

CITY OF PRINEVILLE ORDINANCE NO. 1119

An Ordinance Implementing Ballot Measure 37 Procedures

WHEREAS, the People of Oregon did pass at the General Election of Nov 2, 2004, initiative Petition 37, bearing the ballot title, "Governments must pay owners or forgo enforcement, when certain land-use restrictions reduce property value;" and

WHEREAS, such initiative shall take effect on the 2nd day of December 2004; and

WHEREAS, it is in the interest of an orderly administration of law that the City of Prineville adopt a procedure for processing claims which may be asserted under such act; and

NOW THEREFORE THE PEOPLE OF THE CITY OF PRINEVILLE ORDAIN AS FOLLOWS:

Definitions:

- (A) "City" means the City of Prineville.
- (B) "Council" means the Prineville City Council.
- (C) "Family member" means: the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.
- (D) "Land-use regulation" means: any law or regulation or decision interpreting a law or regulation regulating the use of land or interest therein.
- (E) "Owner" means: the present owner of the property, or any interest therein.

Section 1. General Application.

(A) Effective the 2nd day of December 2004, an owner of property located in the City of Prineville may file a timely claim for compensation in the manner prescribed by this ordinance if the owner of said property can demonstrate that any of the following circumstances exist:

- (1) When, as a result of a land-use regulation enacted by the City of Prineville, the value of the private real property in which one or more owners have title or interest has been reduced below the value that said private real property would have, had the use of the property not been restricted by such enactment.
- (2) When, as a result of a land-use regulation enforced by the City of Prineville through its Planning Department, Planning Commission or City Council, the value of the private real property in which one or more owners have title or interest has been reduced below the value that said private real property would have, had the use of the property not been restricted by such enforcement.

(B) It is the policy of City of Prineville to accept filing of claims derived from discretionary legislative acts and policies of the City or from regulatory actions arising out of enforcement of those acts and policies. Whenever such acts derive from non-discretionary enactment or enforcement of the laws, regulations or decisions of the State of Oregon or the United States of America, it is the policy of the City to deny such claims for lack of jurisdiction.

Section 2. Certain regulations exempt from claims for compensation.

No claim for compensation shall be recognized if such claim arises as a result of one of the following:

- (A) A land-use regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. The definition of nuisance shall be narrowly construed in favor of a finding of compensation under this ordinance;
- (B) A land-use regulation restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- (C) A land-use regulation required in order to comply with federal law;
- (D) A land-use regulation restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; and
- (E) A land-use regulation enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

Section 3. Timely filing required.

(A) No claim for compensation shall be honored unless such claim is timely filed. A timely filing occurs:

- (1) When a demand for compensation is presented to the City in writing prior to December 2, 2006, based upon an assertion that a reduction in value resulted from an enactment of legislation, a land-use decision or an enforcement of a land-use regulation commenced by the City's Planning Department, City's Planning Commission, or the City's Council prior to December 2, 2004; or
- (2) When a demand for compensation is presented to the City in writing based upon a claim which asserts that a reduction in value resulted as a result of enactment of legislation, a land-use decision or an enforcement commenced by the City after December 2, 2004, and not later than two years from that date, final order of the City in a land-use proceeding or date upon which enforcement was commenced, which the claimant asserts resulted in the claim reduction of the value.

(B) Notwithstanding the deadlines imposed in Sections A (1) and (2) above, no claim shall be deemed filed untimely until at least two years have elapsed since the land-use regulation asserted to have resulted in the claimed reduction in value was applied as an approval criteria to the application submitted by the claimant.

Section 4. Claims are severable.

The City, or a hearings officer, may sever claims whenever such claims are determined related to multiple unrelated properties or multiple or unrelated owners or multiple or unrelated enactments or enforcement of land-use regulations. When claims are severed the City, or hearings officer, may require additional deposits for processing additional claims.

Section 5. Procedure for filing claims.

A claim for compensation may be filed with the City. Such claims shall not constitute applications for land-use permits. The claimant shall bear the burden of demonstrating that their claim is legitimate. The claimant shall meet this burden by presenting empirical evidence, which shall include the following:

- (A) A written petition including a description of the property in question, identified by subdivision lot and block, if available, or township, range, parcel and tax lot number;
- (B) A list of all current owners of the property, along with their names and addresses. In the case of a corporate owner, the address and phone number of the registered agent shall be provided. Included with such list shall be a statement that each owner concurs in the application and its contents. The application must be signed by all owners whose collective interests amount to fee simple title. One owner or other

person must be designated as the claimant who shall serve as contact for the purposes of receiving all communication, correspondence and notices pertaining to the application. The statement must be notarized.

(C) A current assessor's map or survey clearly delineating the entire property or properties that comprise the subject of the claim, together with the street address and assessor's map and lot reference of each property.

(D) A preliminary title report or reports for the subject property or properties disclosing all interests and encumbrances of record. The report(s) shall have been issued no more than 30 days prior to filing the application. In addition, the applicant shall provide a sworn statement indicating any other interests and encumbrances against the property, including but not limited to leases and encroachments, of which the claimant is aware or may have reason to believe exists or indicating that the title report is inclusive of all such claims.

(E) Copies obtained from the City Recorder or City Planning Department of the legislative enactments or land-use enforcement proceedings which the applicant believes has restricted his use of his real private property or any interest therein and/or has reduced the fair market value of the property or any interest therein.

(F) A description by the applicant of how the applicant's use of his real private property or interest therein has been restricted and/or a statement regarding the reduction in fair market value the applicant has experienced as result of the legislative enactment or legislative proceeding in question.

(G) A statement by the applicant of the amount of compensation the applicant is requesting.

(H) A statement by the applicant as to any non-monetary relief the applicant would accept in lieu of monetary compensation.

(I) An appraisal prepared in accordance with USPAP standards by a professional appraiser properly licensed and currently registered in the state of Oregon familiar with real property values in Prineville, which shall opine as follows:

(1) The net amount the subject property has been reduced in value based upon the restriction and what portion, if any, of the reduction in fair market value is attributable to the enactment or enforcement of the regulation in question;

(2) Whether the restriction or restrictions imposed were entirely detrimental and in no way beneficial to the fair market value of the property or properties in question;

(3) A statement explaining how the regulations restrict the use of the property and why the regulation has the effect of reducing the value of the property or properties upon which the restriction is imposed.

(J) A copy of any other documents upon which the claimant intends to rely in support of his claim.

(K) A deposit of \$1,500 or such other amount as the City shall establish. Such deposit shall be used to cover the costs associated with the evaluation of such claims. City shall keep records of the costs associated with the evaluation of such claims including staff time involved. The deposit shall be paid at the time the claimant initially files. The deposits collected from compensation claims shall be deposited into a "Claims Account" which the City shall establish and which shall be used to pay expenses associated with processing of claims and to pay compensation. The deposited funds shall not be used for any purpose other than the administration of the compensation claim system. If at any time a hearings officer or the Council determines that the costs associated with hearing a particular claim will exceed the amount of the deposit paid to date, the hearings officer or the Council may order deposit of additional funds with the City to cover associated costs. A final decision shall not be recorded with the County Clerk for Crook County, Oregon, in a claims proceeding until a claimant has paid any such funds owing.

(L) A claim for compensation after filing shall be reviewed by City who shall determine the following:

1. whether the claim was timely filed;
2. whether the claimed is barred;

3. whether the claim meets the requirements of this section;
4. whether the required deposit has been paid.

(M) A claim is deemed “filed” upon submittal, regardless of whether the filing requirements are met. However, no claim shall be processed until City’s designee (hereinafter “the reviewing official”) shall determine that all information required by this Section has been submitted.

Section 6. Review of claims submitted.

(A) Once a claim has been submitted and reviewed, if information is found to be missing, the reviewing official shall advise the claimant in writing what material has been omitted, and what material is required in order to begin processing the claim. Claimant shall also be advised that claimant may withdraw his claim in writing within 30 days unless such 30 days shall expire on a weekend or holiday when the deadline shall be the next regular business day. If claimant withdraws his claim within 30 days, then claimant’s deposit shall be returned less any processing costs of the City incurred as of the date of withdrawal. If claimant elects not to withdraw his claim, then the deposit paid by claimant shall be held by the City for application toward the deposit, which may be required at a future time when the claimant submits a completed application. If no such application has been received within two years of the date of the initial filing, claimant’s deposit shall be returned, less any claims and processing costs incurred.

(B) Upon determining that the filing requirements have been met the reviewing official shall notify City’s manager that a claim has been timely filed and deemed complete. For purposes of interpreting this ordinance, a claim is deemed “filed” on the date all material required by section 6 has been submitted. Once claims have been deemed “timely filed,” and complete, the City shall make a final determination and issue a final ruling regarding compensation due within 180 days, provided the appropriate deposit has been paid.

(C) Upon receipt of a notice from the reviewing official that a claim has been timely filed and is complete, the Council shall schedule a hearing before the City Council or assign the claim to a hearings officer. The Council or the hearings officer shall schedule a hearing on the claim not later than 45 days after the date on which the claim was deemed “timely filed” and complete. If the Council or the hearings officer fails to schedule a hearing within 45 days, the claimant may seek a writ of mandamus from the Circuit Court of Crook County to compel the Council to schedule or cause to be scheduled such hearing.

Section 7. Procedure for hearing claims.

The following procedure shall govern the conduct of a compensation hearing:

(A) The hearing shall be conducted at a time and place designated by the City or appointed hearings officer. Public notice in a newspaper of record or in another manner allowed by the Oregon Public records law of the time and place of the hearing shall be given at least 48 hours in advance of the hearing. Written notice shall be mailed at least seven days in advance of the hearing by the City via regular mail to all owners within 100 feet of the property which is the subject of the claim. Notice shall be deemed given on the date the notice is mailed.

(B) Continuances of such hearings may be granted by the City or by the hearings officer if such continuances are, in the opinion of the City or hearings officer, deemed necessary. Requests for a continuance made by the applicant shall be requested not later than 72 hours prior to the scheduled hearing. The applicant shall be entitled to no more than one continuance. No continuance shall be granted within 21 days of the expiration of that period 180 days from the date on which the application for compensation was filed.

(C) Hearings shall be conducted in a location where the public may observe the proceedings.

(D) A tape recording of the hearing shall be made. Written minutes of the proceeding may be substituted for the tape recording at the discretion of the City or the hearings officer.

(E) Accommodation shall be made upon request for persons with disabilities.

- (F) The Council or hearings officer shall in the course of the hearing allow the applicant to present such empirical evidence as he believes is necessary to demonstrate that a legislative action of the City or that an enforcement of a land-use regulation by the City has restricted the use of his real private property or any interest therein and has had the effect of reducing the fair market value of the property or any interest therein. The applicant may present expert testimony or call witnesses to support his case. All testimony submitted for the consideration of the Council or hearings officers shall be entered into and retained by the City as a part of the permanent record. The Council or the hearings officer may limit the time allowed for the applicant to make his presentation.
- (G) Following applicant's presentation, the Council or the hearings officer shall call upon the City's Planning Director or his designee or other City staff to present a response to the applicant's case. The Council or the hearings officer may limit the time allowed for the planning director's and/or City staff's presentation.
- (H) The Council or the hearings officers shall permit other public testimony regarding the application. The Council or the hearings officer may limit the time allowed for such testimony.
- (I) Following public testimony, the applicant shall be granted time for rebuttal. The Council or the hearings officer may limit the time allowed for such testimony.
- (J) Whenever the Council; or the hearings officer deems necessary, he may continue the hearing.
- (K) Upon conclusion of testimony, the Council or the hearings officer shall consider the evidence received and within 60 days of the final hearing or as soon as may be practical thereafter announce the amount of compensation, if any, to which the applicant is entitled due to the fact that the value of the subject property has been reduced by the enactment or enforcement of the land-use regulation as asserted by the claimant; or a decision that the lost value to which the applicant would otherwise be entitled may be restored by modifying, removing or not applying the land-use regulation or enforcement action which was the proximate cause of the loss of value. Such decision shall be set forth in writing and shall summarize the evidence and testimony presented, briefly describe how the Council or the hearings officer evaluated the evidence, indicate the amount of compensation which in the judgment of the Council or hearings officer the applicant is due, and such other matters as the Council or the hearings officer may deem necessary.
- (L) In any such case where the Council is the tribunal hearing the application for compensation, and the Council determines that compensation is due, the Council shall in lieu of compensation consider whether to waive such regulation or enforcement action.
- (M) Notwithstanding any procedural requirement herein, nothing shall preclude the Council or a hearings officer, prior to receiving testimony, from dismissing a claim for lack of jurisdiction.
- (N) In cases where a hearings officer considers the application, the hearings officer may in lieu of compensation consider whether to waive such regulation or enforcement action. The hearings officer shall notify the members of the Council in writing of his decision within ten business days of the date the decision is reduced to writing. Upon receipt of such notice, the Council by majority vote may request that the Council take up such decision on review at a meeting of the Council. Prior to conducting such a review, the Council shall notify the applicant and post a notice in the newspaper of record not less than seven days before the hearing is conducted. At such hearing, the Council shall review the decision of the hearings officer and may overrule, modify or amend the decision of the hearings officer. If after ten business days from the date the Council received notice of a hearings officer's decision and there is no review, the decision of the hearings officer shall become final.
- (O) If the Council elects not to modify, remove or not to apply the land-use regulation or enforcement action which was the proximate cause of the loss in value, then the City shall pay to the applicant the value in question out of such funds as the City may have appropriated for such purpose or out of such other funds as may be available to the City. Payment shall be made within 180 days of the date written demand for compensation was originally filed with the City.

(P) The decision of the Council or a duly appointed hearings officer being quasi-judicial in nature, appeals of a decision by the Council or a hearings officer appointed by the City may be appealed by writ of review returnable to the Crook County Circuit Court and not otherwise.

(Q) Upon final approval of a decision by the Council or a hearings officer, the City shall cause to be recorded in the deed records of Crook County, Oregon, such decision, and shall return any unused deposit to the claimant. Prior to the return of the deposit, the cost of recording shall be deducted from the deposit paid by the applicant. A decision is final only when the time provided in this ordinance for reconsideration or appeal has been exhausted and no opportunity for appeal remains, and the final decision has been recorded in the office of the Crook County Clerk.

Section 8. Special provisions related to property in family ownership.

Whenever a property has been transferred through inheritance or acquisition among members of the same family, then that property shall not be subject to enactments or enforcements of land-use regulations which were passed or enforced by the Council, City Planning Director or City Planning Commission after the date upon which the current owner in a familial line acquired the subject property. An owner of a property which he believes is exempt from regulation by virtue of this Section shall submit a claim to the City or official designated by the City to receive such claims in the following manner:

(A) A claim for exemption may be filed with the City's designee. Such claims shall not constitute applications for land-use permits. The claimant shall bear the burden of demonstrating that applicant's claim of exemption meets the requirements of this section. The applicant shall meet this burden by presenting the following:

(1) A request for exemption in writing including a description of the property in question, identified by subdivision lot and block, if applicable, or township, range, parcel and tax lot number;

(2) A list of all current owners of the property, along with their names and addresses. In the case of a corporate owner, the address and phone number of the registered agent shall be provided. Included with such list shall be a statement that each of them concurs in the application and its contents. The application must be signed by all owners whose collective interests amount to fee simple title. One owner or other person must be designated as the claimant who shall serve as contact for the purposes of receiving all communication, correspondence and notices pertaining to the application. The statement must be notarized.

(3) A current assessor's map or survey clearly delineating the entire property that is the subject of the claim, together with the street address and assessor's map and lot reference.

(4) A preliminary title report for the subject property disclosing all interests and encumbrances of record. The report shall have been issued no more than 30 days prior to filing the application. In addition, the applicant shall provide a sworn statement indicating any other interests and encumbrances against the property, including but not limited to leases and encroachments, of which the claimant is aware or may have reason to believe exists or indicating that the title report is inclusive of all such claims.

(5) A copy obtained from the City of the legislative enactment or land-use enforcement proceeding which the applicant believes was enacted or enforced following acquisition or inheritance of the subject property by the original member of the familial line.

(6) Copies of all recorded deeds documenting the transfer of property.

(7) Copies of documents, such as birth certificates, baptismal records, marriage licenses, wills, or other document which prove a family relationship among owners of the subject property whose claim of relationship is the basis of the claim for compensation.

(B) A deposit of \$1,500.00 or such other amount as the Council shall establish. Such deposit shall be used to cover the cost associated with the evaluation such claimed. Such deposit shall be not less than the amount required to cover costs associated with the evaluation of such claims. The deposit shall be paid at

the time the claimant initially files. The fees collected from compensation claims shall be deposited into a "Claims Account" which the City shall establish and which shall be used to pay expenses associated with processing of claims. Such deposited funds shall not be used for any purpose other than the administration of the compensation claims system. If at any time a hearings officer or the Council determines that the costs associated with hearing a particular claim will exceed the amount of the deposit paid to date, the hearings officer or the Council may order deposit of additional funds with the City to cover associated costs. A final decision shall not be recorded with the County Clerk for Crook County, Oregon, in a claims proceeding until a claimant has paid any such funds owing.

(C) A claim for compensation after filing shall be reviewed by such official as the Council may designate who shall determine the following:

- (1) whether the claimed is barred;
- (2) whether the claim meets the requirements of this section;
- (3) whether the required deposit has been paid.

(D) The official designated by the Council ("reviewing official") shall determine that all information required in this section has been submitted. Whenever information is found to be missing, the reviewing official shall advise the claimant in writing what material has been omitted, and what material is required in order to begin processing the claim. Claimant shall also be advised that claimant may withdraw his claim in writing within 30 days (if such 30 days shall expire upon a weekend or holiday, the deadline shall be the next regular business day). If claimant withdraws his claim within 30 days, then the unused portion of claimant's deposit shall be returned. If claimant elects not to withdraw his claim, then the deposit paid by claimant shall be held by the City for application toward the deposit in effect at such time as claimant submits the remainder of the required documentation.

(E) Upon determining that the requirements of this Section 8 have been met, the reviewing official shall notify the Council that a claim has been submitted and deemed complete. For purposes of interpreting this ordinance, a claim is deemed "filed" on the date of the initial filing, if the initial filing is subsequently deemed complete or on the date of the amended filing, upon determination that the amended filing is complete. Once claims have been deemed "filed," the City shall issue its final decision within 180 days of filing, provided the appropriate deposit has been paid.

(F) Upon receipt of a "filed" claim from the reviewing official, the Council shall schedule a hearing before the Council or assign the claim to a hearings officer. The Council or the hearings officer shall schedule a hearing on the claim not later than 60 days after the date on which the claim was deemed "filed." Hearings shall be conducted in accordance with the provisions provided for in Section 7, except the final determination of the Council or the hearings officer shall be that the property either is or is not exempt from the land-use regulation claimed, based on family ownership. The Council or the hearings officer shall issue a written decision setting forth the basis of such determination and indicating the enactment or regulation which has been exempted.

(G) Such exemption shall be effective when the decision of the Council or hearings officers shall be filed with the City Planning Director, unless a writ of review shall be applied for, in which case, such decision shall not become final until after final judicial disposition.

(H) Any exemption from regulation which is granted based on this Section shall entitle the owner of the property to use the subject property in a manner consistent with the land-use regulations that were in effect at the time the current owner acquired the property.

(I) Upon final approval of a decision by the Council or a hearings officer, any unused deposit shall be returned to the claimant. A decision is final only when the time provided in this Ordinance for reconsideration or appeal has been exhausted and no opportunity for appeal remains and the final decision has been recorded in the office of the Crook County Clerk.

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Section 9. Timely Consideration.

(A) All proceedings, whether before the Council or an appointed hearings officer, shall be completed within 170 days of the date upon which a complete application is received

(B) On the 170th day after a claim has been filed, if the claimant has not yet received a final determination from the Council or a hearings officer, the claimant may submit a petition to City Council through the City's manager for a final decision regarding whether the enactment or enforcement of a land-use regulation still applies to the property or properties which are the subject of his claim. Upon receipt of such a claim, the Council shall within ten days of receipt of such claim hear the petition and issue a final decision, but nothing herein shall require Council to grant compensation or to waive an enactment or enforcement of a land-use regulation.

(C) The burden of proof remains with the claimant throughout the proceedings to show that the claimant has experienced the alleged reduction in value of claimant's property as a result of an enactment or enforcement of a land-use regulation. Failure of the applicant to submit evidence or fees as required by this ordinance is deemed a failure to meet the burden of proof and may result in denial by the Council of claimant's application. Upon judicial review, such failure may be deemed a failure by the claimant to exhaust his available administrative remedies and may therefore be grounds for dismissal of the claim.

Section 10. Land-use Authority Retained.

(A) Nothing herein shall be construed to repeal or modify those laws and regulations of the State of Oregon or the City relating to land-use. An applicant who applies for compensation and is granted a waiver of an enactment or land-use enforcement in lieu of compensation is not exempt from land-use regulations, but an enactment or land-use regulation which has been waived allowing a particular use by a particular applicant and recorded against a particular property shall not be applied as a condition of approval in a subsequent land-use proceeding filed by that applicant to undertake that use upon that property.

(B) A property which has been improved by an owner who has obtained a waiver allowing a use which would not otherwise have been allowed due to an enactment or enforcement of a land-use regulation may be transferred to a new owner, but this privilege shall not be construed to create authority to transfer the right to improve to a new owner.

Section 11. Transfer of Waivers.

Waivers of enactments or land-use regulations, when granted in lieu of compensation, are not transferable to other properties. A waiver properly recorded in the deed records of Crook County survives the sale or transfer of a property to a new ownership. The right to obtain a waiver does not survive the sale or transfer of property if an application for waiver was not made, awarded, and recorded by the owner who was eligible to obtain such waiver; however, a use shall not be deemed non-conforming so long as any current owner who was also an owner at the time a waiver was granted remains an owner of the subject property.

Section 12. Effective date of land-use decisions.

For purposes of interpreting this ordinance, a land-use decision becomes final when signed by the City Planning Director, Planning Commission Chair, Mayor, or council representative. If multiple land-use decisions were signed as a result of appeals, then the latest proceeding in the matter shall be considered the final decision.

Section 13. Appointment and compensation of hearings officer(s).

At any time following passage of this ordinance, the Council may appoint as hearings officers one or more persons whom the Council deems knowledgeable in matters of law, local government or the land-use regulations of the state of Oregon. Hearings officers shall serve at the pleasure of the City. Cases shall

be assigned to hearings officers by the Council. A hearings officer shall be compensated on a "lump sum basis" with a fee to be determined by the Council.

Section 14. Application of Law.

This measure (including any future amendments thereto) shall be applied in accordance with the standards set forth in the ordinance and subsequent amendments at the time of filing of a claim except as otherwise provided by judicial decree or enactment of legislation by the General Assembly or the People of Oregon

Section 15. Severability.

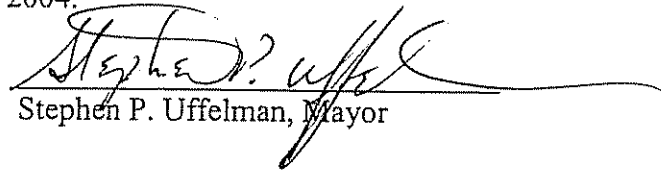
No provision of this ordinance shall be applied if such provision is determined by the Council or by a court of competent jurisdiction to be in conflict with the Constitution or laws of the State of Oregon. The provisions of this ordinance are severable, and if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this ordinance.

Section 16. Emergency declared.

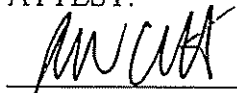
This ordinance being necessary to comply with the requirements of Ballot Measure 37 (submitted to the people in the General Election of 2004), the provisions of which take effect on December 2, 2004, an emergency is hereby declared to exist, and it shall take effect December 2, 2004 unless stayed by order of a court of competent jurisdiction.

Approved by the Council this 23rd day of November, 2004.

Signed by the Mayor this 23rd day of November, 2004.


Stephen P. Uffelman, Mayor

ATTEST:



Robb Corbett,
City Manager/City Recorder