

ORDINANCE NO. 704

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON ADOPTING AMENDMENTS TO LAKEWOOD MUNICIPAL CODE CHAPTERS 1.36, 18A.02, 18A.40, 18A.50, AND 18A.90 AND ADOPTING A NEW LMC CHAPTER 1.38 RELATED TO QUASI-JUDICIAL HEARING PROCESSES AND SITE-SPECIFIC ZONING MAP AMENDMENTS.

RECITALS

WHEREAS, the City of Lakewood is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the State of Washington, and planning pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW; and

WHEREAS, the City has adopted a Comprehensive Plan under the GMA and, as provided in RCW 36.70A.040 (3), is authorized to adopt development regulations to implement the Comprehensive Plan; and

WHEREAS, the City's Hearing Examiner System is regulated under Lakewood Municipal Code (LMC) Chapter 1.36 and the City's Land Use and Development is regulated under LMC Title 18A; and

WHEREAS, per RCW 35A.63 and LMC Chapter 2.90, the Lakewood Planning Commission has authority to make recommendations to the City Council regarding the provisions of LMC 18A; and

WHEREAS, after required public notice, the Planning Commission held a public hearing on proposed amendments to LMC Chapters 18A.02 (Administration), 18A.40 (Overlay Districts) and 18A.50 (Development Standards) related to establishing a Quasi-Judicial Hearing Process; and

WHEREAS, the Planning Commission reviewed the public record and made a recommendation to the City Council on January 16, 2019; and

WHEREAS, pursuant to RCW 36.70A.370, the City has utilized the process established by the Washington State Attorney General so as to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on December 7, 2018, the City provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendments to LMC Title 18A related to establishing Quasi-Judicial Hearing Procedures and considering site-specific rezone applications; and

WHEREAS, the Department of Commerce issued its acknowledgement letter on December 10, 2018 with Material ID #25573; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, the City issued the Determination of Non-Significance (DNS) on December 7, 2018, which identifies the impacts and mitigation measures associated with the adoption of the proposed amendments; and

WHEREAS, pursuant to RCW 43.21C and WAC 197-11-508, on December 7, 2018, the City submitted information and a Determination of Non-Significance (DNS) to the Washington State Department of Ecology related to the establishment of Quasi-Judicial Hearing Procedures and considering site-specific rezone applications; and

WHEREAS, the Department of Ecology published the materials and DNS on December 7, 2018 under SEPA #201806850; and

WHEREAS, after required public notice, on February 19, 2019 the City Council held a public hearing on proposed amendments to LMC Chapters 1.36 (Hearing Examiner System), 18A.02 (Administration), 18A.40 (Overlay Districts), 18A.50 (Development Standards) and 18A.90 (Definitions) and adding a new LMC Title 1.38 (Procedures for

Quasi-Judicial Hearings) related to establishing a Quasi-Judicial Hearing Process and addressing site-specific zoning map amendments; and

WHEREAS, the City Council finds that adopting this Ordinance is in the public interest and will advance the public health, safety, and welfare.

II. FINDINGS

The procedural and substantive requirements of the State Environmental Policy Act (RCW 43.21C) have been complied with.

The procedural requirements of the Growth Management Act (RCW 36.70A) have been complied with.

The proposed action is consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.

The proposed action is consistent with the City of Lakewood Comprehensive Plan.

The proposed amendments have been reviewed and processed in accordance with the requirements of Title 14 Environmental Protection, Title 14A Critical Areas, and Title 18A Land Use and Development of the City of Lakewood Municipal Code.

All of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the City's municipal code.

The Lakewood City Council finds and determines that regulation of land use and development is subject to the authority and general police power of the City, and the City reserves its powers and authority to appropriately amend, modify and revise such land use controls in accordance with applicable law.

The Lakewood City Council finds and determines that approval of such amendments to the Land Use and Development Code is in the best interests of the residents of Lakewood, and will promote the general health, safety and welfare.

The documents and other materials that constitute the record of the proceedings upon which the Council's recommendations are based are located in the City of Lakewood, Community and Economic Development Department at 6000 Main Street SW, Lakewood, Washington, 98499-5027. The custodian of these documents is the Assistant City Manager for Development Services of the City of Lakewood.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. Adoption of City Council Findings. The Findings of the City Council are adopted as part of this Ordinance.

Section 2. Adoption of Amendments. Amendments to LMC Title 1 and 18A are adopted as follows:

Chapter 1.36 HEARING EXAMINER SYSTEM

1.36.280 Review of final decisions.

A. The decision of all matters decided hereunder, except site-specific rezones, shall be final and conclusive unless, within 21 days from the date of the final decision, an applicant or an aggrieved party makes an application to court of competent jurisdiction or competent administrative agency for review.

B. If a statute provides that an application for judicial review must be filed within a time period other than set forth in this code, the application for judicial review, and the finality of the decision, shall be governed by the time period established by the statute. [Ord. 585 § 9, 2014; Ord. 264 § 14, 2001; Ord. 13 § 28, 1995.]

C. Rezones. For site-specific rezones, the Examiner's decision is final unless an aggrieved party of record files a written notice of appeal and pays an appeal fee in accordance with Chapter 1.38 LMC to the Planning Department within ten working days from the date of the postmark mailing of the Examiner's final written decision; PROVIDED, if the Examiner was requested to reconsider a decision, then the appeal must be filed within ten working days from the mailing of the Examiner's decision on reconsideration. The notice of appeal shall concisely specify each error and/or issue the Council is asked to consider. Upon the timely filing of an appeal, the Planning Department shall forward the original recording containing a verbatim record of the

proceedings before the Examiner and ten copies of the Examiner's official record to the Clerk of the Council. The procedures contained in Chapter 1.38 LMC shall govern appeals to the Council filed under this subsection.

Proposed New Chapter

Chapter 1.38
PROCEDURES FOR QUASI-JUDICIAL HEARINGS

- 1.38.010 Application of Provisions.**
- 1.38.020 Definitions. Revised 3/18**
- 1.38.030 Standing – Notice – Continuance.**
- 1.38.040 Grounds for Appeal.**
- 1.38.050 Quorum – Decision.**
- 1.38.060 Submission of Documents.**
- 1.38.070 Requests to Testify.**
- 1.38.080 Presentations at Hearing.**
- 1.38.090 Decision on Appeal.**
- 1.38.100 Remand to Examiner.**
- 1.38.110 Reconsideration.**
- 1.38.120 Appeal.**

1.38.010 Application of Provisions.

The procedures for quasi-judicial hearings, as set forth in this Chapter, shall supersede any conflicting references to procedures for quasi-judicial hearings in the City Code.

1.38.020 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

- A. "Aggrieved" means adversely affected by proceedings before or decisions of the Examiner, Council, or any City department.
- B. "Council" means the City Council.
- C. "County" means Pierce County, together with any of its subdivisions, departments, or agencies.
- D. "Examiner" means the Office of the City Hearing Examiner or Deputy Examiner.
- E. "May" means optional and permissive, and does not impose a requirement.
- F. "New evidence" means any and all evidence that is submitted or received after the date the Examiner closes the official record.
- G. "Newspaper of general circulation" means a newspaper which is regularly distributed in (i) one of the four geographic areas identified by the Planning

Department and (ii) the area where the subject of the application has been proposed.

H. "Official record" means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the Examiner.

I. "Parties of record" means those persons or entities who:

1. Testified before the Examiner; or
2. Listed their names on a sign-up sheet, which shall be available during the Examiner's hearings; or
3. Specifically, advised the Planning Department or Examiner by individual written letter of their desire to become a party of record; or
4. The applicant or appellant and any of applicant's or appellant's agents.

J. "Person" means any individual, partnership, corporation, association, City department, or public or private organization.

K. "Community Development Department" means the City's Community and Economic Development Department, its Director, or the Director's designee.

L. "Shall" means mandatory and imposes a requirement.

1.38.030 Standing – Notice – Continuance.

Quasi-Judicial hearings shall be held at the request of an aggrieved person who is a party of record to a decision by the Examiner. The hearing date shall not be scheduled until after the Clerk of the Council receives the notice of appeal and official record. The Clerk shall cause notice of the hearing date to be mailed to the parties of record listed in the Examiner's decision at least 24 days prior to the initially scheduled hearing date. A request for continuance of the hearing by a party of record may be granted by the Council upon a showing of good cause.

1.38.040 Grounds for Appeal.

An aggrieved party of record may appeal a final decision of the Examiner to the Council based upon the following grounds:

- A. The Examiner's findings of fact are not supported by substantial evidence in the record; or
- B. The Examiner failed to apply the law correctly.

1.38.050 Quorum – Decision.

The presence of four Councilmembers, a quorum, shall be required to dispose of any matter. A majority of the quorum must concur to change or overturn the decision of the Hearing Examiner. The decision of the Examiner shall be sustained if a majority of the quorum is unable to concur.

1.38.060 Submission of Documents.

Parties of record may submit documents to the Council in support of their position on appeal. Parties submitting documents must provide the Clerk with the original and eight copies of such documents at least ten days prior to the scheduled date for Council action. Documents that contain information not contained in the record of the prior proceeding shall not be admitted.

1.38.070 Requests to Testify.

The party filing a notice of appeal is deemed the appellant for the purposes of these Rules. Other parties of record who wish to provide testimony in opposition to or in support of the appellant must submit a written request to the Legal Clerk at least ten days prior to the scheduled hearing date.

1.38.080 Presentations at Hearing.

The presiding officer shall determine the proper order of presentation for the hearing. The procedure may be as follows:

- A. The Community Development Department shall present an opening statement briefly stating the established facts, disputes and issues on appeal.
- B. The appellant may then present oral argument and may reserve a portion of her/his time for rebuttal. The appellant is entitled to open and close oral argument.
- C. Following appellant, the opposing parties of record may present oral argument.
- D. Following argument by the parties, the Council may request such further clarification from the Examiner, City Staff, or the parties as it deems necessary to fully consider the case, provided however, that if the answer to such questions requires knowledge of factual evidence which is not contained in the record, such questions shall be stricken.
- E. Appellants are allowed 15 minutes for oral argument. This time may be increased up to thirty minutes if the Chair and/or Council deems additional time is warranted. Requests for additional time must be submitted in writing to the Legal Clerk at least ten days prior to the hearing and will be considered as the first issue of the hearing. Parties of record in opposition to the appellant are allowed an amount of time equal to the amount of time granted to the appellant. In the event there is more than one appellant or opposing party of record, the parties on each side will share the time granted equally, unless the parties agree to some other allocation. The Legal Clerk will act as timekeeper.
- F. The Council will hear argument on behalf of appellant or parties who properly request to speak and who appear at the time of oral argument. If none of the parties appear for oral argument, the Council may order argument at a later time or may decide the matter on the record and written memoranda submitted.

1.38.090 Decision on Appeal.

A. Following the presentation of argument and questions by the Council, a Councilmember may state in motion form, a proposed decision on the appeal. A second to the motion is not necessary.

B. If the Council determines that the Examiner's findings are supported by substantial evidence in the record and if the Examiner applied the law correctly, then the Council shall uphold the Examiner's decision.

C. If the Council determines that the Examiner's findings are not supported by substantial evidence in the record, then the Council shall reverse the Examiner's decision.

D. If the Council determines that the Examiner failed to apply the law correctly, then the Council shall reverse or remand the Examiner's decision. The decision of the Examiner on remand shall be final and subject to appeal according to the procedures set forth in this Chapter.

1.38.100 Hearing on Remand.

If a matter is remanded to the Examiner, a new hearing may be scheduled.

1.38.110 Reconsideration.

Any aggrieved party or person affected by the action may, within seven working days of the Council's oral decision, file with the Legal Clerk a written request for reconsideration based on any one of the following grounds materially affecting the substantial rights of said party or person:

A. Errors of procedure or misinterpretation of fact, material to the party seeking the request for reconsideration.

B. Irregularity in the proceedings before the Council by which such party was prevented from having a fair hearing.

C. Clerical mistakes in the official file or record transmitted to the Council, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Council's decision on the matter.

Upon receipt of a request for reconsideration, the Council shall review said request and take such further action as the Council deems proper, including, but not limited to, the right to deny said request for reconsideration without oral argument, or the right to rehear and render a revised decision on the matter if deemed appropriate by the Council. Only one request for reconsideration may be filed by any one person or party, even if the Council reverses or modifies its original decision or changes the language in the decision originally rendered.

1.38.120 Appeal.

Any aggrieved party or person affected by the action may file an appeal of the Council's decision with a court of competent jurisdiction within the time period required.

**Chapter 18A.02
ADMINISTRATION**

18A.02.502 Process Types - Permits.

Permit Process Types. Permit applications for review pursuant to this section shall be classified as a Process I, Process II, Process III, or Process IV action. Process V actions are legislative in nature. Permit applications and decisions are categorized by process type as set forth in Table 3. The differences between the processes are generally associated with the different nature of the decisions and the decision-making body as described below.

TABLE 3: APPLICATION PROCESSING PROCEDURES

	Process I Administrative Action	Process II Administrative Action	Process III Hearing Action	Process IV Hearing Action	Process V Legislative Action
Permits	Zoning certification; Building permit; Design Review; Sign permit; Temporary Sign permit; Accessory Living Quarters; Limited Home Occupation; Temporary Use; Manufactured or Mobile Home permit; Boundary Line Adjustments; Minor modification of Process II and III permits; Final Site Certification; Certificate of Occupancy; ***Sexually Oriented Business extensions	Administrative Uses; Short Plat; SEPA; Home Occupation; Administrative Variance; Binding Site Plans, Minor Plat Amendment, Major modification of Process II permits; Shoreline Conditional Use; Shoreline Variance; Shoreline Substantial Development Permits; Cottage Housing Development (may be considered together with residential binding site plan)	<u>Site-specific Zoning Map Amendments*</u> Conditional Use; Major Variance; Preliminary Plat; Major Plat Amendment; Major modification of Process III permits: Shoreline Conditional Use; Shoreline Variance; Shoreline Substantial Development Permit when referred by the Shoreline Administrator; Public Facilities Master Plan;	<u>Area Wide Zoning Map Amendments</u> ; <u>Scrivener corrections to Comprehensive Plan map and/or Comprehensive Plan text</u> ; <u>Site-specific Comprehensive Plan map amendments</u> ; <u>Specific Comprehensive Plan text amendments</u> ; Shoreline Redesignation, **Final Plat** ; **Development Agreement** **No hearing required or recommendation made by Planning Commission**	Generalized or comprehensive ordinance text amendments; Area-wide map amendments; Annexation; Adoption of new planning-related ordinances;
Impacts	Minimal or no effect on others, so issuance of permit is not dependent on others	Application of the standards may require some knowledge of impacts and effect upon others	Potential significant effect on some persons or broad impact on a number of persons	Potential significant effect on some persons or broad impact on a number of persons	Potential significant effect on some persons or broad impact on a number of persons
Notice & Comment	Participation of applicant only	Nearby property owners invited to comment on an application	In addition to applicant, others affected invited to present initial information	In addition to applicant, others affected invited to present initial information	Anyone invited to present information
Recommendation	NA	NA	Community	Planning	Planning

	Process I Administrative Action	Process II Administrative Action	Process III Hearing Action	Process IV Hearing Action	Process V Legislative Action
			Development Department Staff	Commission, except for Final Plat and Development Agreement as noted ** above	Commission
Decision-Making Body	Community Development Director	Community Development Director	Hearing Examiner	City Council	City Council
Appeal	Hearing Examiner Community Development Director's decision on permits noted *** above is appealable to Superior Court.	Hearing Examiner	Superior Court * Site-Specific <u>Zoning Map</u> Amendments are appealed to the City Council	Superior Court	Superior Court

Chapter 18A.40 OVERLAY DISTRICTS

18A.40.520 Application for a Planned Development District (PDD).

A. Process III. A PDD is a process III application type and subject to all the procedural requirements applicable to this application type.

B. PDD Applications. An application for approval of a PDD shall be submitted to the Community Development Department on forms provided by the Department along with established fees.

1. PDD with Subdivision. For those planned development districts that include the division of land, a PDD application shall only be accepted as complete if it is submitted concurrent with an application for preliminary plat approval that includes all information required pursuant to LMC Title 17 and other applicable City regulations. Seven copies of all associated application materials must be submitted in hard copy format. Digital application materials (e.g., CD copies) may fulfill a portion of the required hard copy applications as approved by the City.

2. PDD with No Subdivision. A binding site plan is required for all planned development districts that do not require the subdivision of land and associated preliminary plat. Requirements for the binding site plan shall include:

- a. Existing Plat. All information recorded on the existing plat;
- b. Structures. The location of all proposed structures;
- c. Landscaping. A detailed landscape plan indicating the location of existing vegetation to be retained, location of vegetation and landscaping

structures to be installed, the type of vegetation by common name and taxonomic designation, and the installed and mature height of all vegetation;

d. Schematic. Schematic plans and elevations of proposed buildings with samples of all exterior finish material and colors, the type and location of all exterior lighting, signs and accessory structures;

e. Conditions. Inscriptions or attachments setting forth the limitations and conditions of development, as well as an outline of the documents of the owners' association, bylaws, deeds, covenants and agreements governing ownership, maintenance and operation of the planned development district shall be submitted with the binding site plan. Planned development district covenants shall include a provision whereby unpaid taxes on all property owned in common shall constitute a proportioned lien on all property of each owner in common. The City may require that it be a third party beneficiary of certain covenants with the right but not obligation to enforce association-related documents; and

f. Conformity with Site Plan and Final Plat. Provisions ensuring the development will be in conformance with the site plan and shall include all the required certificates of a final plat. [Ord. 651 § 35, 2016.]

3. PDD with a Site-Specific Rezone. For those planned development districts that include a site-specific rezone, a PDD application shall only be accepted as complete if it is submitted concurrent with an application for a site-specific rezone that includes all information required pursuant to LMC Chapter 1.36, Chapter 1.38, Section 18A.02.502, and other applicable City regulations.

C. All PDD Applications. An applicant for a PDD shall submit the following items to the City, unless the director finds in writing that one or more submittals are not required due to unique circumstances related to a specific development proposal:

1. Narrative. A detailed narrative that includes:

a. Improvement. A description detailing how the proposed development will be superior to or more innovative than conventional development methods as allowed under the City's land use regulations and how the approval criteria set forth in LMC 18A.40.540 have been satisfied;

b. Public Benefit. A description of how the proposed PDD will benefit the public in a manner greater than that achieved if the project was to be developed using conventional land use regulations;

c. Density Table. A table illustrating the density and lot coverage of the overall development, with the proportion of the site devoted to open space clearly indicated;

d. Uses. A description of the types and numbers of dwelling units proposed and the overall land use density and intensity;

e. Open Space and Recreation. A description of the proposed open space and recreation areas including any proposed improvements, including specific details regarding the ownership and maintenance of such areas;

f. Landscaping. Detailed information regarding all proposed landscaping that is not included on an associated landscaping plan;

g. Modifications. A description of the specific City standards as set forth in the underlying zoning district that the applicant is proposing for modification in accordance with Chapter 18A.30 LMC; and

h. Impacts. A description of potential impacts to neighboring properties and how impacts have been mitigated through site design, screening, buffering and other methods;

2. Site Plan. A site plan with the heading "Planned Development District Site Plan" that includes any additional information that is not included on the standard preliminary plat map, including building footprints, proposed landscaping, open space and parks and/or recreational areas including trails and proposed setbacks;

3. Drawings. Elevation drawings illustrating facade and building design elements, including height, overall bulk/mass and density and proposed residential design features that will provide for a superior development;

4. Landscape Plan/Map. A conceptual landscape plan/map showing the proposed location and types of vegetation and landscaping. The landscape plan may also be incorporated into the PDD site plan and narrative;

5. Phases. A phasing plan, if the development will occur in distinct phases with a written schedule detailing the timing of improvements;

6. Development Agreement. A draft development agreement, if proposed by the applicant or as required by the City; and

7. Conditions. A draft of proposed covenants, conditions and restrictions demonstrating compliance with this chapter.

D. An applicant shall provide sufficient facts and evidence to enable the Hearing Examiner to make a decision. The established fee shall be submitted at time of application.

E. Notice of application shall be provided pursuant to LMC 18A.02.670.

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18A.40.610 — Binding Site Plan.

A binding site plan is required for all planned development districts and shall include:

- A. All information required on a preliminary plat;
- B. The location of all proposed structures;
- C. A detailed landscape plan indicating the location of existing vegetation to be retained, location of vegetation and landscaping structures to be installed, the type of vegetation by common name and taxonomic designation, and the installed and mature height of all vegetation;
- D. Schematic plans and elevations of proposed buildings with samples of all exterior finish material and colors, the type and location of all exterior lighting, signs and accessory structures;
- E. Inscriptions or attachments setting forth the limitations and conditions of development;
- F. An outline of the documents of the owners' association, bylaws, deeds, covenants and agreements governing ownership, maintenance and operation of the planned development district shall be submitted with the binding site plan. Planned development district covenants shall include a provision whereby unpaid taxes on all property owned in common shall constitute a proportioned lien on all property of each owner in common. The City may require that it be a third party beneficiary of certain covenants with the right but not obligation to enforce association-related documents; and
- G. The provisions ensuring the development will be in conformance with the site plan. [Ord. 651 § 35, 2016.]

* * *

18A.40.640 — Expiration.

Approval of a binding site plan expires unless recorded by the county auditor within three years from the date of approval. An applicant who files a written request with the City Clerk within 30 days of the expiration date shall be granted a one year extension upon a showing of a good faith effort to file the site plan. [Ord. 651 § 38, 2016.]

**Chapter 18A.50
DEVELOPMENT STANDARDS**

18A.50.221 Applicability - Community Design.

This chapter shall apply to all new development, except single-family dwellings not associated with a Planned Development District (PDD), in any zoning district in the City. Additions and exterior remodels associated with existing buildings and site redevelopment projects are subject to those provisions of this chapter that are determined by the Community Development Director to be reasonably related and applicable to the development project. Projects that modify parking and landscaping areas shall be subject to site design standards for pedestrian access, safety and landscaping standards. The Community Development Director may, at his sole discretion, determine which, if any, additional design standards apply to projects that modify an existing building or site. Proposals that will not modify a building exterior or the site, such as interior tenant improvements and interior remodels are exempt from the community design standards.

**Chapter 18A.90
DEFINITIONS**

18A.90.200

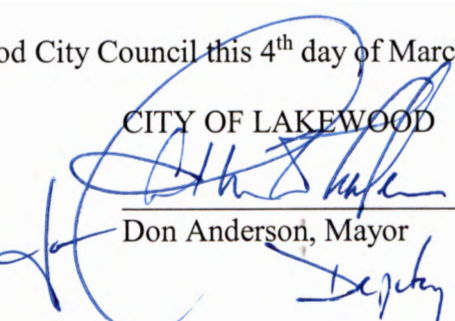
SITE SPECIFIC ZONING MAP AMENDMENT means a site-specific rezone. A site-specific rezone occurs when there are specific parties requesting a classification change for a specific tract. A site-specific rezone requires three factors: (1) a specific tract of land, (2) a request for a classification change, and (3) a specific party making the request.

Section 2 Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 3. Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

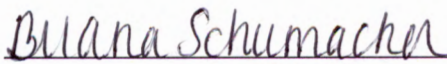
ADOPTED by the Lakewood City Council this 4th day of March, 2019.

CITY OF LAKEWOOD



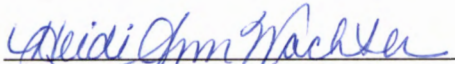
Don Anderson, Mayor

Attest:



Briana Schumacher, City Clerk

Approved as to Form:



Heidi Ann Wachter, City Attorney