ordinance No. 717-65, passed June 7, 1965,

Sections 513.01 and 513.02, as amended by Ordinance No. 1800-2000, passed March 16, 2001,

Section 513.03, as amended by Ordinance No. 599-2011, passed June 6, 2011,

Section 513.04, as amended by Ordinance No. 104-08, passed April 21, 2008,

Section 513.05, as amended by Ordinance No. 72-03, passed May 12, 2003,

Section 513.06, as amended by Ordinance No. 1800-2000, passed March 16, 2001,

Section 513.07, as amended by Ordinance No. 104-08, passed April 21, 2008,

Section 513.08, as amended by Ordinance No. 1233-2015, passed November 9, 2015, and

Sections 513.09, 513.10, 513.11, and 513.99, as amended by Ordinance No. 1800-2000, passed March 16, 2001,

are amended to read as follows:

Section 505.07      Board of Sidewalk Appeals

A Board of Sidewalk Appeals consisting of the Director of Capital Projects Public Service, a member of Council to be elected by Council and the Director of Law or his or her duly authorized representative, shall serve as a the board to hear and determine any protests filed by property owners or their agents as to sidewalks, curb or gutter construction, reconstruction or repair, or any written notices issued pursuant to Charter Section 164. Additionally, the board shall hear and determine any other appeals that the board is designated to review under the Codified Ordinances of Cleveland, Ohio, 1976.

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## Section 513.01      Definitions

When used in this chapter, the following words shall have the following meanings:

(a)    “Community Development Corporation” or “CDC” means a non-profit, community-focused entity whose mission is to support its affiliated City neighborhood with a range of programs, services, and activities.

(b)(a) “Director” means the Director of Public Service Capital Project or his or her designee.

(c)(b) “Outdoor Patio Restaurant” means a portion of a public sidewalk, court, alley, street, or other public right-of-way that is used by a business establishment for its current business operations to serve food and/or beverage.

(d)    “Parklet” means an area within an existing curb lane on a street where parking is permitted that may be used by a business establishment for its current business operations, bicycle parking, or any other purpose deemed appropriate by the Director or by a CDC for food and/or beverage consumption, bicycle parking, or any other purpose deemed appropriate by the Director.

(e)(e) “Permit” means a temporary public right-of-way occupancy permit authorized by Section 513.02 of the Codified Ordinances.

(f)(d) “Permittee” means the person or entity who owns the outdoor patio and/or parklet, or the CDC who owns the parklet, restaurant permitted to occupy an area of the public right-of-way.

(g)(e) “Right-of-way” means any sidewalk, court, alley, street or other area dedicated or otherwise designated for public use and held by the City.

(h)(f) “Unobstructed Walk” means a clear, continuous paved surface free of tree grates, elevator grates and all vertical obstructions.

## Section 513.02      Temporary Public Right-of-Way Occupancy Permits for Outdoor Patios and Parklets

Notwithstanding any codified ordinance to the contrary, the Director of Capital Projects Public Service is hereby authorized to issue temporary public right-of-way occupancy permits revocable at the will of the Council authorizing the placement of outdoor patios restaurants at permitted locations on sidewalks, and parklets at permitted locations on streets courts, alleys, streets or other public rights-of-way in the City, subject to the provisions of this chapter. A separate encroachment permit for such outdoor restaurants patios or parklets shall not be required.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk or street, court, alley, street or other public right-of-way with an

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~~outdoor patio or parklet, respectively, and no CDC shall occupy any portion of a street with a parklet, restaurant~~ without first obtaining a permit in accordance with this chapter. Any business owner or operator occupying any portion of a public sidewalk or street, court, alley, street or other public right-of-way, or any CDC occupying any portion of a street, without a permit as required by this chapter shall be subject to the fines and penalties set forth in Sections 513.09 and 513.99 of this chapter.

### Section 513.03 Application for Permits

Application for a permit shall be made to the Director in a form deemed appropriate by him or her. Such application shall include, but not be limited to, the following information:

- (a) Name, phone number and address of the applicant;
- (b) Name and address of the business establishment or CDC, as appropriate, seeking the temporary occupancy permit;
- (c) A description of the proposed area, with photographs, to be occupied by the outdoor patio or parklet restaurant and the hours and days of operation;
- (d) Detailed plans drawn to scale showing the locations, number and arrangement of tables, chairs, and other structures, the location of the pedestrian diverters planned to demarcate the occupied area, the location of the entrance to the establishment, the locations of fire exits or fire escapes, and the nature and location of any existing sidewalk obstructions. If the application is for a parklet, drawings and any other information that the Director deems necessary for the protective barrier required under division (e) of Section 513.05 of these Codified Ordinances;
- (e) A description of the tables, chairs, pedestrian diverters, and other structures, including information about the composition;
- (f) ~~As appropriate, A a signed statement that:~~
  - ~~(1) tThe applicant is the owner of the business establishment immediately adjacent to the proposed area to be occupied by an outdoor patio or parklet. If the applicant desires the outdoor patio or parklet to extend into area not immediate adjacent area to such business establishment, a signed statement from the adjacent property owner agreeing to the use of an area immediate adjacent to his or her business establishment; or restaurant;~~
  - ~~(2) The applicant is an authorized officer of a CDC located in the City and has obtained written approval(s) from the property owner(s) immediately adjacent to the proposed area to be occupied by a parklet. Such written approval(s) shall be attached to the signed statement;~~
- ~~(g)(f) If applicable, A a description of the type of food, beverage or merchandise for sale; and beverage to be served;~~

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~~(h)~~(g) If applicable, a copy of the applicant's liquor permit, expansion permit, and a complete copy of the expansion permit application submitted to the Division of Liquor Control;

~~(i)~~(h) If applicable, Eevidence that all required health licenses, including, but not limited to, the license required by section 241.21 of the Codified Ordinances, have been obtained or have been applied for; and

~~(j)~~(i) A signed statement that the permittee shall hold harmless the City of Cleveland, its officers and employees and shall indemnify the City of Cleveland, its officers and employees for any claims or damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, if applicable, and property damage insurance as will protect permittee and the City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage in an amount of not less than One Million Dollars (\$1,000,000.00) on account of an accident involving injuries, including death, to one (1) or more persons and property damage insurance in an amount of not less than One Million Dollars (\$1,000,000.00), or a combined single limit of One Million Dollars (\$1,000,000.00) provided however, that this insurance requirement shall not be construed to limit permittee's indemnification obligations to the above-required limits of insurance. Such insurance shall also include the City of Cleveland, its officers and employees, as additional insured.

~~(k)~~(j) Prior to issuing a permit for a patio or parklet, the applicant shall deposit with the Director a survey bond or equivalent financial instrument in the amount of \$10,000 to guarantee full and faithful performance of the requirements of this chapter. Such bond shall be satisfactory to the Director of Capital Projects and the Director of Law. The requirements in this division shall not apply to a CDC that is seeking a permit for a public purpose.

### Section 513.04 Permit Fee, Issuance and Duration

(a) An application for a permit shall be accompanied by the fee established by time to time by the Board of Control for each proposed area for an outdoor patio and/or parklet. a fee of two hundred dollars (\$200.00) for each outdoor restaurant for which a permit is desired. If the applicant is not issued a permit, the fee shall be refunded, except one hundred dollars (\$100.00) for administrative expenses.

(b) On approval of the application by the Director of Public Health, the Director of Public Safety, the Director of Capital Projects Public Service, the Director of the City Planning Commission, and, as applicable, the Director of Building and Housing, the Director of Public Works, and the Secretary of the Landmarks Commission, as applicable, and on compliance with the Council notification provision described below, applicable, and the legislative approval required under division (c) below, and the bond described in division (j) of Section 513.03 above, the Director of Capital Projects Public Service shall issue a permit under this chapter. Denial of a permit may be appealed to the Board of Zoning Sidewalk Appeals.

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~~(c) — No permit shall be issued until the members of Council of the wards affected have been provided with written notice by the Director of Capital Projects Public Service and until the expiration of thirty (30) days from the date of the notice, unless the period of thirty (30) days is expressly waived by the Council members in writing. The processing of a complete application shall not take more than ninety (90) days and in the event the application is not processed within ninety (90) days, the applicant shall be entitled to a refund of the permit fee.~~

(c) No permit shall be issued without the prior approval of Council.

(d) ~~Permits shall be valid for a twelve (12) month period, commencing April 1st and ending March 31st. Permits may be renewed, on a form provided by the Director, for the following yearseason provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. The non-refundable permit renewal fee shall be established by time to time by the Board of Control. ~~one hundred dollars (\$100.00) for each outdoor restaurant.~~ If there are changes to the application, a new application must be made under this application and the appropriate permit fee shall accompany the application.~~

(e) If a permittee sells or leases its business establishment, the new business owner or operator may submit, within sixty (60) days of obtaining or leasing such business establishment and at no cost, an amended application for the location(s) with the information required under Section 513.03, except for divisions (c) and (d) thereof, if no changes will be made to the use or detailed plans for which the permit was previously issued. Otherwise, a new application for the location(s) must be made under Section 513.03 and the appropriate permit fee shall accompany the application.

### Section 513.05 Permitted Locations

The Director, consistent with the provisions of this chapter and the zoning code, shall establish rules and regulations as the Director deems proper with respect to permitted locations for the operation of outdoor patios and parklets ~~restaurants~~. The Director shall consider, as appropriate, the operation and location of the outdoor patio and/or parklet~~restaurant~~, the maintenance of the business establishment requesting a permit, the proximity and location of emergency exits, fire standpipes, fire hydrants, driveways, handicap ramps, handicapped parking zones, commercial loading and unloading zones, the condition of the sidewalk, and other factors he or she deems relevant. The Director may modify the rules and regulations as he or she deems necessary.

The issuance of permits and the maintenance of structures, tables, chairs, and other associated equipment ~~structures~~ shall be subject to the rules and regulations established by the Director, the zoning code and the following conditions and restrictions:

(a) Outdoor patios ~~restaurant~~ shall not obstruct emergency exits or fire standpipes;

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(b) Outdoor patios and parklets restaurant shall comply with the handicap accessibility requirements established in the Director's rules and regulations; not occupy any portion of the roadway or within two (2) feet of the curb;

(c) Outdoor patios and parklets restaurant shall not be permitted within six (6) feet of any fire hydrant, within five (5) feet of any driveway, within three (3) feet of any sidewalk handicap ramp, or within two (2) feet of the curb designated for parking, unless the use is for a parklet, or within that portion of the sidewalk parallel to an area designated for parking, handicapped parking or commercial loading and unloading or any other area where parking is prohibited. Parklets also shall not be permitted within fifty (50) feet of an intersection; and

(d) Outdoor patios shall not be permitted At any location where the clear, continuous, unobstructed sidewalk for the passageway of pedestrians is reduced to less than six (6) feet with the exception of the following areas which shall have clear, continuous unobstructed sidewalk at width of no less than ten (10) feet:

(1) Public Square;

(2) East 9th Street between Carnegie and the East 9th Street Pier, Lakeside Avenue, St. Clair Avenue and Superior Avenue between Ontario Street and East 13th Street; and

(3) Ontario Street between Carnegie Avenue and Lakeside Avenue, East 6th Street between Superior Avenue and Lakeside Avenue.

(e) Parklets shall not be used without a protective barrier that meets the plans and specifications approved by the Director.

## Section 513.06      Permits

Permits for outdoor patios shall be issued in such a manner that they are distinguishable from liquor permits issued by the State of Ohio and shall be posted in a conspicuous location in a window or other readily visible location of the frontage of the applicant's business establishment. The permit shall be protected from the weather as necessary and shall be clearly visible from the public sidewalk, court, alley or street and not obstructed by awnings, landscaping or other impediments.

Each permit for an outdoor patio and a parklet shall contain the following information:

(a) The name and address of the permittee;

(b) A description of the permitted location;

(c) A description of the any structures, tables, chairs and other associated equipment structures;

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- (d) A statement indicating whether the permittee is authorized by the State of Ohio to serve alcohol in the outdoor patio and/or parklet restaurant;
- (e) The expiration date of the permit; and
- (f) Any other information the Director deems desirable.

### Section 513.07 Requirements and Conditions of Permit

(a) Permittees and their agents shall comply with all of the requirements of this chapter and any applicable state law, while engaged in business at permitted locations.

(b) The outdoor patio and/or parklet restaurant shall be placed only on the location set forth in the permit.

(c) An outdoor patio or a parklet restaurant located in the Central Business District shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight. An outdoor patio or a parklet restaurant located in any district other than the Central Business District shall not operate earlier than 6:00 a.m. nor later than 11:00 p.m.

(d) Permittees and their agents shall obey any order of a police officer or other emergency personnel to remove their structures, tables, chairs and other associated equipment structures from the public right-of-way if necessary to avoid congestion or obstruction in an emergency.

(e) Permittees shall maintain all required health licenses, including, but not limited to, the license required by Section 241.22 of the Codified Ordinances.

(f) Permittees and their agents shall be responsible for maintaining all outdoor patio and parklet restaurant structures and associated equipment in good repair, free of corrosion and in a safe, sound and nonhazardous condition. Permittees and their agents shall remedy any maintenance violations within the time frame stated in a written notice by the Director.

(g) Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter and shall provide a suitable container for the placement of paper, wrappers, and other similar items used by customers and others within the permitted area. Permittees and their agents shall maintain at least six (6) feet of unobstructed walk as required by the Director of Capital Projects Public Service, which shall be free of snow at all times, as required by Section 507.13.

(h) Permittees shall not cook food in the outdoor patio or parklet restaurant.

(i) Except for outdoor patios located on a sidewalk that is adjacent to a permittee's business establishment, permittees shall install, after obtaining a permit from the City and at their expense, a sign in each permitted location which conforms with the City's design format and states the hours of operations, whether it is for public

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or customer use, and the permittee's business name. Such sign shall not include any other commercial messages, slogans, telephone numbers, or other forms of advertising. Permittees shall not place any other signs in the permitted location outdoor restaurant, except under a permit issued by the City of Cleveland.

(j) A business establishment that has been issued a permit for a parklet shall provide prior written notice to its respective CDC that the permittee will be installing, or will cause to be installed, a parklet at the permitted location.

(k) Permittees shall include the additional seating in outdoor patios and/or parklets in its capacity in determining restroom requirements under state and local law.

~~(l)(j)~~ No permit shall be transferable in any manner.

~~(m)(k)~~ A permit is valid only when used at the location designated in the permit.

## Section 513.08 Permit Suspension and Revocation

(a) The Director may suspend or revoke the permit of any permittee if the permittee or his or her agent fails to abide by the provisions of these Codified Ordinances or state law, or if any required health license has been suspended or revoked.

(b) The Director may revoke the permit of any permittee if the permittee suspends operations permanently in the location designated in the permit.

~~(c)(b)~~ The Director shall give written notice of suspension or revocation of the permit to the permittee or his or her agent stating the reasons therefor. If the reason for the suspension or revocation is that a required health license has been suspended or revoked or that the permittee does not currently have an effective insurance policy as required by division (i) of Section 513.03, the action shall be effective upon giving such notice to the permittee or to his or her agent. Otherwise, such notice shall contain the further provision that the action shall become final and effective ten (10) days thereafter unless, within five (5) days of receipt of notice, the permittee requests a hearing before the Director. The Director shall forthwith hold the requested hearing, at which time the permittee shall be afforded the opportunity to give his or her version of the facts which gave rise to the Director's action. After the hearing the Director shall determine whether to proceed with the action or to rescind it.

~~(d)(e)~~ The action of the Director may be appealed to the Board of Zoning Sidewalk Appeals.

## Section 513.09 Removal of Structures, Tables, Chairs and Other Associated Equipment

(a) Failure to Obtain Required Permit. Any structures, tables, chairs and other associated equipment placed in a public sidewalk, ~~court, alley,~~ street or other public right-of-way without a permit issued pursuant to this section may be seized and

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removed. Prior to such seizure and removal, the property owner or operator of the business establishment fronting on the public right-of-way from which the structure, tables, chairs and other associated equipment are to be removed shall be notified and given two (2) days in which to remedy the violation. If the property owner or operator of the business establishment fails to remedy the violation, the City may seize and remove the structures, tables, and chairs and other associated equipment.

(b) *Immediate and Serious Danger to Person or Property.* Notwithstanding any other provisions of this chapter, the City may seize any structures, tables, and chairs and other associated equipment, whether placed with or without a permit, without prior notice if the structures, tables, and chairs and other associated equipment are placed in the public right-of-way in such a place or manner as to pose an immediate and serious danger to persons or property or if the condition of the structures, tables, chairs, and associated equipment renders them unsafe, unsound or hazardous so as to pose an immediate and serious danger to persons or property. After seizure, the City shall promptly notify the owner or operator of the business establishment and such individual shall have the right to request an informal hearing before the Director within ten (10) days after such notification to determine whether the seizure was proper.

(c) *Emergency Situations.* Notwithstanding any other provision of this chapter, the City may seize and remove any structures, tables, chairs and other associated equipment, whether placed with or without a permit, without prior notice in the case of an emergency. The City shall promptly notify the owner or operator of the business establishment or CDC, as appropriate, of such removal.

(d) *Temporary Removal for Utility Work.* If a public or private entity needs to make repairs to any utilities located in, over, or across, or through the permitted location for a parklet, the permittee shall remove, or cause to be removed, any structures, tables, chairs and other associated equipment within the later of thirty (30) days or the time frame stated in the written notification to the permittee by such public or private entity. If the permittee fails to remove any structures, tables, chairs, and other associate equipment, the City may remove and seize, or cause to be removed and seized, the structures, tables, chairs, and other associated equipment. Upon completion of any such utility repairs, the permittee may reinstall such items.

(e) *Restoration; Failure to Restore.* Upon the termination or revocation of a permit, the permittee shall immediately remove any structures, tables, chairs and other associated equipment in the public right-of-way and shall restore the public right-of-way to a similar or like condition which existed at the time permittee began to use the location designated in the permit or to the standards and specifications required by the Director. Notwithstanding the above, such removal and restoration shall not be required when the permittee sells or leases its business establishment to a third-party who files, within sixty (60) days of obtaining or leasing such business, an amended or new application, as appropriate, pursuant to division (e) of Section 513.04 of these Codified Ordinance.

(f) As a condition of recovering any structures, tables, and chairs and other associated equipment properly seized pursuant to this section, except for division (c), the owner of such structure, tables, and chairs and other associated equipment shall

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pay an impound fee covering the actual cost to the City of transporting and storing such structure, tables, and chairs and other associated equipment.

## Section 513.10      Taxes

The Ppermittee shall be responsible for all charges and all federal, state or local taxes, including property taxes, which may now or hereafter be imposed or levied upon the outdoor patio and/or parklet restaurant and the services provided in connection therewith.

## Section 513.11      Regulations

The Director may promulgate such regulations, not inconsistent with the provisions of this chapter, establishing procedures for the issuance, requiring uniformity and landscaping provisions, and any additional requirements, and conditions of permits. The Director shall submit to the Council for its approval, any change or addition to the regulations referred to in this section.

## Section 513.99      Penalty

(a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense.

(b) The Administration Manager for the Office of Capital Projects, or his or her designee, is authorized to assess a civil penalty of \$100 for each day during which noncompliance or a violation continues. A civil penalty imposed under this division may be appealed to the Board of Sidewalk Appeals. Notice of appeal shall be in writing and shall be filed with the Board within ten (10) business days from the date of the notice of the civil penalty.

(c) The authority to assess civil penalties under division (b) of this section does not limit or affect any criminal offense, or the authority of the Director to suspend or revoke a license under Section 513.08, or any other means of enforcement of this chapter provided for in these Codified Ordinances.

Section 2.      That the following existing sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 505.07, as amended by Ordinance No. 717-65, passed June 7, 1965,

Sections 513.01 and 513.02, as amended by Ordinance No. 1800-2000, passed March 16, 2001,

Section 513.03, as amended by Ordinance No. 599-2011, passed June 6, 2011,

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Section 513.05, as amended by Ordinance No. 72-03, passed May 12, 2003,  
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2001,  
Section 513.07, as amended by Ordinance No. 104-08, passed April 21, 2008,  
Section 513.08, as amended by Ordinance No. 1233-2015, passed November 9,  
2015, and  
Sections 513.09, 513.10, 513.11, and 513.99, as amended by Ordinance No.  
1800-2000, passed March 16, 2001,  
are repealed.

Section 3. That the name of Chapter 513 of the Codified Ordinances of  
Cleveland Ohio, 1976, is changed from CHAPTER 513 – ISSUANCE OF TEMPORARY  
PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS FOR OUTDOOR RESTAURANTS” to  
“CHAPTER 513 – ISSUANCE OF TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY  
PERMITS FOR OUTDOOR PATIOS AND PARKLETS.”

Section 4. That this ordinance is declared to be an emergency measure and,  
provided it receives the affirmative vote of two-thirds of all the members elected to  
Council, it shall take effect and be in force immediately upon its passage and approval  
by the Mayor; otherwise it shall take effect and be in force from and after the earliest  
period allowed by law.

SM:nl  
6-5-2023  
FOR: Director DeRosa

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**REPORT  
after second Reading**

**By Council Members Bishop and Griffin (by departmental request)**

**AN EMERGENCY ORDINANCE**

To amend Section 505.07 and various sections of Chapter 513 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended, relating to patios and parklets; and to change the name of Chapter 513.

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**READ FIRST TIME** **REPORTS**

and referred to \_\_\_\_\_

by the council \_\_\_\_\_

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**CITY CLERK**

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**READ SECOND TIME**

by the council \_\_\_\_\_

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**CITY CLERK**

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**READ THIRD TIME**

by the council \_\_\_\_\_

\_\_\_\_\_  
**PRESIDENT**

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**CITY CLERK**

\_\_\_\_\_  
**APPROVED**

\_\_\_\_\_  
**MAYOR**

Recorded Vol. \_\_\_\_\_ Page \_\_\_\_\_

Published in the City Record \_\_\_\_\_