

**MINUTES  
BOARD OF ALDERMEN  
JULY 17, 2023  
DES PERES GOVERNMENT CENTER**

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The Special Meeting of the Board of Aldermen of the City of Des Peres, Missouri was held at the Des Peres Government Center, 12325 Manchester Road 63131, commencing at 6:00 P.M. on Monday, July 17, 2023.

**ROLL CALL**

The City Clerk took roll call with the following elected officials physically present: Alderman Barrett, Alderman Concagh, Alderman Fitzpatrick, Alderman Kleinschmidt, Alderman Osherow and Alderman Pound. Mayor Becker was also present.

Staff members present included the City Administrator, Director of Public Works, Director of Finance, Director of Public Safety, City Clerk and City Attorney.

**AMENDMENT TO AGENDA**

Mayor Becker announced that while Citizen Comments was not included on the agenda for this special meeting, citizen comments will be allowed and everyone will be given an opportunity to speak. Mayor Becker asked that all respect a time limit in their remarks and focus on the legislation being debated; try not to be redundant of remarks previously made at the public hearing or subsequent meetings; and for everyone needs to be respectful of the speakers.

**LEGISLATION**

**UNFINISHED BUSINESS –**

- a. Unfinished Business from Meeting of June 12, 2023
  - 1. B23-2993 An Ordinance Amending Sections 402.002, 404.055 and 408.015 of Appendix C. Zoning of the Municipal Code of the City of Des Peres Relating to Comprehensive Marijuana Facilities (As Introduced May 8, 2023 and 2<sup>nd</sup> Read June 12, 2023)
  - B23-2993.2 Substitute Bill for B23-2993 Proposed to Be Considered by the Board as an Amendment to B23-2993 in lieu of B23-2993.1 Discussed but not adopted as an amendment June 12, 2023.

Mayor Becker asked the City Attorney to address the legislation in question, Mr. Graville stated that the legislation being considered is the regulatory framework for how the city will regulate the time, place and manner of operation of comprehensive marijuana dispensaries. Amendment #3, approved by voters in November 2022, established that the sale of recreational marijuana is legal in the State of Missouri, established detailed rules and regulations regarding sales via the Department of Health and Senior Services; and provided an opportunity for local governments to opt into local regulation as to the time, place and manner of operations as long as those regulations were not unduly burdensome and not in conflict with the constitutional amendment.

Mayor Mark Becker stated B23-2993 is not specific to Root 66 but are regulations that apply citywide including the site at 12095 Manchester where Root 66 already possesses a medical marijuana dispensary permit.

Alderman Osherow questioned what would happen if the board didn't adopt the legislation in its current form or with amendments tonight or before the current moratorium ends. The City Administrator Harms indicated that if the city doesn't adopt local zoning regulations on comprehensive marijuana dispensaries, they become a permitted use under our code since they are expressly allowed in Amendment #3. In that case, a dispensary would only need an Occupancy Permit and Business License both of which are administrative functions not providing for review by the Planning & Zoning Commission or Board of Aldermen.

Mayor Becker stated that he would now open Citizen Comments calling first on speakers who have completed a speaker's card following which he would certainly afford those who did not file speakers' cards with the clerk an opportunity to do so. However, all questions and comments should be addressed to the Board of Aldermen and not to the audience.

Andrew Mullins – President at MO Can Trade Association – provided statistics on the impact of legalization of marijuana by both Amendment #2 and Amendment #3 on jobs created in the State of Missouri in the growth, processing and distribution and the tax dollars those activities have created for the state and the cities in which those facilities are located.

Sam Eversman – 1308 Bansbach Road – stated that he had provided the board of aldermen with proposed amendments to substitute bill B23-2993.2 via email, which he had asked be addressed by the board. Specifically, an amendment to Section E.3 to add a 500 foot buffer for any property zoned residential in addition to the parks buffer and to Section E.5 to change the proposed 120 feet buffer from any existing single family residential property to be a 500 foot buffer from any residentially zoned property. Such amendments would offer the same protection to our homes as it does our parks and does not discriminate against any property owners who may own vacant residential property - they should get the same protections as existing homeowners.

Mr. Eversman stated that the proposed buffer of 120 feet measured from the nearest residential structure is not use anywhere in the zoning code and asked why in this instance? The City Attorney stated that in drafted the legislation the city did look to the zoning code and use of a buffer for placing nursing homes and assisted living centers in commercial districts has similar language as does Amendment #3.

Luci Fikes – 1884 Candlewick Drive – spoke in general about marijuana; asked what testing exits to measure the levels of intoxication and if there are age limits for those who can purchase marijuana. She was advised that the amendment allows sales only to adults over the age of 21 under the constitution,

Kevin Quigley – 1308 Kendon Drive – spoke in opposition of marijuana stating that the regulation of time, place and manner in the constitution is simple: the time is never, the place is not Des Peres and the manner is irrelevant since it should not be allowed.

Robert Barringer – 1322 Bansbach Road – stated that the preamble to bill are technically correct but substantially inaccurate. Planning & zoning did not recommend the residential buffer on a tie vote but 3 members of the commission were absent and indicated later that had they been present, they would have voted for the residential buffer of 120 feet from residentially zoned property and would have voted for a buffer for minor-oriented businesses. The substitute bill as written is inadequate and does not provide a reasonable buffer for residential property and ignores needed safeguards for the children.

Jeane Fluri – 1820 Gray – spoke in opposition to allowing marijuana in Des Peres. The city is at a crossroads and we need to either protect our children, homes, parks and family oriented business community of marijuana or ignore our children, homes, parks and businesses.

Annette Evola – 12131 Georgian Trail – spoke in opposition of marijuana. She stated she is a teacher, a chemist and nurse and encouraged residents before the vote in November 2024 to read the position papers and policy statements from reputable medical journals about the effects of marijuana use.

Chris West – one of the building owners of 12095 Manchester Road - As a business owner, COVID hit our rental property hard. The prior tenant Paper Dolls could not make rent due to the impact on business and eventually closed. The process for Root 66 to first get a medicinal marijuana license from Des Peres took 8 months. They have spent another 8 months on hold after passage of Amendment #3 while the city studied the comprehensive marijuana amendment and rules. As a property owner in this community, I applaud your due diligence and thorough approach. . We are now here tonight to adopt the rules on what my tenant needs to do in order to apply for his comprehensive permit from the city which will trigger another round of review of his application.

Alderman Concagh asked if the rent from Root 66 would be different if they were selling medicinal or comprehensive. Mr. West said the rent would be the same either way.

Gretchen Kolthoff – 1525 Breezeridge Drive – stated she works at Mathnasium and it is still open teaching children nearly next door to the proposed marijuana dispensary.in fact open.

Tom Evola – 12131 Georgian Trail – spoke in opposition of marijuana and asked for a residential buffer much greater than 120 feet.

Patty Rose - 12116 Ridgelawn Drive – spoke in opposition of marijuana. She stated that the City Attorney's comparison of marijuana dispensaries to assisted living centers is like comparing apples to oranges.

Yvonne Allen – 1600 Bopp Road – spoke in opposition of marijuana. She stated that our code prohibits adult oriented businesses from being within 1200 feet of residential property and that the same standard should be applied to marijuana dispensaries.

Alderman Fitzpatrick asked for a clarification on the adult oriented business. The City Attorney advised that the zoning code established special regulations relating to Adult Entertainment Establishments and Businesses which largely deal with adult entertainment relating to performances of a sexual nature and was targeted to allow that use in response to a court case and restrict it only to major shopping centers.

Dan Welsh, Attorney for Root 66, presented a power point updating everyone on their construction, exterior finished and their interior design which is similar to a high end jewelry store. He also provided letters in support of Root 66 from Des Peres former and current State Senators Koenig and McCreary. He reminded those present that that issues of the sale of recreational marijuana was legalized by voters in 2022 and that the opportunity for Des Peres to ban adult use dispensaries is on the ballot for November 2024 and not tonight.

Mr. Welsh introduced Hamid Hamrah one of the owners of Root 66. Mr. Hamrah, owns property at 1408 Fawnvalley Drive in Des Peres as well as a home in Ladue. I hear what many of you are saying about protecting the children, but what about my children. I have two daughters and since I appeared before this board in June my family has been stalked and my children exposed on-line. Where they go to school, the activities they partake in. You have succeeded in

frightening them. Attack me all you want but families are out of bounds. I will not publicly expose those of you in the room that did this but some of you spoke again this evening about protecting the children. I am not a man without resources and that harassment will end or I will use those resources as necessary.

Alderman Concagh stated they we are not talking about Root 66 tonight but about regulations for the entire city. However, I want to know why you have not opened your medicinal marijuana dispensary. It was approved over a year ago. Alderman Fitzpatrick concurred - how is it our fault that you have not yet opened? Your presentation about the lengthy time period for review suggests that is why you are not open. This is a misrepresentation about the facts. For whatever reason, you did not start construction and are now only finishing your build out. That's is on you not the city.

Karla Kramer – 18 Forest Place Lane – spoke in opposition of marijuana. She stated that this is an emotional issue because we are afraid for our children and for our families.

Nichole Graham – former Des Peres Resident – spoke in favor of the marijuana dispensary and of the integrity of the owner who she has known for years and for whose children her own children have babysat.

Janet Howard – 998 Kinstern Drive – spoke in opposition of marijuana. Traffic on Manchester Road is already unsafe. I have lived here 72 years. A member of my family was killed in a traffic accident on Manchester and I was hit by a mail truck on Manchester. Medical marijuana helps people. Recreational does not.

There being no additional speakers, Mayor Becker asked if any members of the Board had any comments before we take up specific discussion on Bill 23-2993 or amendments thereto.

Alderman Barrett – stated he sees the passion the residents have on this issue and the board appreciates your input. We have heard you. For some this is a moral issue; for others a serious public health and safety issue; and for others your comments reflect your values. We hear and appreciate all of your comments. In many ways that input is reflected in the regulations being considered tonight. However, even before we voted, because we won't pledge that we agree with your position, we have been called liars; we don't care about the children or the community; and that we don't listen is just wrong. The board is just doing their job to listen, gather all of the information and then make a decision.

The board is not your enemy, we are your neighbors. We care about this community or we wouldn't be sitting up here. I for one have returned every call, listened to every comment and read every e-mail. The board has been to countless meetings on this issue. We have taken steps to impose moratoriums to allow time to study the issues. We have commissioned traffic studies, parking studies, analyzed options for what we can and cannot do under Amendment #3 and already called for an election to ban recreational dispensaries in the time frame compliant with the law. Some want us to just say no and ban marijuana facilities through regulation and risk litigation. Many of you say OK, Des Peres will find a way to pay for it but money spent on litigation is money not available for your city services. Do we eliminate free trash? Raise property taxes? Cut your services? This community has over 9,000 residents and we have to think about all 9,000 including the seniors on fixed incomes, single mom's and even dual income families struggling to get by. I too am a lifelong resident of Des Peres. I raised my family which includes 5 daughters in Des Peres. I do care about the children in this community and the region including my own. However, this decision is a balancing act between the competing interests and beliefs of all 9,000 residents

Alderman Barrett went on to say when you read the language of Amendment #3 it screams consult your attorney with terms like “regulate the time, place and manner of operations” and provides that your regulations cannot be ‘unduly burdensome’ or in conflict with Amendment #3. We have done that throughout this process and I believe this ordinance is among the most restrictive and complete in the region if not the entire state. Des Peres to the best of my knowledge is the only city that has put an outright ban on the ballot. We need to follow the law and the constitution regardless of our personal beliefs and values.

Alderman Osherow asked if the city has reduced any parking requirements in the substitute bill.

The City Administrator responded The Lochmueller Report on parking included both a statement that “with regards to the parking supply for the use, given the volatility experienced it is recommended that the city consider a requirement akin to existing standards. A parking requirement of 2 spaces for every 3 employees on the maximum shift plus 7 spaces for every 1,000 sf should be adequate in most cases”. The report went on to say that “trip generation and parking demand is likely driven by brand name, recognition and loyalty of the customer base which would best be captured by the above data requirements specific to the user’. Both concepts were incorporated into the legislation by also allowing an alternative parking finding based on a site specific parking study as a part of the CUP process. In drafting the legislation, the staff interpreted the reference to “square feet” as being “gross square feet” which is measurement consistent with the general parking standard for most uses in the code.

At the meeting on June 12<sup>th</sup>, the petitioner filed a written objection to the parking standard as written suggesting it was double counting parking demands for staff. The board requested that the staff confirm with The Lochmueller Group if their suggestion was gross square foot or public square foot. We did so and their response is in writing by memo dated July 6<sup>th</sup> basically saying it is the city’s call. Since the only other use which has a dual standard that uses both an employee count and square foot calculation is a restaurant use in which case the square footage only applies to publicly used square footage and does not include back of the house space for kitchens, prep work, or storage staff in the interest of consistency included the same standard for comprehensive marijuana facilities in the amended version of the bill for the board’s consideration. When asked if Root 66 meets either standard, the City Administrator stated that the information needed to do the calculation will be submitted by the petitioner when they actually apply for a CUP if this ordinance is adopted. Without adopting a defined parking standard we default to the general parking standard of 5 space for each 1,000 sq ft of gross floor area which Root 66 met when the medicinal marijuana CUP was issued.

Alderman Osherow asked if Chief Hall thought there would be a public safety difference with the 500 foot buffer to the 100 foot buffer. Chief Hall replied no, he does not see a difference from a public safety perspective.

Alderman Pound stated he would like the board to consider a 300 foot residential buffer which is the protection we are giving dispensary operators with the minimum 300 foot separation from other dispensaries. When asked if that was a motion, he indicated not at this time as he would like to hear other aldermen’s thoughts first. When asked if he had any thoughts as our most senior alderman, Alderman Kleinschmidt stated he had no comments at this time.

Cathleen Anderson – 2053 Willow Leaf Drive – expressed her concern for the parking issue and wished Root 66 would have opened last August so everyone could see how the parking is.

Alderman Osherow expressed his own concern if the parking for Root 66 would be adequate for the recreational use. Root 66 Representative, Dan Welsh stated there will be twenty-one parking spaces and that is more than enough parking.

There being no other comments, Mayor Becker asked if there was anyone on the board wishing to make a motion to amend the legislation or to approve the bill. He suggested the board first considering adopting the Substitute Bill B23-2993.2 as an amendment to the bill, then considering any additional amendments desired to be offered by any member of the board.

Alderman Fitzpatrick made a motion, seconded by Alderman Osherow to amend 2993 by the language in Bill 23-2993.2. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick, "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", and Alderman Pound, "AYE". Motion passed 6-0

The Mayor asked if there were any motions for further amendments to Bill 23-2993 as amended.

Alderman Concagh made a motion, seconded by Alderman Pound to amend the bill relating to parking back to how it was stated in the original bill B23-2993 to read "gross square feet" rather than "area available for public use".

Following discussion to clarify the intention of the amendment, the City Administrator stated that as he understood the amendment, the language being changed is on page 8 of the bill and would change Section E(11)(b) to read: "Seven (7) spaces per thousand 1,000 square feet of gross floor area of the comprehensive marijuana dispensary facility". Alderman Concagh stated that fairly states his motion.

A roll call vote was taken with the following results: Alderman Barrett, "NAY", Alderman Concagh, "AYE", Alderman Fitzpatrick, "NAY", Alderman Kleinschmidt, "NAY", Alderman Osherow, "NAY", and Alderman Pound, "AYE". Motion fails 2-4.

Alderman Pound made a motion, seconded by Alderman Concagh, to amend the bill to change the residential buffer proposed from 120 feet to 300 feet and to measure that distance from the property line.

After discussion to clarify the intention of the motion, the City Administrator stated that as he understood the amendment, the language being changed is on page 7 of the bill and would change Section E(5) to read: "No comprehensive marijuana facility shall be initially sited within three (300) feet of any residentially zoned property." Alderman Pound stated that is his motion.

Alderman Concagh asked how many properties along the 2 mile commercial stretch of Manchester Road in Des Peres might be eligible sites for a comprehensive marijuana facility using a 500 foot residential buffer or a 300 foot buffer?

The City Administrator stated that maps evaluating the cumulative effect of application of the various buffers discussed by Planning & Zoning Commission last February showing that combining the 1000 foot buffer from churches, schools and day care centers and the 500 foot buffer from parks with various residential buffers. All measurements in February were shortest direct distance as the crow flies before it was discovered that the measurement in Amendment #3 is shortest lawfully walkable distance by a pedestrian between a marijuana dispensary and a church, school or day care center. Those initial maps overstated the measurement of the buffers for churches, day care centers and schools but were accurate as to proposed residential buffers which showed 7 potential sites

The City Administrator stated that last week, at the direction of the Mayor in response to that exact question from a resident proposing a 300 or 500 foot residential buffer from any residentially zoned property, public works prepared a new map measuring only various residential buffers of 100', 300' and 500' measured from the property line of the adjoining

residentially zoned district. Those maps were forwarded electronically last Friday to the Mayor, the board to review over the weekend and paper copies at each board members seat. Those maps are not substantially different from the same maps generated in February as to the impact of the residential buffers.

The Director of Public Works displayed the map electronically and reviewed the content of the maps with orange coloring indicating the impact of the 500' park buffer along with a 100' residential buffer; yellow showing areas removed as eligible parcel when expanded to a 300' residential buffer; and green depicting the impact of a 500' residential buffer. The number of parcels eligible for a potential comprehensive marijuana dispensary depends on how the distance is measured between direct line of site versus legally walkable distance and if eligibility is dependent on the intention of the board if the parcel is ineligible if any part of the buffer crosses the property line of the commercial lot or only if the building on the lot proposed to be used is within that defined buffer area. If the intention is any part of the commercial property, then only 1 parcel located near Barrett Station would appear to fall outside all of the buffers with a 500' residential buffer. At 300' it would appear that no parcels east of I-270 would be eligible except potentially West County Shopping Center where some buildings are outside the buffer. West of I-270, no parcels south of Manchester would be eligible and potentially the parcels between eastbound and westbound Manchester would be eligible with the exception of those within 1,000 feet of a day care center.

Alderman Concagh stated as far as he is concerned having 5-7 eligible parcels in the corridor is sufficient for the 2 mile strip of Manchester Road in Des Peres using a 300 residential buffer.

Robert Barringer – 1322 Bansbach – stated that the staff was wrong in their mapping and conclusions. Amendment #3 and the proposed bill establishes a measurement from the back wall of a freestanding dispensary to the closest point of the property line and in the case of a dispensary or school, church or day care center located in a multi-tenant building from the property line to the entrance or exit of the facility. The method to measure the residential buffer would be the same methodology.

The City Administrator suggested if that is the intention of the board, then he would suggest an Amendments to Section 12, paragraph 6 (a) and (b) on page 7 of the bill be amended to include the work residence following the term school, daycare or church to make that intention clear so that the current and future staff are applying the standard consist with the intention of the board.

A roll call vote was taken with the following results: Alderman Barrett, "NAY", Alderman Concagh, "AYE", Alderman Fitzpatrick. "NAY", Alderman Kleinschmidt, "NAY", Alderman Osherow, "NAY", and Alderman Pound, "AYE". Motion fails 2-4.

Alderman Fitzpatrick made a motion, seconded by Alderman Osherow to approve B23-2993 as amended. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "NAY", Alderman Fitzpatrick. "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", and Alderman Pound, "NAY". Motion passes 4-2.

Alderman Kleinschmidt made a motion in light of passage of Bill 23-2993 to end the moratorium on marijuana dispensary permits previously extended to August 21, 2023 under Ordinance 2977 upon signature of the Mayor approving Bill 23-2993. Seconded by Alderman Fitzpatrick. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick. "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", and Alderman Pound, "AYE". Motion passed 6-0.

- a. B23-2998 An Ordinance of the City of Des Peres Amending Section 404.055 of Appendix C. Zoning Related to Conditional Use Permits Providing for Storage of Beer and Spirits as a Conditional Use in the C-1 Commercial District

Mayor Becker stated that B23-2998 was introduced June 12<sup>th</sup> and was the subject of a public hearing and 2<sup>nd</sup> read on July 10<sup>th</sup>. It is now in a position for further discussion, amendment and potentially a vote. If adopted this meeting, the petitioner could return to Planning & Zoning at their next meeting on August 9<sup>th</sup> to consider the merits of his petition. If held to our next meeting scheduled for August 14<sup>th</sup>, further consideration by Planning & Zoning would be delayed until September 13<sup>th</sup>.

Alderman Concagh was absent for the public hearing on July 10<sup>th</sup> and asked for a recap on what B23-2998 entails. Public Works Director, Steve Meyer gave a brief synopsis on zoning text amendments for storage use using the PowerPoint presentation from the Public Hearing on July 10, 2023. Mayor Becker stated that there were no public comments pro or con at the public hearing.

Alderman Kleinschmidt expressed his concerns that amending C-1 in the Zoning Code potentially opens up the entire commercial corridor to this use which was also the unanimous opinion of the Commission and stated he would be less concerned if the bill were amended as suggested by the commission to allow this use only for property Zoned PD-C which would allow us to limit the use to the petitioners proposed site t 2141 Sam's Drive,

When asked what the process would be for the petitioner under each option, the City Administrator replied if the bill remains and amendment to C-1, the petitions application for a Conditional Use Permit and his application for approval of a Master Site Plan for Lot #4 of Barrett Park Subdivision would then proceed through Planning & Zoning for review and recommendation following which the petition would then go to the Board of Aldermen for a Public Hearing and consideration of an ordinance approving both.

If a motion to amend were adopted to allow the use as a permitted use in PD-C, the city would need to rezone Barrett Park Subdivision PD-C and readopt the Master Plan adopted for the commercial subdivision and submit an application for approval of a Master Site Plan for Lot #4 of Barrett Park Subdivision with review by Planning & Zoning, a public hearing and consideration of an ordinance approving the development. If the board refers the rezoning to the commission following approval of the amended ordinance for concurrent consideration of the master site plan for Lot #4, the time frame for this process should be the same.

The City Administrator stated that it has been a goal of the staff to rezone both Barrett Park Subdivision and the Des Peres Pointe Shopping Center to PD-C since adoption of the revised zoning code in 2017 creating the PD-C regulations. Both of those developments were previously zoned C-5 Planned Business District was eliminated with adoption of the revised Zoning Code. Those properties were developed using standards and methods similar to the new planned development zoning regulations and should have been rezoned PD-C instead of C-1 at that time. Now that we have a City Planner on staff, we hope to have the staff time available to address those issues.

Following discussion, Alderman Kleinschmidt moved to amend Appendix A of B23-2998 relating to the use "Storage, Beer and Spirits Only" to remove it as a Conditional Use in the C-1 Commercial District and to make it a Permitted Use in the Planned Development - Commercial (PD-C) District. Motion Seconded by Alderman Barrett. A roll call vote was taken with the



following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick. "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", and Alderman Pound, "AYE". Motion passed 6-0.

Alderman Kleinschmidt moved to approve Bill 23-2998 as amended, seconded by Alderman Barrett. A roll call vote was taken with the following results: Alderman Barrett, "AYE", Alderman Concagh, "AYE", Alderman Fitzpatrick. "AYE", Alderman Kleinschmidt, "AYE", Alderman Osherow, "AYE", and Alderman Pound, "AYE". Motion passed 6-0.

## **ADJOURNMENT**

The Mayor reminded all that the Regular Meeting of July 24<sup>th</sup> has been cancelled due to summer vacations. The board is next scheduled to meet in work session on July 31<sup>st</sup> for Strategic Planning and on August 7<sup>th</sup> for a work session on employee pensions. The next business meeting of the board will be August 14<sup>th</sup>.

Alderman Fitzpatrick made a motion, seconded by Aldermen Barrett, to adjourn the Regular Board of Aldermen Meeting at 9:13 P.M.

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Amanda Hurley  
City Clerk

Minutes approved by the Board of Aldermen on the 14<sup>th</sup> day of August, 2023.

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Mark Becker, Mayor

ATTEST:

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Amanda Hurley  
City Clerk