

PRESCOTT CITY COUNCIL  
REGULAR VOTING MEETING  
TUESDAY, DECEMBER 13, 2011  
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on DECEMBER 13, 2011, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:00 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Reverend Julia McKenna Johnson

Reverend McKenna Johnson gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Blair

Councilman Blair led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

Present	Absent
Mayor Kuykendall	None
Councilman Arnold	
Councilman Blair	
Councilman Carlow	
Councilman Hanna	
Councilman Kuknyo	
Councilman Lamerson	

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

None

**I. CONSENT AGENDA**

**CONSENT ITEMS A - D LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.**

- A. Approval to purchase microwave communication equipment for Water Production Facilities located in Chino Valley from Microwave Networks in the amount of \$13,844.00.
- B. Adoption of Resolution No. 4111-1221 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the Prescott Police Department to enter into a Memorandum of Understanding with Yavapai College Police Department to establish responsibility and authority for the Prescott Regional Communications Center to enter YCPD records in the Arizona Criminal Justice Information System (ACJIS) and the National Crime Information Center (NCIC) per an approved Holder of Record Agreement and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- C. Adoption of Resolution No. 4112-1222 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the Prescott Police Department to enter into a Memorandum of Understanding with Prescott Valley Police Department to establish responsibility and authority for the Prescott Regional Communications Center to enter PVPD records in the Arizona Criminal Justice Information System (ACJIS) and the National Crime Information Center (NCIC) per an approved Holder of Record Agreement and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- D. Approval of the minutes of the November 15, 2011, Joint Special Meeting/Workshop, the November 17, 2011, Special Meeting, and the November 22, 2011, Regular Voting Meeting.

Councilman Kuknyo asked if he should be recused from voting on the minutes since he was not there at the time. Mr. Kidd said that he could. Councilmen Arnold, Carlow and Kuknyo all recused themselves.

**COUNCILMAN BLAIR MOVED TO APPROVE CONSENT AGENDA ITEMS A, B AND C; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.**

**COUNCILMAN BLAIR MOVED TO APPROVE AGENDA ITEM D; SECONDED BY COUNCILMAN LAMERSON; PASSED 4-0 WITH COUNCILMEN ARNOLD, CARLOW AND KUKNYO ABSTAINING.**

## **II. REGULAR AGENDA**

- A. Adoption of Ordinance No. 4820-1220 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting title to real property commonly known as the Pulmonary Foundation property

located at 215 North McCormick Street, and authorizing the Mayor and staff to execute any and all documents to effectuate said purchase.

Chief Martinez noted that escrow closed on October 10, 2011, and the final step was for Council to accept the deed to the property.

Councilman Hanna thanked the Williams Family Trust and the Pulmonary Foundation Property for the great deal. He said it did not cost the City anything.

**COUNCILMAN HANNA MOVED TO ADOPT ORDINANCE NO. 4820-1220; SECONDED BY COUNCILMAN LAMERSON.**

Councilman Lamerson thanked Fred Lindquist for all of his help.

**MOTION PASSED UNANIMOUSLY.**

- B. Adoption of Resolution No. 4114-1224 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, extending the 2005-2010 Water Management Policy, adopting a Water Management Budget for Calendar Year 2012, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Leslie Graser, Water Resource Specialist, noted that as of the end of the month the policy would expire and would be replaced by a long term policy that would include additional water supplies of 1,472 acre feet of treated effluent and 8,067 acre feet of imported supplies from the Big Chino Sub Basin. She said the Long Term Management Policy would be drafted and Council approval would be sought. She noted that it had been waiting in the wings until litigation ceased on the City's assured water supply designation order dated 2009. She said the litigation ended 2011.

She noted the extension of the present water management policy provided guidance for how supplies would be available for allocation. It set forth a calendar year budget of 200 acre feet of alternative water. She noted that they were recharge and recovered surface water and treated effluent. She noted that 160 acre feet would be for market and 40 acre feet for Work Force or affordable housing projects. She said that single family units received 0.35 acre feet per year per unit and multi-family was 0.25 acre feet per year per unit. She said based on the existing policy, non residential was allocated water on the basis of demand. All projects requesting demand greater to or equal to five acre feet per year required approval of a water service agreement by Council.

She referred to the table provided in the packet and said the City was currently operating under the Arizona Department of Water Resources

(ADWR) Assured Water Supply Designation and Order dated 2005. She said the total quantity of alternative water available for allocation to new subdivisions and development was 355.77 acre feet.

She noted that there were three additional water service agreements waiting to go out. Each allocation would reduce the balance. She said the Decision and Order had additional 1,472 acre feet of alternative supplies; it was suggested that the additional acre feet be held until they finished auditing the allocations to date from 1999 to 2010.

She noted that the City was required to submit an annual report to the Arizona Department of Water Resources due on the 31<sup>st</sup> of December which was an accounting of all of the water supplies. She said the City would continue to produce a citizen-friendly version of the report.

Mr. McConnell said the item would extend the plan for another year until the Long Term Management Policy was established. He noted that an acre foot was 325,851 gallons. He said that if they were allocating .35 acre feet for each new residential until, that would be about 100,000 gallons. He said the hard copy of the Water Management Report was available at City Hall or could be read on the web.

Councilman Blair said that he had been on the Water Committee for many years and the policy had worked very well. The growth rate was at three percent. He said he was anxious to see the long term plan and who would be on the committee. He asked if it would be driven by staff or if there would be some Council members as well

Mr. McConnell recommended that water resource people, he and Leslie Graser, draft the report because it was so technical. He noted that explanations would need to be added to that. He said they could have additional discussion with Council and other residents to fully flush out the report.

Councilman Lamerson said the short term should be extended to cover the gap between the time they thought they were going to develop the policy and the reality of the fact that they had not developed the Long Term Water Policy. He said they set out with 1000 acre feet of alternative water and they still had 350 acre feet that had not been distributed. He said that he thought the policy had been working well. He noted that it might take longer than one year to write the policy.

Mr. McConnell said that they were looking at water management and water policy on three levels; The General Plan, Long Term Water Management Policy and Rate Structure. He said he anticipated that it may take up to one and one half years to complete the effort.

Councilman Blair said that the 1000 acre feet in the short term plan took place after the great plat rush and they had used 644 in 12 years which averaged 54 acre feet per year. He said they should not think that they were overspending the kitty when they appointed 200 acre feet for that year. He said the policy was pretty sound.

Mayor Kuykendall said that he thought Mr. McConnell was on target by having the staff create the plan. He said that they had asked the Water Issues Committee to be involved with the entire water allocation. He noted that Councilman Blair had taken former Councilwoman Suttles' place on the water committees and he recommended that the staff work with the existing group.

Kreegan McConnell, Prescott, asked if the item had anything to do with the 2012 Budget regarding arsenic. Mayor Kuykendall said that it had nothing to do with money. He said the arsenic item was coming up.

**COUNCILMAN LAMERSON MOVED TO ADOPT RESOLUTION NO. 4114-1224; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.**

- C. Approval of Professional Services Agreement between Jacobs Engineering Group, Inc., and the City of Prescott acting on behalf of the Central Yavapai Metropolitan Planning Organization in the amount of \$81,321.00 for the Regional Transportation Plan Update.

Mr. McConnell noted that the Central Yavapai Metropolitan Planning Organization (CYMPO) Coordinator, Chris Bridges was in the audience to answer questions. He said the item was on the agenda because Council had a Memorandum of Understanding with CYMPO to perform personnel, purchasing and accounting services. He noted that Yavapai County was presently housing CYMPO. CYMPO had mandated responsibilities from the federal government. He said the region was required to have a CYMPO. He said they were the planning and funding conduit for state and federal funds. If the City did not comply with the mandates, they would not get the federal funds.

He said the region had been fortunate to receive federal and state monies for the widening of State Route 89, the prospective widening of State Route 89 from the airport to North Chino Valley, highway safety improvements and the Fain Road project, to name a few. He said that CYMPO had to do regional studies and plans and received and allocated the funds. He noted that it was in the regions best interest to have a CYMPO. He said that it was a limited regional transportation plan update and it was to align the regional plan with the census 2010 numbers. This

was a two year limited study. He noted that Jacobs Engineering Group did the previous updates and were familiar with the region. There would be personnel working on the project with CYMPO. He said the maximum the City would pay out was \$6,500 as their share of the local match. He said that in-kind costs would be deducted from that, which would be personnel costs.

Councilman Lamerson asked how they knew the City would get the money from the state. Mr. McConnell said that it was an assured funding agreement. He said that there were assurances over the next couple of years, but the money was drying up.

Mayor Kuykendall asked him to identify entities that made up CYMPO and how the funding worked. Mr. McConnell said that 80 percent of the contract was being funded through a federal highways grant through the Arizona Department of Transportation. He said that the remaining 20 percent was a local match, which was really a regional match. He said 20 percent was based on the population. He said the City of Prescott, Town of Prescott Valley, Town of Chino Valley, Town of Dewey-Humboldt and Yavapai County made up the entities participating and the Executive Board Meetings.

Mayor Kuykendall asked if the City of Prescott had a seat at that table. Mr. McConnell said yes.

**COUNCILMAN LAMERSON MOVED TO APPROVE PROFESSIONAL SERVICES AGREEMENT BETWEEN JACOBS ENGINEERING GROUP, INC., AND THE METROPOLITAN PLANNING ORGANIZATION IN THE AMOUNT OF \$81,321.00 FOR THE REGIONAL TRANSPORTATION PLAN; SECONDED BY COUNCILMAN HANNA.**

Mayor Kuykendall said that he read about the MPO and there was something about a 200,000 population that may affect the makeup of MPOs.

Chris Bridges said there had been no clear cut direction. He said the Senate Bill was a two year bill and showed that they could grandfather an MPO. He said the House version was for six years and for less money. He said that they were looking for a year or more of continuing resolutions.

Councilman Lamerson said that 20 percent of the \$80,000 was not a huge issue. He said the issue was if they got stuck with the whole \$81,000 if the feds decided to change their plans. Mr. Bridges said that once the federal funds were obligated they would not be taken away. He said the money was there for that project.

**MOTION PASSED UNANIMOUSLY.**

- D. Approval of Revision of Plat – Lot 3 of the “Shops at the Boulders” to create six commercial parcels located on 5.4 acres at the northwest corner of Gail Gardner and Willow Creek Roads. (RE11-018)

Tom Guice said the item had been approved by Council in 2007. He said the site plan established the access location for the subject property. He noted that in addition to approval of the grading, the approval of the revision of plat would abandon the small portion of the property along Willow Creek Road.

Councilman Arnold said he did a site visit and had traffic related questions. He said that he was interested in the ingress and egress on Gail Gardner Way and the traffic stacking process in the area. He was also interested in the pork chop that was going to be installed on Willow Creek.

Ian Mattingly said his points were valid. The existing intersection on Gail Gardner Way did experience backing from the signal. He said that while the condition would continue and would increase with the increased volume, it was the best location for the site. He noted that he did not have a major concern with the safety at the pork chop.

Jason Gisi said the pork chop was in the best location for the building.

Councilman Hanna said that he understood the point about the congestion and he had never had a problem from Willow Creek turning on to Gail Gardner. He said that if people came out of the north end of the parking lot and went through on Flora, it would alleviate the problem on Willow Creek.

Councilman Kuknyo asked if the traffic flow would have to be revisited before he got final approval. He said that Willow Creek was loaded with many quick rights. He asked if there was anyway they could put a safe haven in there. Mr. Gisi said he did not know how to do that. He noted that Gail Gardner was not going through the property when he purchased it. He said that the retailers loved the congestion.

Councilman Arnold asked if Flora to Rosser was commercial. Mr. Guice said it was on the frontage properties. Mayor Kuykendall said that they should shorten the intervals on the lights to move traffic through there quicker.

**COUNCILMAN HANNA MOVED TO APPROVE REVISION OF PLAT – LOT 3 OF THE “SHOPS AT THE BOULDERS” (RE11-018);**

**SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.**

- E. Adoption of Ordinance No. 4821-1221 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting title to real property known as the Westridge Preserve Property and authorizing the Mayor and staff to execute any and all documents to effectuate said purchase.

Joe Baynes said that on September 27, 2011, Council approved the real estate purchase agreement with Westridge Preserve LLC for the purchase of open space. He said that since that time they had done the survey and opened escrow. He noted that the purchase involved 30.31 acres. The property was appraised at \$238.00 in 2011. The purchase price was \$56,000. He said the requested tract would allow for trail access from the petro glyphs connecting to the rodeo grounds trails. He said the purchase agreement specified close of escrow by December 15, 2012.

Councilman Lamerson asked when the Council would find out about the liability of the property. He asked if there would be a risk management strategy for Open Space. Mr. Baynes said that as far as risk was assessed on the properties, there was a recreational immunity that municipalities had in park areas. Councilman Lamerson asked if the residents of the City were eliminated from risk and potential liabilities when someone went on to recreational properties that were controlled by the City of Prescott.

Mr. Kidd said that anytime the City acquired park property or any other property, they added to exposure that needed to be added to the insurance portfolio. He said they should begin to assess risks on all properties. He said the trails would fall within recreational immunity statutes for normal activities. They should take a look at the City's responsibilities for public safety and guard against gross negligence.

Councilman Lamerson said the City should have a standard of maintenance and the liability for the maintenance. He said the City should have a level of notification of what was and what was not primitive. Mr. Kidd said the gross negligence standard was if there was a reckless indifference to a safety issue.

Councilman Kuknyo asked what the yearly cost of the 30 acre parcel would be. Mr. Baynes said that they did not surface the trails with anything other than native soils. He said the cost would be negligible. He said there was some clean up with homeless camps and garbage.

**COUNCILMAN BLAIR MOVED TO ADOPT ORDINANCE NO. 4821-1221; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.**

- F. Adoption of Ordinance No. 4822-1222 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona renewing a lease for Willow Creek Dog Park for City of Prescott Parks and Recreation Department from Arizona Public Service Company.

Mr. Baynes said the Parks and Recreation Department currently leased about 3.4 acres from Arizona Public Service off of Willow Creek Road. He said the lease started December 31, 2000. They had done two five-year extensions of the lease for \$1 per term. They would like to do a 10 year extension that would extend it to December 21, 2021.

Councilman Blair asked how much it cost to maintain the facility. Mr. Baynes said the waste was handled by the users and the City did not have much involvement.

**COUNCILMAN KUKNYO MOVED TO ADOPT ORDINANCE NO 4822-1222; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.**

- G. Approval of a license agreement with Charles M. Horsley and Margaret JT Horsley for public trail and climbing access northwest of Watson Lake.

Mr. Baynes showed a map and said the license agreement would allow a trail through the property to connect to the flume and Watson Dam to access a full loop around the lake. He said the five mile loop allowed the City to market Watson Lake to recreational hikers.

Councilman Hanna said he was concerned with the licensing agreement when the City did not own the property. He asked who would be responsible for the liability. He said he did not want to hurt the trails but had a problem with the rock climbing. He did not want to put the City at risk.

Mr. Kidd said it was a license agreement with recreational immunity standards. He said there was a 90 day cancellation on the agreement. He said that would give the City of Prescott some interest in the property. He said if it did not fall under the immunity clause; it would be an insurance issue for the City. He noted the Horsley's had been allowing people to climb on their property.

Councilman Hanna asked if the City would pick up liability if someone fell off the rocks. He asked if there were going to be signs that said to climb at

their own risk. Mr. Kidd said they wanted to have recreational immunity and they wanted to use reasonable care. He said the Parks and Recreation Department should go through it with Risk and make sure that it is signed properly. Councilman Hanna asked if the City of Prescott would be protected in the case of an accident. Mr. Kidd said they would be protected as well as they could be.

Councilman Arnold said he and Councilman Carlow hiked the trail and said that he was concerned about recreational immunity. He said that he was also concerned because it was a license agreement over a fee title ownership. He asked if there was a risk mitigation process in place. He said they needed to identify the risks. He said he had a hard time going ahead with the plan.

Councilman Blair said he could support it with the proper signage and a risk mitigation plan.

Councilman Lamerson said the trail was like an attractive nuisance. He said that he would prefer staff to have a workshop. He could not support an agreement without a mitigation plan. There needed to be some homework done. Councilman Carlow asked if they would sign it as a hiking or climbing area. He said they were not show stoppers, but they should be addressed. He asked what other communities did for mitigations

Councilman Arnold said that he wanted the trail acquisition to happen. He wanted to hear what type of mitigation they had for the trails in the City. Councilman Hanna asked for the item to be pulled because he would have to vote no. Mr. McConnell said they should take no action so that it would not have to come back at a particular time and it would give Parks and Recreation time to fulfill what the Council was interested in.

Councilman Kuknyo asked if the Horsley's were good with waiting. Mr. Baynes said yes. Councilman Arnold asked how long it would take Parks and Recreation to answer the questions. Mr. Baynes said that he would have to talk to Risk before he could get a timeline.

**COUNCILMAN LAMERSON MOVED TO TAKE NO ACTION AND INSTRUCT STAFF TO DO WHAT THEY NEED TO DO TO BRING IT BACK; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.**

- H. Approval of Supplemental Agreement No. 4 to City Contract No. 2007-222 with Layne Christensen Company for arsenic reduction water treatment.

Mr. Nietupski said Public Works operated the City's water system and would continue to do that. He assured the Council and the public that the operational change could be implemented safely and without risk to the City's water customers.

He noted that in January of 2006 the Environmental Protection Agency reduced the maximum contaminate level for arsenic in drinking water from 50 parts per billion to 10 parts per billion. He said that owners of systems were required to implement treatment to meet the new quality standards. He said the City had varying arsenic levels. They chose to do individual well head treatment to minimize capital costs and assure compliance with the new standard. He noted that the City paid a monthly lease on equipment and a volumetric charge per acre foot of water treated.

He noted that Wells 1 and 6 currently required arsenic treatment. He said Wells 3, 4 and 5 could suspend arsenic treatment based on periodic testing that had occurred since the last well was put into treatment operations on October of 2010. He said they would continue to monitor arsenic at intervals more frequent than the regulatory requirements. They would test the wells on a monthly basis and report quarterly to the Department of Environmental Quality to be sure that the City was responsible. If they needed to resume treatment it could start in two days.

He said the costs associated with the routine operation were less than \$10,000 annually which was mostly staff time. He said staff would operate treatment facilities for Wells 1 and 6. He said that Layne Christensen would be responsible for all non-routine, non-preventative major maintenance. They had accepted the supplemental agreement. He noted that Wells 3, 4, 5 were in a standby mode. He said the transfer of maintenance for all wells would occur December 31, 2011, subject to Council's approval.

Councilman Arnold asked if testing would be done in house. Mr. Nietupski said there would be internal and external third party testing.

Councilman Lamerson noted that since the process was implemented, the wells had met ADEQ requirements and they said it was not necessary to continue treatment. Mr. Nietupski said they would monitor on a regular basis.

John Zambrano, Prescott, said he had a background in environmental engineering. He reviewed the rule making on arsenic and the cancer risk assessment from the National Academy of Sciences. He said that it was good news that City was finding lower levels of arsenic in their water sources.

He urged the City to maintain treatments of the well and operate them to achieve the lowest possible levels of arsenic. The standard of 10 was based on a risk assessment and a national cost benefit analysis where the cost of arsenic removal was weighed against the resulting health benefits, including reduction in the incidents of cancer. He said the risk of getting cancer at a standard of 10 was not 0, it was 1 in 300 which was higher than any standard for drinking water. He asked that the City reduced the arsenic level to 2 parts per billion. He said that arsenic was associated with liver, kidney, lung, bladder and skin cancer.

Councilman Kuknyo noted that at the current levels 1 out of every 300 would get cancer from drinking water. Mr. Zambrano said that would be “lifetime drinking”. If they drank the water for 70 years, that would be the risk. He said it would be one to two cancers per year in a City of Prescott’s size.

Mayor Kuykendall asked if there was a number for the big tank in Chino. Mr. Nietupski said they monitored and tested at all entry points into the system. He said they relied on the EPA standards and it was below 10 parts per billion.

**COUNCILMAN HANNA MOVED TO APPROVE SUPPLEMENTAL AGREEMENT NO. 4 TO CITY CONTRACT NO. 2007-222 WITH LAYNE CHRISTENSEN COMPANY FOR ARSENIC REDUCTION WATER TREATMENT; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.**

- I. Adoption of Resolution No. 4113-1223 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Resolution No. 4009-1039 with regard to Council Policy on Membership on Boards, Commissions and Committees and adopting a new Council Policy on Membership on Boards, Commissions and Committees.

Kim Webb introduced the item and said the City adopted a new resolution on March 23, 2010, which repealed several other resolutions pertaining to Boards, Commissions and Committees. Since that resolution, two of the committees had been eliminated – the Centennial Committee and the Transportation Coordinating Committee. She noted that one of the new Council members thought it was important that the new appointees to the committees be required to attend training within six months of their appointment. Training would be offered in March and September.

**COUNCILMAN LAMERSON MOVED TO ADOPT RESOLUTION NO. 4113-1223; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.**

- J. Adoption of Ordinance No. 4823-1223 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, abandoning a small segment of Rhinestone Drive right-of-way adjacent to State Route 69 and authorizing the Mayor and City staff to take all necessary steps to effectuate such abandonment.

Mr. Nietupski said the parcel was a result of the improvement to State Route 89. He said that in the reconfiguring, the intersection was land locked and had no practical purpose. He said the adjacent property owners requested that the City sell them the property. He noted that the property was appraised at \$13,500 and a purchase agreement had been approved.

Mayor Kuykendall asked where the money would go from the sale. Mr. Nietupski said it would go into the Street Fund.

**COUNCILMAN HANNA MOVED TO ADOPT ORDINANCE NO. 4823-1223; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.**

### III. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of December 13, 2011, adjourned at 4:48 p.m.

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MARLIN D. KUYKENDALL, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 13th day of December, 2011. I further certify the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

AFFIX  
CITY SEAL

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ELIZABETH A. BURKE, City Clerk