

ORDINANCE NO. \_\_\_\_\_  
0-09-13

An ordinance of the City of Gainesville, Florida, relating to right-of-way obstructions and street closures; stating legislative findings, amending Article III of Chapter 23 of the Code of Ordinances; providing for permits and requirements for obstructions and street closures; providing additional regulations for cranes, hoists and other mechanical apparatus; providing exemptions; renumbering § 23-36 relating to obstructing streets; renumbering § 23-38 relating to trees and waste; providing penalties; renumbering, transferring and amending § 19-95 relating to vendors' stands; renumbering and transferring § 23-42 to a new Article in Chapter 26 relating to parades and assemblies on streets; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**WHEREAS**, obstructions in the right-of-way present a threat to public health, safety, and welfare by creating dangerous impediments to vehicular and pedestrian traffic; and

**WHEREAS**, the City Commission finds that obstructions of streets and other rights-of-way occur at a time and without notice to the City; and

**WHEREAS**, such unregulated obstructions can create unnecessary risk and liability for the City and the public treasury; and

**WHEREAS**, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

1           **WHEREAS**, the Public Hearings were held pursuant to the published notice  
2 described at which hearings the parties in interest and all others had an opportunity to be  
3 and were, in fact, heard.

4           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**  
5 **OF THE CITY OF GAINESVILLE, FLORIDA:**

6  
7           **Section 1.** Findings. The City Commission adopts the foregoing findings.

8           **Section 2.** Article III of Chapter 23, consisting of Sections 23-36 through 23-43  
9 of the Code of Ordinances of the City of Gainesville are amended and renumbered, and  
10 new Sections are created and added to the Code of Ordinances to read as follows:

11 **ARTICLE III. ENCROACHMENTS AND OBSTRUCTIONS.**

12 **Sec. 23-36. Definitions.**

13 Right-of-way means public ways, public highways, streets, alleys, sidewalks,  
14 thoroughfares, medians, or walkways.

15 Site Plan means a graphic depiction of the work location and proposed project. The level  
16 of detail required will be commensurate with the nature and extent of the work, subject to  
17 acceptance by the Public Works Director or designee.

18 Emergency Maintenance means work on a utility infrastructure necessitated by an  
19 unforeseen blockage, severing, dislocation, or other similar event that interrupts service.

20 Obstruct means to impede, block, hinder, stifle, retard, restrain, interfere, or intermeddle  
21 with movement of vehicular or pedestrian traffic.

22 **Sec. 23-37. Permits.**

23 Any person, corporation, public agency, or other entity not exempt from this section that  
24 obstructs any right-of-way in the City of Gainesville, or whose actions temporarily will

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1 obstruct the general movement of vehicular or pedestrian traffic, must first obtain a  
2 permit from the Public Works Department.

3 **Sec. 23-38. Permit Requirements.**

4 Except as made exempt by Sec. 23-40 below, the Public Works Department shall issue  
5 permits for temporary right-of-way obstructions no later than five business days after  
6 receiving a completed application, provided the following requirements are met:

7 (1) The applicant shall submit a Site Plan and maintenance-of-traffic (MOT) plan  
8 in compliance with the requirements of The Federal Highway Administration  
9 and The Florida Department of Transportation. The Site Plan shall indicate the  
10 exact location of the right-of-way to be obstructed, the estimated duration of  
11 the obstruction, the safety measures that will be used to protect the public  
12 health and safety, and the reason for the obstruction. Where excavations  
13 and/or repairs are made in any hard-surfaced or brick paved streets, all  
14 excavations may be done by the city at its discretion, at the sole cost and  
15 expense of the applicant.

16 (2) The applicant must fully and completely comply with Florida Statutes Chapter  
17 556 as may be amended from time to time.

18 (3) The applicant must provide the phone number for an emergency contact who  
19 will be available 24 hours a day, if the work is anticipated to last longer than  
20 one day.

21 (4) The Public Works Director may establish conditions in the permit to protect  
22 public health and/or safety.

- 1           (5) Before issuing a permit, the Public Works Director shall inform the  
2           Gainesville Police Department and Gainesville Fire Rescue Department of the  
3           proposed obstruction. The Public Works Director shall deny the permit if  
4           either of those agencies determines the obstruction will be a danger to public  
5           health and/or safety.
- 6           (6) If the obstruction is within or upon the right-of-way, or over and upon public  
7           infrastructure, or if any excavation is made within the right-of-way, then the  
8           applicant shall post a cash deposit with the Finance Director or, surety bond or  
9           letter of credit in favor of the City, and agree to restore the right-of-way to the  
10          same or better condition that existed when the permit was issued, and to pay  
11          for any damage to public property and /or for trash and debris removal to be  
12          performed by the applicant. The Public Works Director shall determine the  
13          deposit amount, based upon the nature and extent of the work to be performed  
14          within the right-of-way. The deposit shall be used by the City only in the  
15          event the applicant fails to repair damage and/or remove trash and debris  
16          resulting from the activity. The City shall return the deposit no later than ten  
17          days after notice to City of job completion unless there is damage to City  
18          property or other costs incurred by the City such as but not limited to relining  
19          the right-of-way to the same or better condition that existed prior to the  
20          issuance of the permit. This requirement does not apply to public agencies.
- 21          (7) If metered parking spaces will be obstructed, the applicant shall pay a fee, at  
22          the time of application, that the Public Works Director determines will

1           compensate the City for the lost parking revenue. This requirement does not  
2           apply to public agencies.

3           (8) The permit shall become null and void, upon notice to the applicant, if the  
4           applicant fails to abide by any of the above requirements or violates any  
5           conditions of the permit

6           (9) The permit may be revoked by the City if there is no activity performed by the  
7           applicant at the location specified in the Site Plan for seven consecutive days  
8           upon providing the applicant with written notice. Such notice shall be  
9           provided no later than twenty four hours after the seventh day of inactivity.

10          (10) The applicant, excluding public agencies, shall provide proof of insurance  
11          coverage, as outlined below, paid for by the applicant:

12           a. Commercial general liability insurance in the amount of at least  
13           \$500,000 per occurrence for bodily injury and property damage for  
14           construction activities on City property. The policy must name the  
15           City of Gainesville as additional insured, and an endorsement must be  
16           issued as part of the policy reflecting this requirement.

17           b. Policies must be issued by companies authorized to do business in the  
18           State of Florida and must be rated at least A- and have a size category  
19           rating of VI or higher as per Best's Key Rating Guide, latest edition.

20           c. The applicant must give the City no less than 30 days written notice  
21           prior to any cancellation, non-renewal, or any material change in a  
22           continuing policy.

- 1 d. The City's Risk Management Director is authorized to lower the  
2 amount of general liability insurance required, if the applicant can  
3 show that the above amount is excessive for the particular activity.

4 **Sec. 23-39. Additional Regulation of cranes, hoists, and other mechanical**  
5 **apparatus.**

- 6 (1) The use of cranes, hoists, and other mechanical apparatus within the right-of-  
7 way are subject to the following additional conditions and restrictions, in  
8 addition to the other requirements of this Section:

- 9 a. The maximum duration for such apparatus to operate or be maintained in a  
10 right-of-way shall be 15 days, except as authorized by the City permit.  
11 b. Full-tracked vehicles, including but not limited to bulldozers and  
12 skidsteers, shall not be off-loaded, on-loaded, walked, or operated in a  
13 paved City right-of-way.  
14 c. Fixed-tower cranes shall be permitted in the right-of-way, subject to the  
15 following conditions:  
16 i. Approval by the Public Works Director, upon finding that no  
17 suitable alternative exists;  
18 ii. Submission of sufficient plans and specifications to ensure that  
19 both the crane and its foundation are adequate, subject to approval  
20 by the Public Works Director.

21 **Sec. 23-40. Exemptions.**

22 The requirements of Sections 23-37, 23-38, and 23-39 shall not apply to:

- (1) parades, filming, news racks, sidewalk cafes, special events, and any other person, corporation, public agency, or other entity that obstructs a right-of-way pursuant to another City permit that authorizes the obstruction within the right-of-way;
- (2) right-of-way obstructions anticipated to last for less than one hour;
- (3) right-of-way obstructions made by any person, corporation, public agency, or other entity in response to a natural disaster, man-made disaster, or similar emergency.
- (4) right-of-way obstructions made by any public or private utility company performing Emergency Maintenance. Utility companies exempted under this subsection shall adhere to all federal, state, and local safety requirements imposed by law in addition to industry standards and shall notify the Public Works Department in the event an Emergency Maintenance project lasts longer than a twenty four hour period. The Public Works Department shall be notified in the event the emergency work results in a disruption of pavement, sidewalks, hardscape, or planted landscaping.
- (5) right-of-way obstructions made by the City, its agents, or contractors performing work on behalf of the City, unless the Public Works Department notifies the City's agent or contractor that a written permit is required due to past performance. The Public Works Department shall be notified in the event of a disruption of pavement, sidewalks, hardscape, or planted landscaping.

~~Sec. 23-36.~~ **Sec. 23-41. Obstructing streets, generally; digging holes, etc.**

It shall be unlawful for any person to place or construct any fence or building or other obstruction upon or over, or otherwise obstruct, all or any part of any street, avenue,

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1 alley, lane or sidewalk, or other public ground of the city, or to dig any hole in any street,  
2 sidewalk or other public highway or grounds of the city, without the ~~written consent of~~  
3 ~~the city manager permit from the public works department.~~

4 ~~Sec. 23-38.~~Sec. 23-42. **Large tree limbs, stumps, industrial wastes, etc.**

5 Large tree limbs, tree butts, stumps, logs, plaster, earth, construction debris, industrial  
6 waste or other matter in bulk shall not be classed as trash and no person shall place or  
7 cause the same to be placed in the streets of the city or along the parkways adjacent to the  
8 street.

9 **Sec. 23-43. Abatement and removal required.**

10 All encroachments or obstructions on any public street of the city are hereby declared to  
11 be nuisances and shall be abated and removed in accordance with law.

12 **Sec. 23-44. Penalties.**

13 Any person who violates any provision of this article shall be subject to punishment as  
14 provided in Section 1-9 of this Code.

15 ~~Sec. 23-39. Excavations in streets.~~

16 ~~(a) No excavations shall be made in any of the streets of the city for the purpose of~~  
17 ~~laying gas, water or sewer pipes therein or for any other purpose, until the plans therefor~~  
18 ~~have been submitted to and approved by the city manager.~~

19 ~~(b) Where the excavations are to be made in any hard surfaced or brick paved streets,~~  
20 ~~all excavations and replacements of surfacing material or paving may be done by the city~~  
21 ~~at its discretion at the cost of the person desiring to lay the piping or of doing other work~~  
22 ~~therein. The city manager shall make an estimate of the cost of the work before the same~~  
23 ~~is done and in all cases the person desiring the doing of the work shall deposit with the~~

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1 director of finance the amount of money necessary to cover the estimated cost before the  
2 performance of the work shall be commenced. Upon the completion of the work the city  
3 manager shall file with the director of finance an itemized statement of the cost of the  
4 work and where the same is less than the amount deposited therefor, the balance shall be  
5 returned to the person paying the same.

6 **~~Sec. 23-40. Building materials.~~**

7 Building material for buildings in the process of construction may be deposited on the  
8 streets of the city if a permit is first obtained from the city manager and if it is placed in  
9 such a manner as not to prevent the passage of vehicles. If the material obstructs the  
10 passage of vehicles it shall be the duty of the chief of police or any police officer to  
11 remove the same at the cost of the owner.

12 **~~Sec. 23-41. Vendors' stands.~~**

13 It shall be unlawful for any person to display, keep or maintain any stand, article or item  
14 of personal property, whether for sale, advertising or other purpose, on any of the streets  
15 or sidewalks of the city, or within 50 feet of the main entrance to any public building in  
16 the city during normal operating hours for that building, without first obtaining a permit  
17 from the city manager. This section does not apply to a vending booth properly permitted  
18 under chapter 19 of this Code.

19 **~~Sec. 23-42. Congregating on streets and sidewalks.~~**

20 ~~(a) Permit required.~~ It shall be unlawful for persons to assemble or congregate in  
21 crowds in such numbers as to block the use of any sidewalk or street of the city without a  
22 permit from the city manager or designee, issued pursuant to this section.

~~(b) Permit application.~~ At least ten days prior to the date for which a permit is requested, an application shall be filed with the city manager. This time limit may be shortened to as little as two business days by the city manager or his/her designee, based upon proof that, through no fault of the applicant, the timing of the event is based on an unexpected occurrence related to the purpose of the event, the application was submitted as soon as practicable and the event or activity for which the permit is filed will be rendered impossible or substantially ineffective if the event is delayed. The application shall include or be accompanied by the following:

~~(1) Complete information as to the type of event or activity planned, the date and time, the expected number of participants, the expected duration, and the desired location or route, along with any factors particularly affecting the choice of location or route; and~~

~~(2) A fee to cover the cost of processing the application in accordance with the schedule set out in Appendix A.~~

~~(c) Granting or denial of permit.~~

~~(1) Granting of permit; time; considerations.~~ The city manager or designee shall grant the requested permit within five business days of receipt of the application, or within one business day of receipt of an application asking for waiver of the ten day prior notice requirement, if the event or activity for which it is requested:

~~a. Will not unreasonably interfere with the flow of vehicular or pedestrian traffic, such as when alternative routes for such traffic are unavailable or impractical;~~

~~b. Will not unreasonably deny access to any properties or areas of the city by either vehicular or pedestrian traffic;~~

1 ~~e. Will not cause imminent danger or health hazard to any person and will not damage~~  
2 ~~any public or private property; and~~

3 ~~d. Will not create an unreasonable demand upon the city's emergency services personnel~~  
4 ~~and equipment, so as to cause potential deficiencies in such services.~~

5 ~~(2) Use of state or federal road. If the permit includes the closure of one or more state~~  
6 ~~or federal roads, the city manager or designee shall send the necessary paperwork to the~~  
7 ~~state department of transportation within five days of receipt of the application, or within~~  
8 ~~one business day of receipt of an application requesting a waiver of the ten-day~~  
9 ~~requirement.~~

10 ~~(3) Denial of permit. If the city manager or designee finds the planned event or activity~~  
11 ~~violates any of the above conditions, he or she shall inform the applicant that the permit~~  
12 ~~will not be granted and request the city attorney apply to the circuit court for Alachua~~  
13 ~~County for an order enjoining the applicant and other interested persons from conducting~~  
14 ~~the planned event or activity.~~

15 ~~(d) Permit conditions. In granting a permit, the city manager or his/her designee shall~~  
16 ~~specifically limit same as to date and time, location, and duration. In addition, the city~~  
17 ~~manager or his/her designee may attach conditions to the validity of the permit if such~~  
18 ~~conditions are, in his/her opinion, reasonably necessary for the event or activity to meet~~  
19 ~~the criteria specified in the preceding subsection (c). Such conditions may include, but~~  
20 ~~are not limited to:~~

21 ~~(1) The conduct of all or any part of the event or activity at a location or on a route,~~  
22 ~~either public or private, other than the location or route requested;~~

23 ~~(2) A change in the date, time, or duration from that requested;~~

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1 ~~(3) The barricading of street intersections and the provision of identified monitors at~~  
2 ~~such barricades;~~

3 ~~(4) The posting of bond, cash deposit, or other security, not to exceed \$500.00, to cover~~  
4 ~~any damage to public property and the cost of extraordinary cleaning or maintenance~~  
5 ~~expenses caused by the conduct of the event or activity on public property; and~~

6 ~~(5) Prepayment and damage deposits for any city equipment rented or used in~~  
7 ~~connection with the event or activity and city services required therefor.~~

8 The applicant may petition the circuit court of Alachua County for review of the  
9 conditions placed on the permit. The court shall hear the appeal de novo without a jury,  
10 receive evidence and based upon the evidence presented shall make findings and order  
11 that the permit be granted either upon the terms requested or conditions stated by the  
12 court, or enjoin the holding of the event or activity if there is a reasonable likelihood that  
13 it will substantially harm the public health or safety and this cannot be avoided by the  
14 imposition of conditions on the permit.

15 ~~(e) *City services and equipment; cost.* If any city services are reasonably necessary for~~  
16 ~~the conduct of the event or activity, such as police officers to redirect traffic (over the~~  
17 ~~number of officers who would normally be on duty and available in the area) or utilities~~  
18 ~~service, the city manager shall require payment by the applicant for such services. The~~  
19 ~~city manager may allow the use of any city equipment for any such event or activity, at a~~  
20 ~~reasonable rental therefor. For any such activity or event in which the city officially~~  
21 ~~participates, and for others when directed by the city commission, such costs and rents for~~  
22 ~~services and equipment shall be waived.~~

~~(f) *Revocation of permit.* Once a permit has been issued, it may be revoked by the city manager or designee for any violation of the terms and conditions thereof. Any permit may also be revoked by the city manager or designee, or by any police officer on the scene, at any time that the event or activity permitted becomes, or creates a condition, dangerous to the health or safety of any person or otherwise fails to meet the criteria specified in subsection (c) above. At any time that a permit is revoked during the event or activity for which the permit was issued, a police officer shall announce the fact of the revocation to persons assembled for the event or activity.~~

~~(g) *Dispersal of persons.* Persons assembling or congregating in violation of this section, either without a permit or after a permit has been revoked, shall disperse after being ordered to do so by any police officer. Failure to so disperse shall also be a violation of this section.~~

**Section 3.** Section 23-41 of the Code of Ordinances is renumbered as § 19-95 of the Code, and amended to read:

## CHAPTER 19

### ~~Sec. 23-41.~~ Sec. 19-95 Vendors' stands.

It shall be unlawful for any person to display, keep or maintain any stand, article or item of personal property, whether for sale, advertising or other purpose, on any of the streets or sidewalks of the city, or within 50 feet of the main entrance to any public building in the city during normal operating hours for that building, without first obtaining a permit from the city manager. This section does not apply to a vending booth properly permitted under this chapter 19 of this Code.

Section 4. Section 23-42 of the Code of Ordinances is renumbered as Section 26-189 of the Code of Ordinances, to read:

## CHAPTER 26

### ARTICLE VI. PARADES AND ASSEMBLIES ON STREETS

#### ~~Sec. 23-42.~~Sec. 26-189. Congregating on streets and sidewalks.

(a) *Permit required.* It shall be unlawful for persons to assemble or congregate in crowds in such numbers as to block the use of any sidewalk or street of the city without a permit from the city manager or designee, issued pursuant to this section.

(b) *Permit application.* At least ten days prior to the date for which a permit is requested, an application shall be filed with the city manager. This time limit may be shortened to as little as two business days by the city manager or his/her designee, based upon proof that, through no fault of the applicant, the timing of the event is based on an unexpected occurrence related to the purpose of the event, the application was submitted as soon as practicable and the event or activity for which the permit is filed will be rendered impossible or substantially ineffective if the event is delayed. The application shall include or be accompanied by the following:

(1) Complete information as to the type of event or activity planned, the date and time, the expected number of participants, the expected duration, and the desired location or route, along with any factors particularly affecting the choice of location or route; and

(2) A fee to cover the cost of processing the application in accordance with the schedule set out in Appendix A.

(c) *Granting or denial of permit.*

(1) *Granting of permit; time; considerations.* The city manager or designee shall grant the requested permit within five business days of receipt of the application, or within one business day of receipt of an application asking for waiver of the ten-day prior notice requirement, if the event or activity for which it is requested:

a. Will not unreasonably interfere with the flow of vehicular or pedestrian traffic, such as when alternative routes for such traffic are unavailable or impractical;

b. Will not unreasonably deny access to any properties or areas of the city by either vehicular or pedestrian traffic;

c. Will not cause imminent danger or health hazard to any person and will not damage any public or private property; and

d. Will not create an unreasonable demand upon the city's emergency services personnel and equipment, so as to cause potential deficiencies in such services.

(2) *Use of state or federal road.* If the permit includes the closure of one or more state or federal roads, the city manager or designee shall send the necessary paperwork to the state department of transportation within five days of receipt of the application, or within one business day of receipt of an application requesting a waiver of the ten-day requirement.

(3) *Denial of permit.* If the city manager or designee finds the planned event or activity violates any of the above conditions, he or she shall inform the applicant that the permit will not be granted and request the city attorney apply to the circuit court for Alachua County for an order enjoining the applicant and other interested persons from conducting the planned event or activity.

(d) *Permit conditions.* In granting a permit, the city manager or his/her designee shall specifically limit same as to date and time, location, and duration. In addition, the city manager or his/her designee may attach conditions to the validity of the permit if such conditions are, in his/her opinion, reasonably necessary for the event or activity to meet the criteria specified in the preceding subsection (c). Such conditions may include, but are not limited to:

- (1) The conduct of all or any part of the event or activity at a location or on a route, either public or private, other than the location or route requested;
- (2) A change in the date, time, or duration from that requested;
- (3) The barricading of street intersections and the provision of identified monitors at such barricades;
- (4) The posting of bond, cash deposit, or other security, not to exceed \$500.00, to cover any damage to public property and the cost of extraordinary cleaning or maintenance expenses caused by the conduct of the event or activity on public property; and
- (5) Prepayment and damage deposits for any city equipment rented or used in connection with the event or activity and city services required therefor.

The applicant may petition the circuit court of Alachua County for review of the conditions placed on the permit. The court shall hear the appeal de novo without a jury, receive evidence and based upon the evidence presented shall make findings and order that the permit be granted either upon the terms requested or conditions stated by the court, or enjoin the holding of the event or activity if there is a reasonable likelihood that it will substantially harm the public health or safety and this cannot be avoided by the imposition of conditions on the permit.

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1 (e) *City services and equipment; cost.* If any city services are reasonably necessary for  
2 the conduct of the event or activity, such as police officers to redirect traffic (over the  
3 number of officers who would normally be on duty and available in the area) or utilities  
4 service, the city manager shall require payment by the applicant for such services. The  
5 city manager may allow the use of any city equipment for any such event or activity, at a  
6 reasonable rental therefor. For any such activity or event in which the city officially  
7 participates, and for others when directed by the city commission, such costs and rents for  
8 services and equipment shall be waived.

9 (f) *Revocation of permit.* Once a permit has been issued, it may be revoked by the city  
10 manager or designee for any violation of the terms and conditions thereof. Any permit  
11 may also be revoked by the city manager or designee, or by any police officer on the  
12 scene, at any time that the event or activity permitted becomes, or creates a condition,  
13 dangerous to the health or safety of any person or otherwise fails to meet the criteria  
14 specified in subsection (c) above. At any time that a permit is revoked during the event or  
15 activity for which the permit was issued, a police officer shall announce the fact of the  
16 revocation to persons assembled for the event or activity.

17 (g) *Dispersal of persons.* Persons assembling or congregating in violation of this  
18 section, either without a permit or after a permit has been revoked, shall disperse after  
19 being ordered to do so by any police officer. Failure to so disperse shall also be a  
20 violation of this section.

21 **Section 5.** It is the intention of the City Commission that the provisions of  
22 Sections 2 thru 4 of this ordinance shall become and be made a part of the Code of  
23 Ordinances of the City of Gainesville, Florida, and that the sections and paragraphs of

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this ordinance may be renumbered or relettered in order to accomplish such intentions.

**Section 6.** If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

**Section 7.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

**Section 8.** This ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PEGEEN HANRAHAN  
MAYOR

ATTEST:

Approved as to form and legality

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
MARION J. RADSON  
CITY ATTORNEY

This Ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2009.

This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2009.