

## **ORDINANCE NO. 21-001**

### **Ordinance Of The City Council Of The City Of Emeryville Amending Chapter 13, “Dockless Shared Mobility Systems,” to Title 4 Of The Emeryville Municipal Code To Establish Regulations And New Permits To Operate Dockless Shared Mobility Systems In The Public Right Of Way**

**WHEREAS**, the City of Emeryville recognizes the practice of mobility sharing as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse gas emissions, and creates more affordable mobility options for all of Emeryville’s residents; and

**WHEREAS**, Dockless Shared Mobility services, which do not require a docking station to operate and may be electric-assist Devices, have the potential to offer the same benefits as bike sharing, and may offer additional mobility benefits for the public, including larger, more equitable service areas and accommodation for riders with a greater range of physical abilities; and

**WHEREAS**, the City’s Climate Action Plan (Resolution No. 16-166) calls for a 40% reduction in greenhouse gas emissions from 2004 levels by 2030; and

**WHEREAS**, unregulated, unpermitted shared-use Devices proliferating in the Emeryville community can cause problems including impeding the public right of way, facilitating improper use and placement, and creating tripping hazards; and

**WHEREAS**, effective and responsible regulation can help ensure that these new services can provide improved mobility options for the public, while also incentivizing appropriate placement and responsible behavior, local jobs, and accountability; and

**WHEREAS**, the City Council of the City of Emeryville adopted Ordinance 19-005, which added Chapter 13, “Dockless Shared Mobility Systems,” to Title 4 of the Emeryville Municipal Code, which established regulations for operating a Dockless Shared Mobility System in the City of Emeryville; and

**WHEREAS**, the City Council of the City of Emeryville wishes to amend Chapter 13 of Title 4 to require locking mechanisms for devices and to address the timeframe in which Operators must address complaints.

**NOW, THEREFORE, THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

#### **SECTION ONE. PURPOSE AND INTENT**

Chapter 13 of Title 4 of the Emeryville Municipal Code is hereby amended as follows. Additions are in double underline text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged.

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The purpose and intent of this Ordinance is to adopt amendments to Chapter 13, "Dockless Shared Mobility Systems," to Title 4 of the Emeryville Municipal Code to provide for effective and responsible regulation of Dockless Shared Mobility Devices and Systems.

## **SECTION TWO. AMENDING CHAPTER 13 TO TITLE 4 OF THE EMERYVILLE MUNICIPAL CODE**

Chapter 13 of Title 4 of the Emeryville Municipal Code is hereby amended to read as follows:

### **Chapter 13. Dockless Shared Mobility Systems**

#### **4-13.01. Definitions**

- (a) "City Manager" means the City Manager or his or her designee.
- (b) "Deployment" means the placement of Devices by the Dockless Shared Mobility System Operator.
- (c) "Dockless Shared Mobility Device," or "Device," means a device for short-term rental for point to point trips where, by design of the Dockless Shared Mobility Operator, the device is intended to remain in the public right of way, even when not being rented, and is not required to be docked in a designated docking station for rental. "Devices" include electric-assist scooters and dockless bicycles.
- (d) "Dockless Shared Mobility System," or "System," means a system providing Devices as defined above.
- (e) "Dockless Shared Mobility System Operator" or "Operator" is an entity that owns and/or operates a Dockless Shared Mobility System in the public right of way. The term includes any employee, agent or independent contractor hired or retained by the Operator.
- (f) "Dockless Shared Mobility User, or "User," is any person that uses, rents, or rides a Dockless Shared Mobility Device or is a customer of the Operator.
- (g) "Furnishing Zone" is the portion of the sidewalk between the curb and the Thoroughway Zone in which street furniture and amenities, such as lighting, benches, utility poles, tree wells, and bicycle parking are provided.

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- (h) "Roadway" is defined in section 530 of the California Vehicle Code or any successor statute.
- (i) "Locking Mechanism" is a locking mechanism integrated into or on the Device which cannot be removed using simple tools and which securely holds the Device upright when parked at a bike rack or other fixed object.
- (j) "Throughway Zone" is the portion of the sidewalk for pedestrian travel.

#### **4-13.02. Dockless Shared Mobility System Operator Permits.**

- (a) The City Manager is authorized to issue System Operator Permits to Operators who submit applications and fulfill all requirements of this Chapter, including payment of all fees, fines, and penalties to operate such Systems.
- (b) A Permit issued pursuant to this Chapter shall expire on December 31 of each year. Operators must renew such Permits annually to continue operation.
- (c) The City Manager may promulgate additional regulations governing Systems, including but not limited to designating locations for dedicated locations for parking Devices in the public right of way.

#### **4-13.03. Dockless Shared Mobility System Operator Requirements.**

- (a) All Operators seeking to operate a System within the City must obtain a Dockless Shared Mobility System Permit ("Permit") pursuant to this Chapter.
- (b) Operators seeking a Permit or renewal of an existing Permit shall obtain a business license tax certificate from the Finance Department. Failure to maintain a business tax certificate or pay delinquent business license tax penalties or fees constitutes a basis for revocation or non-renewal of a Permit.
- (c) Applicants shall submit a Permit application on a form provided by City and shall pay any applicable application fee.
- (d) Prior to Permit issuance, Permit applicant shall provide to the City for inspection one example Device of each model it intends to deploy. After a Permit is issued, Operators shall not introduce new models without prior inspection by the City. Devices must be made available for compliance audits and enforcement actions upon request.

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- (e) Prior to Permit issuance, Permit applicant shall provide proof that each of its proposed models of Device comply with all federal, state, and local laws. Compliance with such laws shall include, without limitation, U.S.C., Title 15 Section 2052 (a) (1) and 2085, C.F.R. 1500.18(a)(12) and part 1512 of Title 16, C.F.R., and Article 4, sections 21200-21213, and Article 5, section 407.5 and sections 21220-21235 of the California Vehicle Code.
- (f) The City Manager may impose conditions as part of Permit issuance, and may deny a Permit to applicants who do not meet program requirements.
- (g) Operators seeking to renew a Permit shall follow the same procedures as applying for a new Permit.
- (h) Systems shall have the following information readily available for Users:
  - 1. Provide a single point of contact (phone number and email) customer service line, available 24 hours, seven days a week, for complaints regarding improper parking; and display that contact clearly on each Device, along with a unique identifying number; and
  - 2. Address complaints within three hours of receipt ~~during business hours (Monday-Friday, 9 am-6 pm) and six hours on weekends and after business hours~~ at all times; and
  - 3. Issue a “ticket number” for each complaint to both the City and the person who reported the issue; and
  - 4. Provide a response to the complainant when a complaint is closed; and
  - 5. Provide sufficient operations and maintenance staff to respond in Emeryville within three hours to address issues and remove improperly parked Devices.
- (i) Communications to Users  
All permitted Operators shall include visible language within the Operator’s mobile and web application that notifies the User that:
  - 1. Users are encouraged to wear helmets.
  - 2. Users must follow all state and local traffic laws, including but not limited to the California Vehicle Code and the Emeryville Municipal Code.
  - 3. Users are not permitted to ride on the sidewalk.
- (j) System Safety  
Dockless Shared Mobility System Operators are responsible for educating Users about safe use of Dockless Shared Mobility Devices, including providing education about state and local laws applicable to riding, operating and depositing Dockless Shared Mobility Devices in the public right of way.
- (k) Federal, State, and Local Law Compliance

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Operators shall comply with all federal, state, and local laws and shall be responsible for Dockless Shared Mobility User compliance with all laws, rules, and regulations governing the use of Dockless Shared Mobility Systems.

- (l) Operator's Devices shall not create excessive or annoying noise in violation of Chapter 13 of Title 5 of the Emeryville Municipal Code.

**4-13.04. Establish Parking and Fleet Size Requirements in Accord with California Vehicle Code Section 21225 (Motorized Scooters).**

- (a) The City Manager may establish parking requirements for Dockless Shared Mobility Devices, and assess each Operator's compliance with those requirements periodically and at Permit renewal. Shared Devices ~~with both "self-locking" technology and those that lock to bike racks may be allowed~~ are required to have Locking Mechanisms.
- (b) Unless otherwise specified, Dockless Shared Mobility Devices ~~may be parked in the Furnishing Zone if one exists, or at the curbside in areas with no Furnishing Zone.~~ must be locked upright to a bike rack or other fixed object, **which shall not include trees**, as long as the Device does not impede access to or use of the right of way. Devices shall not be parked in the Furnishing Zone adjacent to or within:
1. Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
  2. Curb ramps;
  3. Fire hydrant zones;
  4. Roadways,
  5. Loading zones;
  6. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
  7. Locked to street furniture that requires pedestrian access (e.g. benches, parking pay stations, bus shelters, transit information signs, etc.);
  8. Entryways;
  9. Driveways; and
  10. **Handrails.**
- (c) Operators shall inform Users on how to properly park a Device. Operators shall provide a quarterly report to the City on the effectiveness of efforts to enforce proper parking within their mobile application; the report shall include information on the number and description of incidents of improper parking reported to or found by the Operator, the minimum, maximum, and average response time to these incidents, and other data as requested by the City.

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- (d) Devices shall be upright when parked.
- (e) If Operator does not enforce proper parking requirements, the City Manager reserves the right to reduce the number of Shared Mobility Devices allowed under their Permit, or revoke it entirely.
- (f) Any Device that is parked in one location for more than three consecutive days without moving may be removed and taken to a City facility for storage and/or eventual disposal at the expense of the Operator. The City will notify the Operator that a Device has been removed; Operator will have 72 hours to retrieve Device.
- (g) Operators shall promptly remove Devices from the public right of way when they are damaged or their battery has been depleted.
- (h) Operators shall provide a plan to prevent Devices from being mis-placed in bodies of water, including the San Francisco Bay. Operators shall provide for the City's approval their standard operating procedures for retrieval of Devices from bodies of water, along with proof of agreements with any third parties contracted to provide services for scooter removal, such as from areas that require a boat or other specialized equipment.
- (i) Should the City determine that the number of Devices Deployed within the City is creating a public safety impact, the City may cap or reduce the number of Devices each Operator is allowed.
- (j) Operators deploying Devices requiring a driver's license or instructional permit must verify that Users have valid credentials for their use, as required by the California Vehicle Code. This verification may include in-app Driver's License scanning and verification or similar technologies.
- (k) Operators must ensure that if Users' accounts are permitted to be used to rent more than one Device at a time, each Device is used by a person with valid credentials as required by the California Vehicle Code.

#### **4-13.05. Device Specifications.**

- (a) Electric or electric-assist Devices shall not be capable of reaching a top speed greater than 15 miles per hour when operated on a level surface.
- (b) Devices shall have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the Device has stopped.
- (c) Devices shall have clearly visible language that notifies the User that:

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1. Helmets should be worn when operating an electric scooter if over 18 years of age, and helmets must be worn when operating such a Device if under 18 years of age; and
  2. Users shall yield to pedestrians; and
  3. Users must follow all motor-vehicle laws and ordinances in the City of Emeryville; and
  4. "No Riding On Sidewalks" shall be written in minimum 48-point font on the platform or handles of every Device; and
  5. For electric or electric-assist scooters, User must have a valid Driver's License or other State-authorized approval to operate the Device.
- (d) Users must be provided with a clearly visible mechanism, within the Operator's mobile application and a phone number printed on the Device itself, to notify the operator if there is a safety or maintenance issue with the Device. Devices reported as damaged or inoperable must be taken out of service within three hours and remain out of service until repaired.

**4-13.06. Equitable Service Areas and Rebalancing of Dockless Shared Mobility Devices.**

- (a) The Dockless Shared Mobility Permit is only valid for operations within the City public right of way. An Operator shall not restrict use of its Shared Mobility System within certain geographical areas of the City unless approved by the City. Permission to operate the Dockless Shared Mobility System outside the public right of way shall require permission of the property owner(s); the Dockless Shared Mobility Operator shall have a means of communicating to the User when the Device has been operated in non-permitted areas.
- (b) Operator must serve the public right of way in the entire city of Emeryville. An operator shall not restrict use of its System within geographical areas of the city without written permission.
- (c) Devices should be distributed throughout Emeryville. Operators shall provide the City real-time access to data showing the location of all their Devices.
- (d) Operators will closely monitor ridership and adjust Device density and location accordingly to maximize the convenience of the greatest number of riders.
- (e) If charging or servicing of Devices is contracted to third parties, Operators must take steps to prevent conflicts between contractors seeking to charge or service Devices. This may include partnering with local organizations to provide this service, allocating Devices to charging personnel in a coherent way, hiring charging staff directly, or other such mechanisms that remove or reduce the incentive for conflicts.

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#### **4-13.07. Accessibility to Persons Experiencing Disabilities.**

- (a) Operators shall be required to include adaptive Devices for Users experiencing disabilities. The total percentage of adaptive Devices should be based on expected need, performance, and usage.
- (b) If Operator is unable to deploy adaptive Devices at the time of Permit issuance, a plan must be submitted to the City Manager within three months of Permit issuance detailing a timeline for incorporation of shared adaptive Devices into their fleet. This plan shall detail the types and numbers of adaptive Devices that will be made available.
- (c) Mobile apps and other customer interface technology must be fully accessible to persons with disabilities and accessible to screen readers, and must comply with Section 508 of the United States Workforce Rehabilitation Act of 1973.

#### **4-13.08. Affordability.**

- (a) Operators shall offer a discounted membership plan for those with low incomes, equivalent to \$5 for one year of unlimited 30-minute rides for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).
- (b) Operators shall implement a marketing and targeted outreach plan at its own cost, or, at the City Manager's discretion, pay an in-lieu fee to the City to increase awareness of low-income discount options.
- (c) Operators must report quarterly to the City the status of their low-income discount programs, including how many riders have signed up, how many rides have been taken at a discounted rate, and other aspects of the program as requested by City.

#### **4-13.09. Personal Data and Privacy.**

- (a) Operators must clearly communicate to the public and to the City what personal information is being collected about Users, how it is being used, and for how long. The Dockless Shared Mobility Permit shall include a standard reporting form for this information, and the responses should be available on the City's website.
- (b) Operator must employ an electronic payment System that is compliant with the Payment Card Industry Data Security Standards (PCI DSS), and provide proof of compliance.
- (c) Operator must produce a Privacy Policy that complies with the California Online Privacy Protection Act (CalOPPA) and any data protection laws applicable to



minors, and further, expressly limits the collection, storage, or usage of any personally identifiable information to the extent absolutely required to successfully accomplish the provision of the Dockless Shared Mobility System.

#### **4-13.10. System Data and Reports.**

- (a) Operators shall make real-time data available to the City and designated third parties via the data standard developed by the North American Bikeshare Association, known as the “Mobility Data Specification (MDS),” or similar standard as determined by the City.
- (b) Operators must provide quarterly reports to the City on key performance indicators, including, but not limited to, the following:
  - 1. Utilization rates
  - 2. Total trips by day of week and time of day
  - 3. Origins and destinations
  - 4. Routes
  - 5. Trips per Device by day of week, time of day
  - 6. Average trip distance
  - 7. Device maintenance reports including battery life and disposition
  - 8. Incidents of theft and vandalism
  - 9. Number of complaints
  - 10. Call volume, wait time, and call abandonment rates
  - 11. Crash information
  - 12. Payment method information
  - 13. Rebalancing information
  - 14. Outreach activities completed
  - 15. Number of free or discounted helmets distributed
  - 16. Number of Users taking advantage of low-income discount
  - 17. Number of discounted rides taken
  - 18. Number of account suspensions or revocations, including reason for the action.
- (c) Operators must provide reports on a quarterly basis or at other intervals as agreed upon by the Operator and the City.

#### **4-13.11. Community Engagement Process.**

- (a) The City Manager may establish requirements for a community engagement process, including public workshops where Operators co-plan the System with the community and a public forum for Operators to present their proposals directly to, and receive comments from, members of the Emeryville community including residents and members of the business and educational communities. Public

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outreach plans shall be pre-approved by designated City staff, and should include a full list of presentations, activities, and events.

- (b) Operators must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish. A summary of complaints must be submitted to the City at least quarterly.
- (c) Operators must provide methods for both Users and non-Users to suggest Device Deployment locations or prohibited locations, and must report this data to the City at least quarterly.
- (d) Operators shall make available free or discounted helmets to those participating in the discounted membership program through in-person events or through their mobile application.
- (e) Helmets provided to users should be available by mail or equivalent as well as at an accessible physical location.

#### **4-13.12. Revocation or Suspension of Permits.**

- (a) The City Manager may revoke or suspend a Permit, or impose penalties at his or her reasonable discretion for reasons including, but not limited to, the following:
  - 1. A failure to comply with the Emeryville Municipal Code;
  - 2. A failure to comply with the Conditions of the Permit, if any;
  - 3. A violation of the provisions of this Chapter.
  - 4. A determination that the operation of the Shared Mobility service poses a risk to public safety;
  - 5. A determination that the operation of the Shared Mobility service by the Permittee conflicts with the City's obligation to manage the right of way responsibly;
  - 6. A transfer of the Permit to another party without prior written approval by the City;
  - 7. A material misstatement or omission in the Permit application or any other associated document;
  - 8. The Permittee sells or shares confidential and individual User data;
  - 9. The Permittee does not pay required fees, surcharges, or penalties;
  - 10. The Permittee blocks or alters the presentation of any information or denies access to its company application by any City representative authorized to enforce the provisions of the associated Permit and this Chapter, or for the purpose of thwarting or interfering with any City representative's enforcement or oversight of the associated Permit or this Chapter; and
  - 11. Failure by the Users of Devices of specific Permittee to comply with applicable laws and the requirements of this Chapter.

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(b) Appeal of Disapproval, Revocation or Suspension of Permits.

1. Within fifteen (15) days after the City Manager serves notification of disapproval, revocation or suspension of a Permit, an applicant or Permit holder may appeal the action by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
2. The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within thirty (30) days after the receipt of the appeal, unless the City and the applicant/Permit holder agree to a longer time to consider the appeal. The City Clerk shall provide notice of the date, time and place of hearing, at least seven (7) days prior to the date of the hearing.
3. The City Manager shall appoint a Hearing Officer to hear the appeal, determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant/Permit holder and the City Manager shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
4. The Hearing Officer shall issue a written decision within fifteen (15) days after the close of the hearing. The decision of the Hearing Officer shall be final.

**4-13.13. Relationship to City.** In rendering service, hereunder, the Operator shall be and remain an Independent Contractor. It is expressly understood and acknowledged by the parties that any amounts payable hereunder shall be paid in gross amount, without reduction for penalties, taxes, or charges. Operators are responsible for assuming any applicable federal or state withholding taxes, estimated tax payments, or any other fees or expenses whatsoever.

Permits issued under this Chapter are not to be assigned or delegated to a substitute provider, a successor in interest, or a purchaser of the Permit without express written permission from the City.

The City reserves the right to terminate Permits at any time and require the Operator to remove their entire fleet from City streets. An Operator will have 30 days to remove the entire fleet from City streets.

**4-13.14. Non-transferability.** A Permit may not be transferred without prior written approval of the City Manager. Operator shall promptly notify the City of any changes to the Operator's corporate structure or ownership. Failure to do so shall be cause for revocation of the Permit. "Transfer" shall include the sale or other exchange of 50% or more of the ownership or control of a Permittee to a third party.

**4-13.15. Indemnification.** Operator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers

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from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise, settlement, or judgment, and reasonable legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of, in connection with, or which are in any way related to, the City's issuance of or decision to approve a Permit, the process used by the City in making decisions, Operator's participation in the Dockless Shared Mobility System, the Operator's (including its officers, managers, employees, contractors, agents, and volunteers) business conduct and operations, any violation of any laws by the Operator (including its officers, managers, employees, contractors, agents, and volunteers) or its users, or any bodily injury including death or damage to property arising out of or in connection with any use, misuse, placement or misplacement, including but not limited to placement or misplacement resulting in alleged violations of the Americans with Disabilities Act (ADA), of any of the Operator's device or equipment by any person, except such loss or damage which was caused by the sole willful misconduct of the City. Operator will conduct all defenses at its sole cost and expense, and City shall reasonably approve selection of the counsel to represent City as proposed by Operator. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Operator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Operator, its affiliates or other parties are not a limitation upon the obligation of Operator, including without limitation, the amount of indemnification to be provided by Operator. The provisions of this section shall survive the termination of this Agreement.

**4-13.16. Insurance Requirements.** Unless a written waiver is obtained from the City Manager or his or her designee, the Permittee must provide the insurance required in the Permit application.

### **SECTION THREE. CEQA DETERMINATION**

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

### **SECTION FOUR. SEVERABILITY**

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause and phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases

### **SECTION FIVE. CODIFICATION**

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Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five and Six are not codified.

## SECTION SIX. EFFECTIVE DATE AND POSTING

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, February 2, 2021 and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, February 16, 2021, by the following vote:

AYES:	5	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters, Medina, and Patz
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:

*Dianne Martinez*

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MAYOR

ATTEST:

DocuSigned by:

*Sheri Hartz*

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CITY CLERK

APPROVED AS TO FORM:

*Michael Quinn*

CITY ATTORNEY