ORDINANCE NO. O2025.45

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE TEMPE ZONING AND DEVELOPMENT CODE BY ADDING PART 5, CHAPTER 8, MIDDLE HOUSING OVERLAY DISTRICT; AUTHORIZING MIDDLE HOUSING DEVELOPMENT TYPES ON CERTAIN SINGLE-FAMILY RESIDENTIAL ZONED PROPERTIES; INCORPORATING THE RECITALS BY REFERENCE; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Arizona Revised Statutes(A.R.S.) Section (§) 9-462.13(A) requires the governing body of a city or town with a population of 75,000 or more to adopt regulations no later than January 1, 2026, which would allow duplexes, triplexes, fourplexes, and townhomes as a "permitted use" on: (i) lots zoned for single-family residential use within one mile of the municipality's central business district; and (ii) at least twenty percent of any new residential development of more than ten contiguous acres;

WHEREAS, A.R.S. § 9-462.13(H)(8) defines "permitted use" as "the ability for a development to be approved without requiring a public hearing, variance, conditional use permit, special permit or special exception, other than a discretionary zoning action to determination that a site plan conforms with applicable zoning regulations";

WHEREAS, A.R.S. § 9-462.13(E) provides that a failure to adopt regulations by January 1, 2026, would result in middle housing being allowed on all lots zoned for single-family residential use without any limitations;

WHEREAS, A.R.S. § 9-462.13(H)(8) defines "middle housing" as buildings that are compatible in scale, form and character with single-family houses and that contain two or more attached, detached, stacked or clustered homes, including duplexes, triplexes, fourplexes and townhouses;

WHEREAS, A.R.S. § 9-462.13(B)(1) prohibits the City from discouraging the development of middle housing through requirements or actions that individually or cumulatively make impracticable the permitting, siting, or construction of middle housing;

WHEREAS, A.R.S. § 9-462.13(B)(2) prohibits the City from restricting middle housing to less than two floors;

WHEREAS, A.R.S. § 9-462.13(B)(3) prohibits the City from restricting middle housing to a floor area ratio of less than fifty percent;

WHEREAS, A.R.S. § 9-462.13(B)(4) prohibits the City from setting restrictions, permitting or review processes for middle housing that are more restrictive than those for single-family dwellings within the same zone;

WHEREAS, A.R.S. § 9-462.13(B)(5) prohibits the City from requiring owner occupancy of a middle housing structure on the lot;

WHEREAS, A.R.S. § 9-462.13(B)(6) prohibits the City from requiring a middle housing structure to comply with a commercial building code or to contain a fire sprinkler;

WHEREAS, A.R.S. § 9-462.13(B)(7) prohibits the City from requiring more than one off-street parking space per unit of the middle housing;

WHEREAS, A.R.S. § 9-462.13 includes and authorizes various exceptions and limitations that the City is implementing with this Ordinance;

WHEREAS, A.R.S. § 9-462.13 does not change or otherwise impair the terms of any development agreement that exists on September 14, 2024; and

WHEREAS, the City of Tempe finds that it is necessary to adopt these regulations to conform with State law.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 3-201(B)(3) of the Tempe Zoning and Development Code, is hereby amended to read as follows:

SECTION 3-201 – PURPOSE AND APPLICABILITY

…

3. City Center (CC) (previously designated as CCD). The CC district fosters employment and livability in Tempe's City Center (generally bounded by ~~the Town Lake~~ RIO SALADO PARKWAY to the North, the railroad tracks to the West, University Drive to the South and ~~rural road~~ COLLEGE AVENUE to the East). THIS AREA CONSTITUTES TEMPE'S DEFINED *CENTRAL BUSINESS DISTRICT,* AS DESCRIBED IN A.R.S. § 9-462.13, by providing *retail, offices*, moderate- and high- *density* residential uses, *entertainment, civic uses*, and cultural exchange in a *mixed-use* environment that supports the public investment in transit and other public facilities and *services*. This district may also be considered mixed-use when the design provides a mix of uses for the purposes of implementing the General Plan Land Use;

…

Section 2. That Part 5 of the Tempe Zoning and Development Code, is hereby adding a new Chapter 8 to read as follows:

CHAPTER 8 – MIDDLE HOUSING OVERLAY DISTRICT

SECTION 5-801 – PURPOSE AND APPLICABILITY.

A. **PURPOSE.** THE PURPOSE OF THE MIDDLE HOUSING OVERLAY DISTRICT IS TO COMPLY WITH A.R.S. § 9-462.13 FOR THE DEVELOPMENT OF DUPLEXES, TRIPLEXES, FOURPLEXES AND TOWNHOUSES. THE REGULATIONS IN THIS SECTION ARE IN ADDITION TO OTHER CODES AND REQUIREMENTS OF THE CITY OF TEMPE.

B. **APPLICABILITY.** EXCEPT AS SPECIFIED IN SUBSECTION (4) OF THIS SECTION 5-801 (B), THE DEVELOPMENT OF DUPLEXES, TRIPLEXES, FOURPLEXES AND TOWNHOUSES OF EQUAL NUMBER OF UNITS, SHALL BE ALLOWED AS A PERMITTED USE IN THE FOLLOWING:

1. ALL LEGAL LOTS IN SINGLE-FAMILY RESIDENTIAL DISTRICTS, INCLUDING THE AGRICULTURAL DISTRICT, THAT ARE AT LEAST PARTIALLY LOCATED WITHIN A ONE (1)

MILE RADIUS OF TEMPE'S DEFINED CENTRAL BUSINESS DISTRICT, PURSUANT TO FIGURE 5-802 A. MIDDLE HOUSING OVERLAY DISTRICT BOUNDARY;

2. A LEGAL LOT MUST BE EITHER A PREVIOUSLY RECORDED SUBDIVISION LOT OR A PARCEL OF LAND THAT IS IN CONFORMANCE WITH THE MINIMUM SIZE SITE, DIMENSION WIDTH AND LENGTH REQUIREMENTS OF THE SUBJECT PROPERTY;

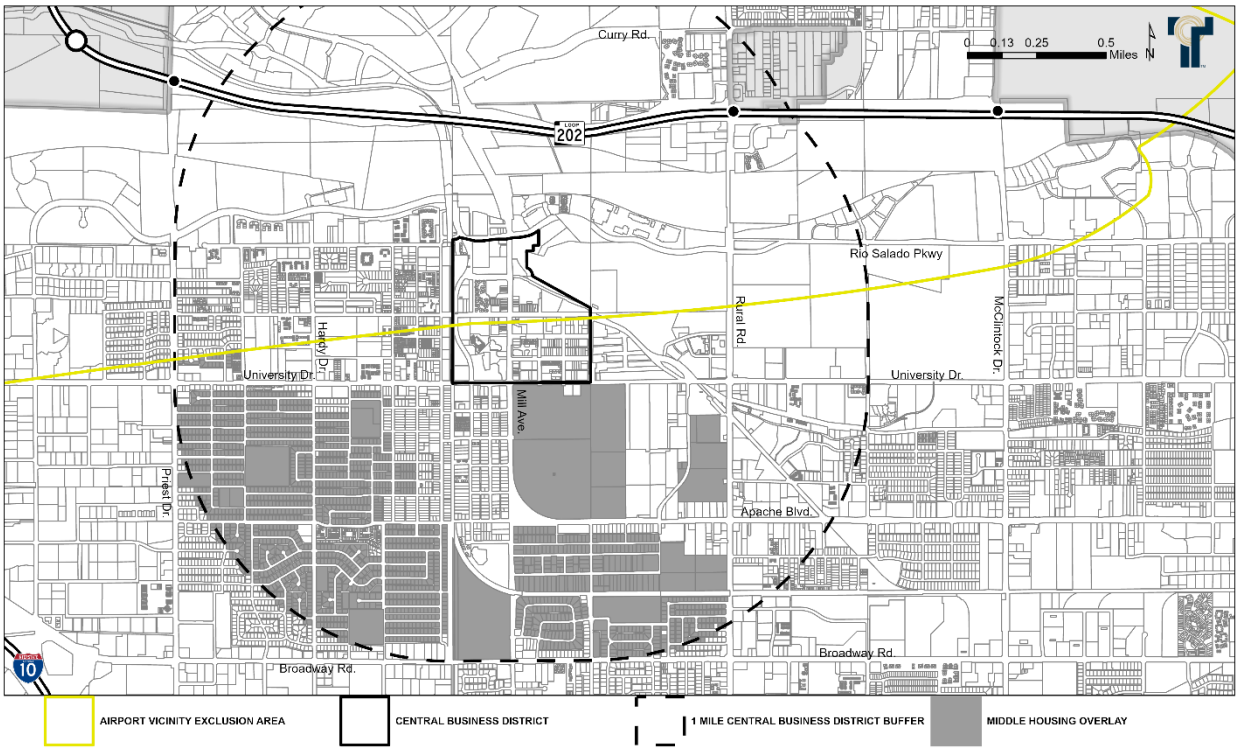
3. THE MIDDLE HOUSING OVERLAY DISTRICT ALLOWS A MULTI-FAMILY RESIDENTIAL PROJECT WITHOUT A REZONING APPLICATION OR USE PERMIT, THAT WOULD OTHERWISE REQUIRE A PUBLIC HEARING. AS A RESULT, GENERAL PLAN LAND USE CONFORMITY, PURSUANT TO SECTION 6-302, AND ZONING MAP AMENDMENTS, PURSUANT TO SECTION 6-304, ARE NOT APPLICABLE IN THIS OVERLAY; AND

4. THE SITE IS NOT LOCATED WITHIN AN EXCLUSION AREA AS DESCRIBED IN SECTION 5-802(C).

SECTION 5-802 – BOUNDARIES.

THE LOCATIONS AND BOUNDARIES OF THE MIDDLE HOUSING OVERLAY DISTRICT ARE ESTABLISHED AS BEING LOCATED WITHIN A ONE-MILE RADIUS FROM THE DEFINED "CENTRAL BUSINESS DISTRICT", PURSUANT TO SECTION 3-201(B)(3), AND SHOWN ON THE MAP IDENTIFIED IN FIGURE 5-802 A.

FIGURE 5-802 A. MIDDLE HOUSING OVERLAY DISTRICT BOUNDARY



SECTION 5-803 – MIDDLE HOUSING OPT-IN OVERLAY

PROPERTIES THAT ARE PART OF A LARGER NEW DEVELOPMENT CAN ALSO CONSTRUCT MIDDLE HOUSING IF THE PARCEL(S) CONSIST OF GREATER THAN TEN (10) CONTIGUOUS NET ACRES AND CONFORM TO THE FOLLOWING REGULATIONS:

A. PARCEL(S) FOR NEW DEVELOPMENT THAT ARE IN EXISTING ZONING FOR SINGLE-FAMILY RESIDENTIAL DISTRICTS, INCLUDING THE AGRICULTURAL DISTRICT, OR NEW DEVELOPMENT WHEN REQUESTING THE INCLUSION OF MIDDLE HOUSING AS A PART OF AN ACTIVE APPLICATION FOR A ZONING MAP AMENDMENT TO A SINGLE-FAMILY RESIDENTIAL DISTRICT, OR THE AGRICULTURAL DISTRICT, ARE ELGIBLE FOR SUCH USE;

B. SITES ARE ALLOWED TO HAVE DUPLEXES, TRIPLEXES, FOURPLEXES, OR TOWNHOUSES OF EQUAL NUMBER OF UNITS AS A BY RIGHT USE, WHEN THE PROJECT DESIGNATES UP TO TWENTY PERCENT (20%) OF THE DEVELOPMENT'S TOTAL *NET SITE AREA*, INCLUDING ANY LOTS, COMMON AREA AND PRIVATE STREETS OR DRIVEWAYS DEDICATED FOR SUCH USE. WHEN THE MIDDLE HOUSING DEVELOPMENT AREA SHARES A PRIVATE STREET OPPOSITE THE SINGLE-FAMILY DEVELOPMENT THE HALF-STREET AREA ADJACENT TO MIDDLE HOUSING SHALL BE COUNTED AS A PART OF THE ALLOWED TWENTY PERCENT (20%) ALLOTMENT;

C. THE MIDDLE HOUSING UNITS SHALL BE BUILT ON LEGAL LOTS THAT COMPLY WITH THE MINIMUM LOT DIMENSIONS OF THE UNDERLYING SINGLE-FAMILY RESIDENTIAL DISTRICT;

D. THE CONSTRUCTION OF MIDDLE HOUSING UNITS WITHIN A LARGER NEW SINGLE-FAMILY DEVELOPMENT SHALL NOT BE BUILT IN PHASES. BUILDING PERMITS SHALL BE ISSUED AT THE TIME THE SINGLE-FAMILY COMPONENT OF THE DEVELOPMENT HAS BEEN PERMITTED FOR CONSTRUCTION; AND

E. THE DEVELOPMENT SITE SHALL NOT BE LOCATED WITHIN AN EXCLUSION AREA AS DESCRIBED IN SECTION 5-804.

SECTION 5-804 – EXCLUSIONS. THE FOLLOWING AREAS ARE NOT ELIGIBLE FOR CONSTRUCTION OF MIDDLE HOUSING:

A. AREAS THAT ARE NOT INCORPORATED;

B. AREAS THAT LACK SUFFICIENT URBAN SERVICES AS DETERMINED BY THE CITY OF TEMPE, PUBLIC WORKS DEPARTMENT;

C. AREAS THAT ARE NOT SERVED BY WATER OR SEWER SERVICES;

D. AREAS THAT ARE NOT ZONED FOR RESIDENTIAL USE;

E. AREAS THAT ARE NOT INCORPORATED AND ARE ZONED UNDER AN INTERIM ZONING DESIGNATION THAT MAINTAINS THE AREAS POTENTIAL FOR PLANNED URBAN DEVELOPMENT;

F. AREAS COVERED UNDER A.R.S. TITLE 48, CHAPTER 6, ARTICLE 4, "ALTERNATIVE FORM OF GOVERNMENT FOR DOMESTIC WATER AND WASTERWATER IMPROVEMENT DISTRICTS";

G. ANY LAND WITHIN THE TERRITORY IN THE VICINITY OF A PUBLIC AIRPORT AS DEFINED IN SECTION 28-8486 OR TO THE EXTENT THAT THIS SECTION WOULD INTERFERE WITH THE

PUBLIC AIRPORT'S ABILITY TO COMPLY WITH LAWS, REGULATIONS OR REQUIREMENTS OF THE UNITED STATES RELATED TO APPLYING FOR, RECEIVING OR SPENDING FEDERAL MONIES; AND

H. ANY LAND WITHIN THE TERRITORY IN THE VICINITY OF A MILITARY AIRPORT AS DEFINED IN A.R.S. SECTION 28-8461.

SECTION 5-805 – DEVELOPMENT STANDARDS.

AN ELIGIBLE MIDDLE HOUSING PROJECT SHALL COMPLY WITH THE FOLLOWING DEVELOPMENT STANDARDS:

A. PARKING. A MINIMUM OF ONE (1) PARKING SPACE PER UNIT SHALL BE PROVIDED ON SITE.

B. HEIGHT. MAXIMUM HEIGHT IS LIMITED TO THAT ALLOWED IN THE UNDERLYING ZONING DISTRICT. MIDDLE HOUSING UNITS SHALL NOT BE RESTRICTED TO HOUSING TYPES OF LESS THAN TWO FLOORS AND SHALL NOT REQUIRE A USE PERMIT, PURSUANT TO SECTION 3-420.

C. DENSITY. ELIGIBLE PROJECTS DO NOT NEED TO COMPLY WITH THE DENSITY REQUIREMENTS OF THE UNDERLYING ZONING DISTRICT TO THE EXTENT THAT THE INCLUSION OF MIDDLE HOUSING CAUSES THE OVERALL DENSITY TO EXCEED THE DENSITY THAT IS OTHERWISE ALLOWED WITHOUT THE INCLUSION OF MIDDLE HOUSING.

D. NUMBER OF DWELLING UNITS. ANY INDIVIDUAL PARCEL DEVELOPED FOR MIDDLE HOUSING IS LIMITED TO A SINGLE DUPLEX, TRIPLEX, OR FOURPLEX OR NO MORE THAN FOUR (4) TOWNHOUSE UNITS. THE NUMBER OF TOWNHOUSE UNITS WILL BE CALCULATED BASED ON THE NUMBER OF UNITS ON THE LOT PRIOR TO SUBDIVISION FOR THE ESTABLISHMENT OF SAID TOWNHOUSES. FOR THE PUPOSES OF THIS SECTION, "TOWNHOUSES" ARE CONSIDERED AS A PART OF THE MIDDLE HOUSING UNITS AND ARE NOT ELIGIBLE FOR SECTION 3-402, ACCESSORY DWELLING UNITS.

E. SETBACKS. ELIGIBLE PROJECTS SHALL CONFORM TO THE SETBACKS OF THE UNDERLYING ZONING DISTRICT.

F. LOT COVERAGE. ELIGIBLE PROJECTS SHALL ALLOW A MAXIMUM OF FIFTY PERCENT (50%) LOT COVERAGE. THE LOT MAY ALLOW GREATER COVERAGE IF THE UNDERLYING ZONING DISTRICT HAS "NO STANDARD" FOR REQUIRED LOT COVERAGE.

G. LANDSCAPE. A LANDSCAPE PLAN SHALL BE SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT, AS A PART OF THE DEVELOPMENT PLAN REVIEW, SUBJECT TO LANDSCAPE DESIGN GUIDELINES. SPECIFIC LANDSCAPE STANDARDS ARE NOT REQUIRED, BUT SHALL BE ESTABLISHED THROUGH THE APPROVAL OF THE DEVELOPMENT PLAN REVIEW, PURSUANT TO SECTION 4-704.

SECTION 5-806 - PROCEDURE.

A. EVIDENCE THAT THE PROPOSED DUPLEX, TRIPLEX, FOURPLEX, OR TOWNHOUSE IS ELIGIBLE AS A PERMITTED USE AND COMPLIES WITH THE DEVELOPMENT STANDARDS IN ACCORDANCE WITH PART 5, CHAPTER 8, MIDDLE HOUSING OVERLAY DISTRICT.

B. MIDDLE HOUSING IS SUBJECT TO THE FOLLOWING APPROVAL PROCESSES:

1. A COMPLETE APPLICATION IN CONFORMANCE WITH CITY'S DEVELOPMENT PLAN REVIEW APPROVAL, PURSUANT TO SECTION 6-306.

2. EVIDENCE OF SITE PLAN REVIEW AND APPROVAL BY ANY UTILITY PROVIDER IMPACTED BY THE PROPOSED DEVELOPMENT;

3. EVIDENCE OF SUFFICIENT URBAN SERVICES FOR THE ENTIRE DEVELOPMENT; AND

4. EVIDENCE OF ADEQUATE EXISTING PUBLIC SEWER AND WATER SERVICE FOR THE ENTIRE PROPOSED DEVELOPMENT.

5.

NEW LOTS OR PARCELS ESTABLISHED AS PART OF A TOWNHOUSE OR CONDOMINIUM PROJECT ARE SUBJECT TO THE APPLICABLE LAND DIVISION APPROVAL PROCESSES, PURSUANT TO SECTION 6-307. A LEGAL LOT IN ALL SINGLE-FAMILY RESIDENTIAL DISTRICTS MAY BE FURTHER SUBDIVIDED FOR THE PURPOSE OF CREATING TOWNHOME LOTS WITH NO MORE THAN THE FOUR (4) MIDDLE HOUSING UNITS ALLOWED FOR THE ORIGINAL LOT.

6. WHEN OPTING INTO THE MIDDLE HOUSING OVERLAY DISTRICT PURSUANT TO SECTION 5-803, THE APPLICANT SHALL SUBMIT A REQUEST THAT THE CITY APPLY THE OVERLAY TO THE PROPOSED NEW LOTS OF A SUBDIVISION ON WHICH THE MIDDLE HOUSING SHALL BE PERMITTED. CITY STAFF SHALL CONDUCT A REVIEW AND WHEN DEEMED ELIGIBLE, UPON APPROVAL OF THE DEVELOPMENT PLAN REVIEW AND NEW SUBDIVISION PLAT RECORDING, UPDATE THE OFFICAL ZONING MAP TO INCLUDE THE MIDDLE HOUSING OVERLAY DISTRICT. THIS IS AN ADMINISTRATIVE ACTION, PURSUANT TO A.R.S. 9-461.13, AND PROCESSED CONCURRENT WITH THE REQUIREMENTS ABOVE.

    a. AN OPT-IN FORM, PROVIDED BY THE COMMUNITY DEVELOPMENT DEPARTMENT, SHALL IDENTIFY THE CHANGE TO THE MIDDLE HOUSING OVERLAY ON CERTAIN LOTS AND SHALL BE SIGNED BY THE SUBDIVISION OWNER, NOTARIZED, INCLUDING A LEGAL DESCRIPTION OF THE LOTS, AND RECORDED WITH THE MARICOPA COUNTY RECORDER.

SECTION 5-807 - DEFINITIONS.

A. TERMS USED IN THIS SECTION HAVE THE FOLLOWING DEFINITIONS:

1. "DUPLEX" MEANS TWO DWELLING UNITS ON THE SAME PARCEL OR LOT IN ATTACHED, DETACHED, OR SEMI-DETACHED ARRANGEMENTS THAT ARE DESIGNED FOR RESIDENTIAL OCCUPANCY BY NOT MORE THAN TWO HOUSEHOLDS LIVING INDEPENDENTLY FROM EACH OTHER.

2. "FOURPLEX" MEANS FOUR DWELLING UNITS ON THE SAME PARCEL OR LOT IN ATTACHED, DETACHED, OR SEMI-DETACHED ARRANGEMENTS THAT ARE DESIGNED FOR RESIDENTIAL OCCUPANCY BY NOT MORE THAN FOUR HOUSEHOLDS LIVING INDEPENDENTLY FROM EACH OTHER.

3. "MIDDLE HOUSING"

    a. MEANS BUILDINGS THAT ARE COMPATIBLE IN SCALE, FORM AND CHARACTER WITH SINGLE-FAMILY HOUSES AND THAT CONTAIN TWO TO FOUR ATTACHED, DETACHED, STACKED OR CLUSTERED HOMES; AND

b. INCLUDES DUPLEXES, TRIPLEXES, FOURPLEXES AND TOWNHOUSES.

4. "TOWNHOUSE" MEANS DWELLING UNITS THAT ARE CONSTRUCTED IN A ROW OF TWO (2) TO FOUR (4) ATTACHED UNITS IN WHICH EACH DWELLING UNIT IS LOCATED ON AN INDIVIDUAL LOT OR PARCEL AND SHARES AT LEAST ONE COMMON WALL WITH AN ADJACENT UNIT AND THAT ARE ACCESSED BY SEPARATE OUTDOOR ENTRANCES.

5. "TRIPLEX" MEANS THREE DWELLING UNITS ON THE SAME PARCEL OR LOT IN ATTACHED, DETACHED, OR SEMI-DETACHED ARRANGEMENTS THAT ARE DESIGNED FOR RESIDENTIAL OCCUPANCY BY NOT MORE THAN THREE HOUSEHOLDS LIVING INDEPENDENTLY FROM EACH OTHER.

SECTION 3. Pursuant to A.R.S. § 9-462.01(J), the City Council has considered a housing impact statement regarding the impact of the zoning ordinance text amendment.

SECTION 4. All ordinances and parts of ordinances in conflict with the provisions of the Code adopted herein are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the Code adopted herein by reference is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions thereof.

SECTION 6. The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Tempe City Code.

SECTION 7. The various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this ordinance.

SECTION 8. Pursuant to this ordinance and State mandate of A.R.S § 9-462.10, after adoption this ordinance will be effective on January 1, 2026.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____day of _____, 2025.

_____
Corey D. Woods, Mayor

ATTEST:

_____
Kara A. DeArrastia, City Clerk

APPROVED AS TO FORM:

_____
Eric C. Anderson, City Attorney